FEDERAL REGISTER

Vol. 85 Friday,

No. 31 February 14, 2020

Pages 8373–8716

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 85 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

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

Contents

Federal Register

Vol. 85, No. 31

Friday, February 14, 2020

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Administrative Orders:
Notices:
Notice of February 13, 2020 8715

5 CFR
Proposed Rules:
1650.....8482

10 CFR
430.....8626
431.....8626
Proposed Rules:
430.....8483

13 CFR
302.....8373
315.....8373

14 CFR
39 (2 documents) 8383, 8386
71.....8388

16 CFR
Proposed Rules:
453.....8490

19 CFR
12.....8389

25 CFR
575.....8395

29 CFR
4022.....8396

30 CFR
Proposed Rules:
938 (2 documents) 8494, 8495
948.....8497

33 CFR
100.....8397
Proposed Rules:
100 (2 documents) 8499, 8504
165 (2 documents) 8507, 8509

36 CFR
Proposed Rules:
1192.....8516

40 CFR
52 (4 documents) ...8405, 8406, 8408, 8411
81.....8411
180 (8 documents) 8428, 8433, 8441, 8447, 8454, 8457, 8461, 8468
281.....8472
282.....8472
Proposed Rules:
52.....8520

42 CFR
410.....8475
Proposed Rules:
37.....8521

46 CFR
Proposed Rules:
530.....8527

47 CFR
Proposed Rules:
0.....8531
54.....8533
64.....8531

50 CFR
679.....8477
Proposed Rules:
648.....8534

Rules and Regulations

Federal Register
Vol. 85, No. 31
Friday, February 14, 2020

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 302 and 315

[Docket No.: 191218–0119]

RIN 0610–AA80

General Updates and Elimination of Certain TAAF and PWEDA Regulations

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (''EDA''), U.S. Department of Commerce (''DOC''), is issuing a final rule to update the agency's regulations implementing the Trade Adjustment Assistance for Firms (''TAAF'') provisions of the Trade Act of 1974, as amended (''Trade Act''), and the Public Works and Economic Development Act of 1965, as amended (''PWEDA''). The changes to the TAAF program regulations clarify the process for import-impacted U.S. manufacturing firms, oil and natural gas production firms, and service firms to obtain technical assistance—identified in the Trade Act as ''adjustment assistance''—through the TAAF program, reorganize the regulations to make them easier to read and understand, incorporate best practices, and bring the regulations into closer alignment with the program's statutory requirements. The result will be to ease the burden on firms seeking adjustment assistance through the TAAF program and make it easier for Trade Adjustment Assistance Centers (''TAACs'') to work with firms. EDA is also eliminating certain TAAF and PWEDA regulations that are unnecessary or duplicative because they describe requirements already established in other regulations or award documentation.

DATES: This final rule is effective on March 16, 2020.

ADDRESSES: EDA received no comments on the notice of proposed rulemaking (''NPRM'') that preceded this final rule, so there are no comments for EDA to post to the *Federal Rulemaking Portal, www.regulations.gov.* For convenience, after the final rule becomes effective, EDA plans to update the full text of EDA's regulations, as amended, and post it on EDA's website at *https://www.eda.gov/about/regulations.htm.*

FOR FURTHER INFORMATION CONTACT: Ryan Servais, Attorney Advisor, Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1244 Speer Boulevard, Suite 431, Denver, CO 80204; telephone: (303) 844–4403.

SUPPLEMENTARY INFORMATION:

Background

Through strategic grant investments that foster job creation and attract private investment, EDA supports development in economically distressed areas of the United States to prepare these areas for growth and success in the worldwide economy.

EDA is issuing this final rule to update the agency's regulations implementing the TAAF program (Part I) and PWEDA (Part II). The changes will ease the burden on firms and grantees by eliminating unnecessary and duplicative regulations and clarifying and reorganizing the regulations to make them easier to understand.

The updates will also incorporate best practices. For example, EDA is adding a requirement that firms must begin implementation of their Adjustment Proposal (''AP'') within six months after the AP is approved by EDA. Firms that do not begin implementation within six months after approval must update and re-submit their AP, and then request re-approval before any Adjustment Assistance may be provided. EDA is also incorporating changes that will enable firms to amend their APs within two years of EDA approval and that will require firms to complete implementation of the APs within five years of approval. These are existing best practices and help to ensure that APs reflect current conditions and are maximally effective.

The updates will align the regulations more closely with statutory requirements. Specifically, EDA refers to imported articles or services that compete with and are substantially equivalent to the petitioning firm's as ''directly competitive or like,'' as written in the Trade Act, rather than simply ''directly competitive.'' In addition, EDA is clarifying all references to ''days'' as ''calendar days,'' to reflect this usage in the Trade Act, a change that will also speed up the time within which EDA is required to make determinations regarding firm eligibility and assistance.

On August 19, 2019, EDA published an NPRM in the **Federal Register** requesting public comments on the general updates and elimination of certain TAAF and PWEDA regulations contained in this final rule (84 FR 42831). The public comment period closed on September 18, 2019. EDA received no comments in response to the NPRM. For this reason, this final rule contains no changes to the rulemaking that was proposed in the NPRM, apart from two technical corrections. The first technical correction changes several instances of ''Adjustment Plan'' to ''Adjustment Proposal.'' ''Adjustment Plan'' is not a defined term; ''Adjustment Proposal'' is the correct term that should be used throughout. The second technical correction, to revised 13 CFR 315.15, eliminates an improper citation to the Tariff Act and is discussed below in Part I.

Lastly, because this rule will remove certain regulations and will make it easier for firms and EDA grantees to comply with the requirements for the TAAF and EDA grant programs, it is considered a ''deregulatory action'' pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771 (M–17–21).

Part I: Updates to TAAF Program Regulations

Trade Act Background

Authorized under chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341–2355), the TAAF program assists import-impacted U.S. manufacturing firms, oil and natural gas production firms, and service firms with developing and implementing projects to regain global competitiveness, expand markets, strengthen operations, and increase profitability, thereby increasing U.S. jobs.

The TAAF program provides cost-sharing technical assistance to eligible import-impacted U.S. manufacturing

firms, oil and natural gas production firms, and service firms in all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Technical assistance is provided through a nationwide network of 11 TAACs, which are non-profit or university-affiliated entities.

TAACs provide eligible firms with customized assistance from industry experts knowledgeable about the unique needs, challenges, and opportunities facing industries in their respective regions. Firms work with TAACs to apply for certification of eligibility for TAAF assistance. Firms demonstrate their eligibility by documenting that they have experienced a decline in sales or a decline or impending decline in employment or worker hours, and that an increase of imports of directly competitive goods or services contributed importantly to such declines. EDA then renders a decision regarding the firms' eligibility.

TAACs work closely with eligible firms' management to identify the firms' strengths and weaknesses and then develop customized business recovery plans, APs, which are designed to stimulate recovery and growth. The TAAF program pays up to 75 percent of the costs of developing APs. EDA reviews firms' APs and determines whether or not to approve them. When an AP has been approved, firm management and TAAC staff jointly identify consultants with the specific expertise to help the firm implement the AP. If the cost exceeds the simplified acquisition threshold, consultants are selected through a competitive procurement process.

Overview of Changes to the TAAF Regulations

The discussion that follows presents an overview of substantive changes by subpart letter and section number.

Subpart A

EDA is transferring §§ 315.4 and 315.5 from subpart A to subpart B. This change will retain all general provisions within subpart A, while consolidating the regulations regarding TAAC selection, operation, role, and coverage within subpart B.

Section 315.1

EDA is replacing this section with a new programmatic description of TAAF's purpose. The revised section more clearly lays out the process by which EDA executes its responsibilities concerning the TAAF program, as delegated by the Secretary of Commerce, and the process by which firms work with TAACs to request and obtain Adjustment Assistance.

Section 315.2

EDA is making changes to the definitions identified below.

Adjustment Assistance

EDA is making three revisions to the definition of *Adjustment Assistance.* First, EDA is removing the reference to ''or industries.'' As explained further in the discussion of the changes to § 315.17, EDA is eliminating its regulations related to the provision of trade adjustment assistance to industries. EDA has historically not provided separate industry-wide assistance programs because firms within impacted industries have solicited help through TAAF on an individual basis and because there has been no demand for industry-wide assistance. In addition, EDA provides expedited review of petitions and APs from firms within impacted industries. When the U.S. International Trade Commission (''ITC'') makes an injury determination, in accordance with chapter 3 of the Trade Act, EDA provides expedited consideration to petitions by firms in the affected industry, as well as expedited assistance in preparing and processing AP applications to such firms. EDA believes this individualized approach has been effective in facilitating adjustments within both firms and industries. The removal of regulations that reference trade adjustment assistance to industries will help prevent potential confusion regarding the availability of a parallel industry program. In the event that EDA does determine it is appropriate to provide trade adjustment assistance for industries, EDA will promulgate new regulations to implement the program.

Second, EDA is revising the definition to clarify that *Adjustment Assistance* refers to technical assistance provided by TAACs. The current regulation is ambiguous and could be interpreted such that EDA provides the technical assistance directly, which is not the case. Third, EDA is adding to the definition a statement that EDA determines what type of assistance is provided and adding a list of the types of assistance that this may include: Preparing a firm's petition for certification of eligibility, developing an AP, and implementing an AP.

Adjustment Proposal

EDA is revising the definition for *Adjustment Proposal,* clarifying that the AP is a firm's plan for improving its competitiveness in the marketplace, consistent with the intent of the TAAF program as established in the Trade Act.

Decreased Absolutely

EDA is making a minor change to the definition of *Decreased Absolutely* to add language clarifying that a firm's sales or production must have declined by a minimum of five percent relative to its sales or production during the applicable time period and that the decline is independent of industry or market fluctuations and relative only to the previous performance of the firm unless EDA determines that such limitations would not be consistent with the purposes of the Trade Act.

Directly Competitive

EDA is revising the defined term *Directly Competitive* to add the words ''or Like'' to the end, such that the term will be *Directly Competitive or Like.* This change will more closely align this term with the terminology of the Trade Act. EDA is further revising this definition by adding language that clarifies the linkage between this definition and the reference to firms that engage in exploring, drilling, or producing oil or natural gas. By adding the phrase ''For the purposes of this term,'' before the final sentence in this definition, EDA reinforces the requirement in Section 251 of the Trade Act that firms that engage in these types of activities be considered as producing articles that are directly competitive with imported oil and natural gas for the purposes of TAAF eligibility.

Firm

EDA is capitalizing the term, ''Unjustifiable Benefits,'' as referenced in this definition. This change is the result of EDA adding a definition for Unjustifiable Benefits, as described below. EDA is further revising this definition by adding to the sub-definition of *Subsidiary,* which is included as a category of firm that may be considered jointly with another firm that is requesting Adjustment Assistance pursuant to TAAF in an effort to prevent Unjustifiable Benefits. EDA is qualifying the definition of *Subsidiary* by adding an explanation that a firm acquired by another firm but which operates independently of the acquiring firm is considered an *Independent Subsidiary* and may be considered separately from the acquiring firm as eligible for Adjustment Assistance. This change reflects existing practice and addresses a growing trend in petitions requesting Adjustment Assistance for firms that have been acquired by another firm but continue to operate independently after the

acquisition, generally retaining the same management, maintaining control over management decisions, and otherwise continuing operations without significant change.

Increase in Imports

EDA is modifying this definition by moving the second sentence of this definition to the revised subpart C (Certification of firms) as a new paragraph (c) in § 315.6 (Certification Requirements). EDA believes this sentence is more appropriately located in subpart C as a description of one method for a firm to demonstrate that it meets the eligibility requirements for Certification to apply for Adjustment Assistance. The sentence provides that a firm may submit certifications from a firm's customers that account for a significant percentage of the firm's decrease in sales or production, that the customers increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country.

Partial Separation

EDA is changing the definition of *Partial Separation* by replacing language denoting that this definition is with respect to any employment in a firm with language which clarifies that a Partial Separation occurs when there has been no increase in overall employment at the firm and either of the conditions currently described in this definition exist: (1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or (2) a reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year. EDA occasionally receives petitions submitted by firms whose overall employment figures have increased within the periods of time in question and which, nonetheless, assert that there has been a Partial Separation with regards to a certain portion of their workforce's work hours or weekly wages. EDA believes that this revision should resolve the apparent confusion caused by the current wording and clarify that a firm does not meet the eligibility criteria if its overall employment has increased during the relevant time period.

Service Sector Firm

EDA is revising the definition of *Service Sector Firm* to remove the last two sentences of the definition because they are already included in the definition of *firm.*

Total Separation

EDA is streamlining and clarifying the definition of *Total Separation* by removing the phrase ''with respect to any employment in a firm'' and adding the words ''in a firm'' after ''the laying off or termination of employment of an employee.''

Unjustifiable Benefits

As noted above, EDA is also adding a definition for *Unjustifiable Benefits.* Under this new definition, *Unjustifiable Benefits* describe Adjustment Assistance inappropriately accruing to the benefit of (1) other firms that would not otherwise be eligible when provided to a firm or (2) any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, rather than treating these entities as a single firm. EDA believes that this is an important concept that should be fully explained to help firms understand TAAF eligibility requirements.

Section 315.3

EDA is not changing this section.

Subpart B

EDA is revising this subpart to consolidate and clarify all regulations regarding TAAC selection, operations, and coverage. The revised subpart B, entitled ''TAAC Provisions,'' would be inserted after § 315.3 and would include revised §§ 315.4 and 315.5, which would be transferred to subpart B from subpart A.

Section 315.4

EDA is revising paragraph (a) of this section to better describe the TAAC selection process.

EDA is revising paragraph (b) of this section to replace the existing language with an explanation that TAACs are awarded cooperative agreements that are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and that TAACs work closely with EDA and import-impacted firms.

Section 315.5

EDA is re-designating paragraph (a)(1) as paragraph (a) and, in that same paragraph, revising the third sentence in order to clarify that information regarding all of the TAACs' service areas, rather than just particular geographic areas, are available at the websites listed in that section.

EDA is re-designating paragraphs (a)(2) and (3) as paragraphs (b) and (c), respectively. EDA is also streamlining newly re-designated paragraph (c) by renumbering paragraphs (i) and (ii) as (1) and (2), respectively, and by rewording newly re-designated paragraphs (c)(1) and (2) to provide enhanced clarity on the types of Adjustment Assistance a TAAC may provide to a firm.

EDA is removing existing paragraphs (b), (c), and (d) in their entirety. EDA believes these paragraphs are unnecessary, as these provisions and requirements will generally be covered in the Notice of Funding Opportunity used to announce the availability of funding for TAAC awards.

Subpart C

EDA is revising subpart C to consolidate all regulations regarding the certification of firms. The revised subpart C will include §§ 315.6 through 315.10.

Section 315.6

EDA is moving the matching share requirements for APs as set forth in current paragraph (c)(2) to the new § 315.11 (''Adjustment Proposal Process'') in subpart D (''Adjustment Proposals''). EDA is eliminating the remaining requirements in § 315.6, which are duplicative of other regulations in this part and provide no additional guidance or clarity to TAACs or firms. Finally, EDA is re-designating the current § 315.7 as § 315.6.

In addition to these revisions, as noted above in the discussion regarding revisions to the definition of *Increase in Imports* at § 315.2, EDA is adding a new paragraph (c) to revised § 315.6 and moving into this paragraph the language formerly located in the definition of *Increase in Imports* that enabled firms to help demonstrate that they meet the eligibility requirements for Adjustment Assistance by submitting certification from the firm's customers that account for a significant percentage of the firms' decrease in sales or production, that the customers increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country. EDA is further adding to this new paragraph (c) a sentence specifying that such certification from a firm's customer must be submitted directly to a TAAC or to EDA. EDA believes this addition will ease some confusion by firms, some of which have requested their customers to provide such certification directly to the firms which subsequently pass on the certifications to EDA through the TAACs.

Section 315.7

EDA is re-designating the current § 315.8 as § 315.7.

EDA is revising paragraph (b)(5) to clarify the additional requirements for publicly-owned corporations when submitting financial information as part of their petitions for certification. EDA is revising the paragraph to clarify that publicly-owned corporations should submit copies of the most recent Form 10–K annual reports (or Form 10–Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition.

EDA is also revising paragraph (b)(6) to make clear the information required regarding a firm's customers. Specifically, EDA is replacing the qualifier that the description relates to the ''major'' customers of the firm with one that identifies the customers as ''accounting for a significant percent of the firm's decline.'' EDA is further revising this paragraph to clarify that firms should submit information regarding those customers' purchases or the firm's unsuccessful bids if there are no customers fitting the description outlined in this paragraph.

EDA is revising paragraph (f) to clarify that, in order to withdraw a petition for certification, the petitioner must submit a request for withdrawal before EDA makes a determination regarding approval or denial of the certification.

EDA is revising paragraphs (g)(1) and (2) of this section. EDA is revising paragraph (g)(1) in order to make clear that EDA may request additional material from a firm beyond what was submitted with the firm's original petition if necessary to make a determination regarding the firm's eligibility for Adjustment Assistance. In addition, EDA is revising paragraph (g)(1) to insert the word ''calendar'' before the word ''days.'' EDA is also making similar revisions to all references to ''days'' found throughout part 315. EDA is making these changes to clarify that all references to ''days'' within part 315 refer to calendar days as the current regulations are not clear on whether these references to ''days'' are calendar or business days. EDA is revising paragraph (g)(2) to clarify that firms may not resubmit a petition within one year from the date of a denial without a waiver from EDA issued for good cause.

Section 315.8

EDA is re-designating the current § 315.9 as § 315.8.

For the reasons discussed above, EDA is inserting the word ''calendar'' in front of the word ''days'' in the introductory paragraph to this section.

EDA is revising paragraph (b)(2) to clarify that, when someone other than the petitioner requests a public hearing on an accepted petition, the requester must include a statement describing the nature of the requester's interest in the proceedings.

EDA is also revising paragraph (d) of this section to clarify that EDA will publish a notice of a public hearing in the **Federal Register** only if EDA has made the determination that the requesting party has a substantial interest in the hearing.

Section 315.9

EDA is re-designating the current § 315.10 as § 315.9.

EDA is also revising paragraphs (a), (b), and (d) to replace the word ''Failure'' at the beginning of each of those paragraphs with the words ''The firm failed'' to provide clarity regarding which entity's omission triggers the loss of benefits. EDA is further revising paragraph (d) to read: ''The firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.''

Section 315.10

EDA is re-designating the current § 315.11 as § 315.10.

EDA is revising paragraphs (a) and (b) of this section by inserting the word ''calendar'' before the word ''days'' for the reasons mentioned above.

EDA is removing the designation of paragraph (d) and adding the sentence that formerly stood alone as paragraph (d) to the end of paragraph (c) in this same section. EDA believes this reorganization will reduce potential confusion by placing all requirements regarding the steps EDA takes when it terminates a certification in a single paragraph.

Subpart D

EDA is not changing the designation or heading of this subpart. However, EDA is revising this subpart to include §§ 315.11 and 315.12.

Section 315.11

Section 315.11 will be revised to combine requirements currently contained in other sections of part 315 and add new language to reflect best practices. The section heading will be revised to ''Adjustment Proposal Process.''

EDA is moving paragraphs (a)(2) and (3) from the current § 315.6 to the revised § 315.11 as paragraphs (a) and (b) within this section in order to consolidate AP procedures within a single section. In order to more clearly reflect the requirements of the Trade Act, EDA is moving the requirement established in the current § 315.16(a), which says APs must be submitted to EDA for approval within two years after the date of Certification, to the new § 315.11(a).

In addition to moving the requirements that currently exist in § 315.6(a)(3) to the revised § 315.11(b), EDA is adding language to these requirements that will require firms to begin implementation of their approved AP within six months after approval. EDA is also adding a requirement that firms that do not begin implementation within six months after approval must update and re-submit their AP for re-approval before any Adjustment Assistance may be provided. These additions reflect long-standing practice and will help firms to ensure that their APs reflect the most up-to-date economic conditions and financial situation and, consequently, that the firms will receive the most effective Adjustment Assistance.

EDA is adding a paragraph (c) to this section that discusses how EDA will make a determination regarding an AP no later than 60 calendar days after receipt of the AP, which incorporates the requirement from Section 252(b)(2) of the Trade Act.

EDA is also adding a paragraph (d) to this section. EDA is moving the matching share requirements for Adjustment Assistance from the existing § 315.6(b)(2) to this paragraph. In addition, EDA is adding a sentence stating that certified firms may request no more than the amount established by EDA for total Adjustment Assistance over the entire lifetime of the firm. This addition incorporates current practice, established to ensure that the maximum number of eligible firms are able to receive Adjustment Assistance and to encourage certified firms to appropriately plan and implement their Adjustment Proposals within established funding limits.

EDA is adding a paragraph (e) to this section and specifying within this paragraph that firms may request EDA approval to amend their APs within two years from the date of EDA approval of their initial APs. This new language incorporates current practice and allows firms to update their APs as needed within the two-year time frame to address any unexpected changes in their situation, new information, or a need to re-direct resources to areas of greatest need.

EDA is also adding a paragraph (f) to this section. Paragraph (f) requires firms

to complete implementation of their APs within five years of EDA approval of their initial APs. This added language reflects current practice and EDA's expectation that firms who request Adjustment Assistance are financially and operationally prepared to engage in the TAAF program and will implement their AP in a timely way.

EDA is adding a paragraph (g) to this section to address what occurs if a certified firm is transferred, sold, or otherwise acquired by another firm during the five-year period established in paragraph (f). Paragraph (g) requires a certified firm that is transferred, sold, or otherwise acquired by another firm during the five-year period of Adjustment Assistance to notify EDA no later than 30 calendar days following the transfer, sale, or acquisition. EDA will then make a determination as to whether the firm remains eligible for Adjustment Assistance. This new language incorporates current practice and is designed to resolve any confusion about how firms and TAACs should handle this scenario.

Finally, EDA is adding a paragraph (h) to this section. Paragraph (h) will require firms that receive Adjustment Assistance to provide data regarding the firms' sales, employment, and productivity upon completion of the program and each year for the two-year period following completion. This language incorporates into the regulations reporting requirements established in Section 255A of the Trade Act, which requires EDA to report annually to Congress on data regarding the TAAF program for the preceding fiscal year.

Section 315.12

EDA is re-designating the current § 315.16 as § 315.12. As discussed above, EDA is eliminating paragraph (a) of this section after moving the requirement that firms must submit their APs to EDA within two years of the date of certification to § 315.11(a).

EDA is eliminating the current § 315.12 (Recordkeeping). With the proposed revisions to § 315.4(b), which states that TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, the current § 315.12 is no longer needed as recordkeeping requirements are adequately addressed in those materials.

Subpart E

EDA is revising the heading for this subpart to ''Protective Provisions.'' As revised, subpart E will include §§ 315.13 and 315.14. EDA is moving the requirements regarding persons engaged by firms to expedite petitions and APs as found in the current § 315.14 (Certifications) and the requirements regarding conflicts of interest that are contained the current § 315.15 (Conflicts of interest), both of which are found in the current subpart C, to subpart E. EDA believes this reorganization and new location will make it easier for firms to read and understand the regulations and will help clarify that these provisions apply to firms at all stages of the TAAF program.

Section 315.13

EDA is moving the requirements for firms to certify in writing to EDA the names of any attorneys, agents, and other Persons engaged by or on behalf of the firm for the purpose of expediting Petitions for Adjustment Assistance and the fees paid or to be paid to any such Person, as found in the current § 315.14, to § 315.13. EDA is further revising these requirements by clarifying, in paragraph (a), that they apply to both Adjustment Assistance and APs.

EDA is eliminating the current § 315.13 (Audit and examination). With the proposed revisions to § 315.4(b), which states that TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, the current § 315.13 is no longer needed as audit and examination requirements are adequately addressed in those materials.

Section 315.14

EDA is moving the requirements found in the current § 315.15 to § 315.14. EDA is also revising these requirements by modifying the list of firm representatives subject to the conflicts of interest requirements to parallel the list of firm representatives identified in the revised § 315.13.

Subpart F

EDA is adding subpart F, entitled ''International Trade Commission Investigations.'' Subpart F sets forth, through § 315.15, what actions EDA takes when the ITC makes an affirmative finding under section 202(b) of the Trade Act regarding injury or threat of injury to an industry.

Section 315.15

EDA is re-designating the current § 315.17 as § 315.15 and is revising the heading of this section to ''Affirmative Findings.'' EDA is also removing the designation ''(a)'' from the first paragraph of this section and eliminating paragraphs (b) and (c) to reflect the fact that EDA, historically, has not provided Adjustment Assistance for the establishment of industry-wide programs for new product development, export development, or other uses consistent with the purposes of the Trade Act because there has been no demand for such programs. As noted above in the discussion regarding changes to the definition of *Adjustment Assistance* in § 315.2, firms within impacted industries have sought Adjustment Assistance through TAAF on an individual basis rather than through industry-wide solutions. EDA also provides expedited review of petitions and APs from firms within industries for which the ITC has determined that increased imports are a substantial cause of serious injury or threat thereof under section 202(b) of the Trade Act. This individualized approach enables EDA to support adjustments at the firm level, while having a cumulative impact at the industry level.

EDA is replacing within this paragraph the language stating that EDA will provide to firms in the identified industry assistance in the preparation and processing of petitions and applications for benefits; EDA instead will include language establishing notification to TAACs and expedited review of petitions and APs from firms within the specified industry. EDA believes these revisions more clearly describe the assistance EDA provides to industries in response to determinations made by the ITC under the Trade Act.

This revised section contains one technical correction to the proposed revision in the NPRM published in the **Federal Register** on August 19, 2019 (84 FR 42831). The correction is to eliminate an improper citation to the Tariff Act. The proposed revision to this section provided that EDA would notify TAACs and provide expedited review of petitions and APs from Firms within an industry for which the ITC has made an affirmative finding under section 202(b) of the Trade Act or under sections 705 or 735 of the Tariff Act. Determinations made under section 202(b) of the Trade Act concern serious injury or threat thereof to a domestic injury, while determinations made under sections 705 or 735 of the Tariff Act concern lesser material injury or threat thereof to a domestic industry. Pursuant to section 202(g) of the Trade Act, EDA is only required to provide expedited review of petitions submitted by firms in industries for which the ITC has made

an affirmative determination under section 202(b) of the Trade Act.

Part II: Updates to PWEDA Regulations

PWEDA Background

PWEDA is EDA's organic authority and the primary legal authority under which EDA awards grants. Other legal authorities include the Trade Act and the Stevenson-Wydler Technology Innovation Act of 1980. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development in order to attract private capital investments and new and better jobs to regions experiencing substantial and persistent economic distress.

Overview of Eliminated PWEDA Regulations

EDA is eliminating certain provisions within part 302 of the PWEDA regulations that are unnecessary or already established in other regulations or award documentation. Specifically, EDA is eliminating the regulations located at 13 CFR 302.4, 302.5, and 302.14. These regulations describe: The responsibilities of EDA grant recipients to maintain records, how information supplied to EDA may be subject to public release under the Freedom of Information Act or Privacy Act, how government auditors may need access to various records, and that grant recipients are subject to the government-wide relocation assistance and land acquisition policies. These regulations can be removed because notice of these terms and conditions is already provided to grant recipients through other Department of Commerce-wide or government-wide regulations as well as in specific documentation EDA provides to each grant recipient. Specifically, recipients of EDA financial assistance are already subject to the requirements related to the Freedom of Information Act or Privacy Act currently described in § 302.4 through 15 CFR part 4 and the Standard Terms and Conditions of an EDA award. Similarly, the relocation and land acquisition policies currently found in § 302.5 are already applicable to all EDA financial assistance recipients under government-wide regulations found at 49 CFR part 24. Finally, the record-keeping requirements currently located in § 302.14 duplicate the requirements of Section 608 of PWEDA (42 U.S.C. 3218), 2 CFR 200.333 and 200.336, and the Standard Terms and Conditions of an EDA award.

In addition, EDA is eliminating 13 CFR 302.11. Beginning with the enactment of the original section 502 of PWEDA (42 U.S.C. 3192) in 1998, Congress has required EDA to maintain an economic development information clearinghouse on matters related to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities. See Public Law 105–393. With the EDA Reauthorization Act of 2004 (Pub. L. 108–373 (Oct. 27, 2004)), Congress amended section 502 to require EDA to, among other things, maintain this information clearinghouse online. The current regulation adds nothing of value to the requirements already in place under section 502 and consequently should be eliminated.

Classification

Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). EDA's programs, including the TAAF program, are financial assistance programs provided through grants and cooperative agreements. As such, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, and the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Although EDA did choose to publish an NPRM in the **Federal Register** requesting public comments on the content of this final rule (84 FR 42831), EDA received no comments in response to the NPRM, and thus has received no input from the public bearing on the analytical requirements of the Regulatory Flexibility Act. For these reasons, a regulatory flexibility analysis has not been prepared.

Executive Orders No. 12866, 13563, and 13771

This final rule was drafted in accordance with Executive Orders 12866, 13563, and 13771. The Office of Management and Budget (''OMB'') has determined that this final rule is not significant for purposes of Executive Order 12866 and Executive Order 13563.

This rule is a deregulatory action that has a neutral effect on the costs to firms, organizations, and all other stakeholders to comply with the regulations discussed in this notice of final rule. It is therefore considered to have a total incremental cost of zero pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771 (M–17–21).

Congressional Review Act

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that 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.'' This final rule does not contain policies that have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA'') requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides the only collections of information (and corresponding OMB Control Numbers) set forth in this final rule. These collections of information are necessary for the proper performance and functions of EDA. This final rule does not include a new information collection requirement and will, thus, use previously approved information collections to collect information relevant to a petition for certification of eligibility for trade adjustment assistance or an AP.

Part or section of this final rule	Nature of request	Form/Title/OMB control No.
315.7(b)	Firms seeking certification of eligibility to apply for trade adjustment assistance must complete Form ED–840P, which provides EDA with the information needed to determine if a firm is eligible to apply for trade adjustment assistance.	Form ED–840P, Petition by a firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.12	The information for Adjustment Proposals is collected pursuant to the same OMB control number as Form ED–840P (0610–0091). Firms certified by EDA as eligible to apply for trade adjustment assistance must prepare an Adjustment Proposal and submit it to EDA for approval within two years after the date of certification. This provides EDA with the information needed to determine whether the Adjustment Proposal meets the requirements of the Trade Act and 13 CFR part 315.	Adjustment Proposal (0610–0091).

List of Subjects

13 CFR Part 302

Community development, Grant programs-business, Grant programs-housing and community development, Technical assistance.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs-business, Reporting and recordkeeping requirements, Trade adjustment assistance.

For the reasons discussed above, EDA is amending 13 CFR chapter III as follows:

PART 302–GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

■ 1. The authority citation of part 302 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.;* 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10–4.

§§ 302.4 and 302.5 [Removed]

■ 2. Remove §§ 302.4 and 302.5.

§ 302.11 [Removed]

■ 3. Remove § 302.11.

§ 302.14 [Removed]

■ 4. Remove § 302.14.

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

■ 5. Revise the authority citation of part 315 to read as follows:

Authority: 19 U.S.C. 2341–2356; 42 U.S.C. 3211; Title IV of Pub. L. 114–27, 129 Stat. 373; Department of Commerce Delegation Order 10–4.

■ 6. Revise § 315.1 to read as follows:

§ 315.1 Purpose and scope.

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341–2355) establishes the responsibilities of the Secretary of Commerce concerning the Trade Adjustment Assistance for Firms (TAAF) program. The regulations in this part lay out those responsibilities as delegated to EDA by the Secretary. EDA executes these responsibilities through cooperative agreements that support a network of Trade Adjustment Assistance Centers (TAACs). The TAACs assist Firms in petitioning EDA for certification of eligibility to receive Adjustment Assistance. EDA certifies the eligibility of Firms. The TAACs then provide Adjustment Assistance to Firms through the development and implementation of Adjustment Proposals.

■ 7. Amend § 315.2 by:

■ a. Revising the introductory text and the definitions for ''Adjustment Assistance'' and ''Adjustment Proposal'';

■ b. In the definition of ''Decreased Absolutely'', revising the introductory text;

■ c. Removing the definition of ''Directly Competitive'' and adding the definition of ''Directly Competitive or Like'' in its place;

■ d. In the definition of ''Firm'', revising the introductory text and paragraph (4);

■ e. Revising the definition of ''Increase in Imports'';

■ f. In the definition of ''Partial Separation'', revising the introductory text;

■ g. Revising the definitions of ''Service Sector Firm'' and ''Total Separation''; and

■ h. Adding in alphabetical order a definition for ''Unjustifiable Benefits''.

The revisions and additions read as follows:

§ 315.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the meanings set forth below:

Adjustment Assistance means technical assistance provided to Firms by TAACs under chapter 3 of title II of the Trade Act. The type of assistance provided is determined by EDA and may include one or more of the following:

(1) Assistance in preparing a Firm's petition for certification of eligibility;

(2) Assistance to a Certified Firm in developing an Adjustment Proposal for the Firm; and

(3) Assistance to a Certified Firm in implementing an Adjustment Proposal.

Adjustment Proposal means a Certified Firm's plan for improving the Firm's competitiveness in the marketplace.

* * * * *

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period, and this decline is:

* * * * *

Directly Competitive or Like means imported articles or services that compete with and are substantially equivalent for commercial purposes (*i.e.,* are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. For the purposes of this term, any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. *See also* the definition of Service Sector

Firm. Pursuant to section 259 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent Unjustifiable Benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

* * * * *

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company. A Firm that has been acquired by another Firm but which maintains operations independent of the acquiring Firm is considered an *Independent Subsidiary* and may be considered separately from the acquiring Firm as eligible for TAAF assistance.

Increase in Imports means an increase in imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by a Firm.

* * * * *

Partial Separation occurs when there has been no increase in overall employment at the Firm and either of the following applies:

* * * * *

Service Sector Firm means a Firm engaged in the business of supplying services.

* * * * *

Total Separation means the laying off or termination of employment of an employee in a Firm for lack of work.

Unjustifiable Benefits means Adjustment Assistance inappropriately accruing to the benefit of:

(1) Other Firms that would not otherwise be eligible when provided to a Firm; or

(2) Any predecessor or successor Firm, or any affiliated Firm controlled or substantially beneficially owned by substantially the same person, rather than treating these entities as a single Firm.

§§ 315.4, 315.5, and 315.6 [Removed]

■ 8. Sections 315.4 through 315.6 are removed.

■ 9. Revise subparts B through E and add subpart F to read as follows:

Subpart B—TAAC Provisions

Subpart C—Certification of Firms

Subpart D—Adjustment Proposals

Subpart E—Protective Provisions

Subpart F—International Trade Commission Investigations

Subpart B—TAAC Provisions

§ 315.4 TAAC selection and operation.

(a) EDA solicits applications from organizations interested in operating a TAAC through Notice of Funding Opportunity announcements laying out selection and award criteria. The following entities are eligible to apply:

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) Entities selected to operate the TAACs are awarded cooperative agreements and work closely with EDA and import-impacted firms. TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200.

§ 315.5 The role and geographic coverage of the TAACs.

(a) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia, and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs and their coverage areas may be obtained from the TAAC website at *http://www.taacenters.org* or from EDA at *http://www.eda.gov.*

(b) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will be made through TAACs.

(c) A TAAC generally provides Adjustment Assistance by:

(1) Helping a Firm to prepare its petition for eligibility certification; and

(2) Assisting Certified Firms with diagnosing their strengths and weaknesses, and with developing and implementing an Adjustment Proposal.

Subpart C—Certification of Firms

§ 315.6 Certification requirements.

(a) *General.* Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions at no cost to the Firms. EDA evaluates Firms' petitions based on the requirements set forth in § 315.7. EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act (19 U.S.C. 2341) if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the five circumstances described in paragraph (b) of this section.

(b) *Minimum certification thresholds*—(1) *Twelve-month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 12-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 12-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(2) *Twelve-month versus twenty-four month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 24-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 24-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(3) *Twelve-month versus thirty-six month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 36-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 36-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(4) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(5) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(c) *Evidence of an increase in imports.* EDA may consider as evidence of an Increase in Imports a certification from the Firm's customers that account for a significant percentage of the Firm's decrease in sales or production, that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States. Such certification from a Firm's customer must be submitted directly to a TAAC or to EDA.

§ 315.7 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED–840P or any successor form) with the following information about such Firm:

(1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, Subsidiaries or Affiliates, and production and sales facilities;

(2) Description of goods or services supplied or sold;

(3) Description of imported Directly Competitive or Like Articles or Services with those produced or supplied;

(4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under § 315.6(b);

(5) One copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition. In addition, publicly-owned corporations should also submit copies of the most recent Form 10–K annual reports (or Form 10–Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;

(6) Information concerning customers accounting for a significant percent of the Firm's decline and the customers' purchases (or the Firm's unsuccessful bids, if there are no customers fitting this description); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register**.

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act (19 U.S.C. 2341) and § 315.6.

(f) A petition for certification may be withdrawn if EDA receives a request for withdrawal submitted by the petitioner before EDA makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.6.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all requested material. In no event may the determination period exceed 40 calendar days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment

Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial unless EDA waives the one-year limitation for good cause.

§ 315.8 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 calendar days after the date of publication of the notice of acceptance in the **Federal Register**, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard.

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of the requesting party's interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial.

(d) If EDA determines that the requesting party does have a Substantial Interest in the proceedings, EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of the hearing.

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§ 315.9 Loss of certification benefits.

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

(a) The Firm failed to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration.

(b) The Firm failed to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule.

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification.

(d) The Firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.

§ 315.10 Appeals, final determinations, and termination of certification.

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 calendar days from the date of notice of denial under § 315.7(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph (a), the determination under § 315.7(g) shall be final.

(b) A Firm, its representative, or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 calendar days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the published notice. EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart D—Adjustment Proposals

§ 315.11 Adjustment Proposal process.

(a) Firms certified in accordance with the procedures described in §§ 315.6 and 315.7 must prepare an Adjustment Proposal and submit it to EDA for approval within two years after the date of certification.

(b) EDA determines whether to approve the Adjustment Assistance requested in the Adjustment Proposal based upon the evaluation criteria set forth in § 315.12. Upon approval, a Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal. Firms must begin implementation within six months after approval. Firms that do not begin implementation within six months after approval must update, re-submit their Adjustment Proposal, and request re-approval before any Adjustment Assistance may be provided.

(c) EDA will make a determination regarding the Adjustment Proposal no later than 60 calendar days upon receipt of the Adjustment Proposal.

(d) Adjustment Assistance is subject to matching share requirements. Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting $30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than $30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent of the cost of that Adjustment Assistance. Certified Firms may request no more than the amount as established by EDA for total Adjustment Assistance over the entire lifetime of the firm.

(e) Firms may request EDA approval to amend their Adjustment Proposals within two years from the date of EDA approval of their initial Adjustment Proposal.

(f) Firms must complete implementation of their Adjustment Proposals within five years of EDA approval of their initial Adjustment Proposal.

(g) If a Certified Firm is transferred, sold, or otherwise acquired by another Firm during the five-year period of Adjustment Assistance, the Firm must notify EDA no later than 30 calendar days following the transfer, sale, or acquisition. EDA will then make a determination as to whether the Firm remains eligible for Adjustment Assistance. EDA will make this

determination no later than 60 calendar days following notification by the Firm.

(h) In accordance with Section 255A of chapter 3 of title II of the Trade Act (19 U.S.C. 2345a), Firms that receive Adjustment Assistance must provide data regarding the Firms' sales, employment, and productivity upon completion of the program and each year for the two-year period following completion.

§ 315.12 Adjustment Proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal, including financial and other supporting documentation as EDA determines is necessary, based upon either:

(1) An analysis of the Firm's problems, strengths, and weaknesses and an assessment of its prospects for recovery; or

(2) If EDA so determines, other available information;

(b) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.,* that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

(ii) Make efforts to find new work for a number of such workers; and

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and

(c) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For purposes of this paragraph (c), Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

Subpart E—Protective Provisions

§ 315.13 Persons engaged by Firms to expedite petitions and Adjustment Proposals.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors, or officers thereof certify in writing to EDA:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting petitions for such Adjustment Assistance or Adjustment Proposals; and

(b) The fees paid or to be paid to any such Person.

§ 315.14 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, members, directors, or officers thereof execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart F—International Trade Commission Investigations

§ 315.15 Affirmative findings.

Whenever the International Trade Commission makes an affirmative finding under section 202(b) of the Trade Act (19 U.S.C. 2252) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA will notify the TAACs and provide expedited review of petitions and Adjustment Proposals from Firms within the specified industry.

Dated: January 6, 2020.

John Fleming,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2020–00453 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0673; Product Identifier 2019–NM–101–AD; Amendment 39–19832; AD 2020–02–20]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2014–24–07, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2014–24–07 required repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which terminates the repetitive inspections. This AD continues to require the actions in AD 2014–24–07, with certain revised compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a report of a crack found in the side box beam flange of the fuselage at the frame (FR) 43 level during a fatigue test campaign. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of March 20, 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–2019–0673.

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–2019–0673; 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 2019–0122, dated June 4, 2019 (''EASA AD 2019–0122'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 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.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014) (''AD 2014–24–07''). AD 2014–24–07 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232 airplanes. The NPRM published in the **Federal Register** on September 6, 2019 (84 FR 46900). The NPRM was prompted by a report of a crack found in the side box beam flange of the fuselage at the FR 43 level during a fatigue test campaign. The NPRM proposed to continue to require repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which would terminate the repetitive inspections. The NPRM also proposed to require certain revised compliance times. The FAA is issuing this AD to address cracking in the side box beam flange of the fuselage, which could affect the structural integrity of the airplane.

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.

Support for the NPRM

United Airlines stated its support for the NPRM.

Request To Use a Certain Revision of the Service Information

JetBlue requested that Airbus Service Bulletin A320–53–1251, Revision 03, dated September 19, 2016, and not Airbus Service Bulletin A320–53–1251, Revision 04, dated May 17, 2019, be used for accomplishing the actions specified in the proposed AD and paragraphs (2) and (3) of EASA AD 2019–0122. JetBlue stated that Airbus Service Bulletin A320–53–1251, Revision 04, dated May 17, 2019, does not require any additional work compared to Airbus Service Bulletin A320–53–1251, Revision 03, dated September 19, 2016.

The FAA disagrees with the commenter's request. Paragraph (2) of EASA AD 2019–0122 specifically requires compliance in accordance with Airbus Service Bulletin A320–53–1251, Revision 04, dated May 17, 2019, due to changes highlighted in the Accomplishment Instructions for certain configurations. However, paragraph (5) of EASA AD 2019–0122 provides credit for Airbus Service Bulletin A320–53–1251, dated November 16, 2012; Airbus Service Bulletin A320–53–1251, Revision 01, dated October 18, 2013; Airbus Service Bulletin A320–53–1251, Revision 02, dated February 11, 2016; and Airbus Service Bulletin A320–53–1251, Revision 03, dated September 19, 2016; if the actions are accomplished before the effective date of the AD. This AD provides the same allowance for credit since EASA AD 2019–0122 is incorporated by reference. This AD has not been changed in this regard.

Request To Clarify the Applicability

Delta Airlines (DAL) requested that certain language be added to the applicability paragraph of the proposed AD. DAL stated that paragraph (c) of the proposed AD applies to certain Model A310, A320, and A321 family airplanes as identified in EASA AD 2019–0122. DAL stated that EASA AD 2019–0122 provides additional applicability details, namely exclusions of manufacturer serial numbers based upon a certain Airbus modification embodied in production. DAL suggested that similar language be added to paragraph (c) of the proposed AD.

The FAA agrees to clarify the applicability of this AD. By incorporation by reference of EASA AD 2019–0122 into this AD, the same production modification applicability exceptions identified in EASA AD 2019–0122 apply to this AD. These exceptions are addressed by the statement ''. . . as identified in European Aviation Safety Agency (EASA) AD 2019–0122'' in paragraph (c) of this AD. We have not changed this AD in this regard.

In addition, this AD and EASA AD 2019–0122 are not applicable to Model A310 airplanes as the commenter stated. This AD has not been changed in this regard.

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 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 2019–0122 describes procedures for repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which terminates the repetitive inspections. 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 851 airplanes of U.S. registry. The FAA 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
Retained actions from AD 2014–24–07	178 work-hours × $85 per hour = $15,130	$31,334	$46,464	$39,540,864

The new requirements of this AD add no new economic burden.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

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 removing Airworthiness Directive (AD) 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014), and adding the following new AD:

2020–02–20 Airbus SAS: Amendment 39–19832; Docket No. FAA–2019–0673; Product Identifier 2019–NM–101–AD.

(a) Effective Date

This AD is effective March 20, 2020.

(b) Affected ADs

This AD replaces AD 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014) (''AD 2014–24–07'').

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0122, dated June 4, 2019 (''EASA AD 2019–0122'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a crack found in the side box beam flange of the fuselage at the frame (FR) 43 level during a fatigue test campaign. The FAA is issuing this AD to address cracking in the side box beam flange of the fuselage, which could affect the structural integrity 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 2019–0122.

(h) Exceptions to EASA AD 2019–0122

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0122 refers to its effective date, this AD requires using the effective date of this AD. However, where Table 1 of EASA AD 2019–0122 provides compliance times for group 1B airplanes as ''[w]ithin 3,000 FC or 6,000 FH'' after a given date, this AD requires that those compliance times be calculated 3,000 flight cycles or 6,000 flight hours, ''whichever occurs first'' after January 9, 2015 (the effective date of AD 2014–24–07).

(2) The ''Remarks'' section of EASA AD 2019–0122 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 2019–0122 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.

(3) The following service information was approved for IBR on March 20, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0122, dated June 4, 2019.

(ii) [Reserved]

(4) For information about EASA AD 2019–0122, 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.*

(5) 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–2019–0673.

(6) 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 29, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–02974 Filed 2–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0063; Product Identifier 2020–NE–01–AD; Amendment 39–19838; AD 2020–01–55]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines. This AD was sent previously as an emergency AD to all known U.S. owners and operators of the GE GE90–110B1 and GE90–115B model turbofan engines with certain engine serial numbers. This AD requires the removal from service of the interstage seal, part number 2505M72P01 or 2448M33P01, from the affected engines. This AD was prompted by a recent event involving an uncontained high-pressure turbine (HPT) failure that resulted in an aborted takeoff. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 2, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–01–55, issued on January 17, 2020, which contained the requirements of this amendment.

The FAA must receive comments on this AD by March 30, 2020.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0063; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew C. Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; Email: *matthew.c.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On January 17, 2020, the FAA issued Emergency AD 2020–01–55, which requires the removal from service of the interstage seal, part number 2505M72P01 or 2448M33P01, from certain serial-numbered GE90–110B1 and GE90–115B model turbofan engines. That emergency AD was sent previously to all known U.S. owners and operators of these affected engines. That action was prompted by investigative findings of an event that occurred on October 20, 2019, in which a Boeing Model 777–300ER airplane, powered by GE GE90–115B model turbofan engines, experienced an uncontained HPT failure resulting in an aborted takeoff. This condition, if not addressed, could result in uncontained HPT failure, release of high-energy debris, damage to the engine, damage to the airplane, and possible loss of the airplane.

FAA's Determination

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

AD Requirements

This AD requires the removal from service of the interstage seal, part number 2505M72P01 or 2448M33P01, from the affected engines.

Interim Action

The FAA considers this AD interim action. The root cause of the HPT failure is still being investigated and the FAA will consider further rulemaking depending on the results of the investigation.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that required the immediate adoption of Emergency AD 2020–01–55, issued on January 17, 2020, to all known U.S. owners and operators of these engines. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because the interstage seal must be removed within 5 flight cycles from the effective date of AD 2020–01–55. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. Additionally, the FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments

or useful information about this AD from U.S. operators. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are unnecessary. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. For the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0063 and Product Identifier 2020–NE–01–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this AD.

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 AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove interstage seal	100 work-hours × $85 per hour = $8,500	$509,600	$518,100	$0

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–01–55 General Electric Company: Amendment 39–19838; Docket No. FAA–2020–0063; Product Identifier 2020–NE–01–AD.

(a) Effective Date

This AD is effective March 2, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–01–55, issued on January 17, 2020, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines with engine serial number 907150, 907152, 907176, 907179,

907192, 907266, 907270, 907301, 907320, 907337, 907344, 907370, 907371, 907405, 907686, or 907687.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by investigative findings from an event involving an uncontained high-pressure turbine (HPT) failure, resulting in debris penetrating the fuselage and the other engine. The FAA is issuing this AD to prevent failure of the HPT. The unsafe condition, if not addressed, could result in uncontained HPT failure, release of high-energy debris, damage to the engine, damage to the airplane, and possible loss of the airplane.

(f) Compliance

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

(g) Required Actions

Within 5 flight cycles after the effective date of this AD, remove from service the interstage seal, part number 2505M72P01 or 2448M33P01, with serial number GWN0PDTR, GWN0PE7T, GWN0PGEL, GWN0PL3N, GWN0PEFH, GWN0R4H0, GWN0R4GW, GWN0R8G8, GWN0RAD1, GWN0RDNM, GWN0RCMT, GWN0RJ69, GWN0RHRM, GWN0RN5A, GWN0W153, or GWN0W03P.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

For more information about this AD, contact Matthew C. Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; Email: *matthew.c.smith@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on February 7, 2020.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2020–02865 Filed 2–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0678; Airspace Docket No. 18–AWP–27]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Concord, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace and establishes Class E airspace extending upward from 700 feet above the surface of the earth at Buchanan Field, Concord, CA. This action also removes the Concord VOR/DME and the city listed before the airport name in the legal description header information.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and establish Class E airspace at Buchanan Field, Concord, CA, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 56390; October 22, 2019) for Docket No. FAA–2019–0678 to amend Class D and Class E airspace at Buchanan Field, Concord, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Seven comments were received.

Three comments contained only the Docket number, the airspace docket number and the FAA's RIN number with no additional text or comment.

Two comments questioned why the airspace is being established, since the San Francisco Sectional already appears to contain the proposed airspace within an existing Class E airspace area extending upward from 700 feet above the surface. This new airspace area is being established for Buchanan Field to ensure the airport has independent Class E airspace to contain arriving IFR aircraft when descending below 1,500 feet above the surface. Additionally, one commenter stated that they could not find the proposed Class E area in FAA Order 7400.11D. This action establishes the Class E airspace for the airport and the airspace will be published in the next iteration of FAA Order 7400.11 which will be effective September 15, 2020.

One comment asked how this change would affect local pilot's knowledge of the local area. This change will be charted on subsequent editions of the San Francisco Sectional. This respondent also asked about ADSB equipage and access to airports in the area, below the SFO Class B veil. This airspace action does not impact the equipment requirements for aircraft operations within a Class B veil.

One comment discussed IFR operations and airspace but did not provide a specific concern or support for the proposal.

Class D and Class E5 airspace designations are published in paragraphs 5000 and 6005, respectively,

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace at Buchanan Field extending upward from the surface to and including 2,500 feet MSL within a 2.6-mile radius of the airport from the 205° bearing from the airport clockwise to the 314° bearing, thence extending to a 4.1-mile radius of airport from the 314° bearing from the airport clockwise to the 205° bearing of Buchanan Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, this action establishes Class E5 airspace extending upward from 700 feet above the surface within a 4.1-mile radius of Buchanan Field and within 2.5 miles each side of the 009° bearing from the airport extending from the 4.1-mile radius to 11 miles north of the airport, and within 2.5 miles each side of the 023° bearing from the airport extending from the 4.1-mile radius to 11 miles northeast of Buchanan Field.

Further, this action removes the Concord VOR/DME and the associated extensions from the legal description to simplify how the airspace is described.

Lastly, this action removes the city listed before the airport name in the legal description header information to comply with airspace policy guidance.

Class D and Class E5 airspace designations are published in paragraphs 5000, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Concord, CA

Buchanan Field, CA

(Lat. 37°59′23″ N, long. 122°03′25″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 2.6-mile radius of the airport from the 205° bearing from the airport clockwise to the 314° bearing, thence extending to a 4.1-mile radius of the airport from the 314° bearing clockwise to the 205° bearing from Buchanan Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP CA E5 Concord, CA

Buchanan Field, CA

(Lat. 37°59′23″ N, long. 122°03′25″ W)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of Buchanan Field and within 2.5 miles each side of the 009° bearing from the airport extending from the 4.1-mile radius to 11 miles north of the airport and within 2.5 miles each side of the 023° bearing from the airport extending from the 4.1-mile radius to 11 miles northeast of Buchanan Field.

Issued in Seattle, Washington, on February 3, 2020.

Byron Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–02448 Filed 2–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 20–03]

RIN 1515–AE52

Import Restrictions Imposed on Archaeological and Ethnological Material From Ecuador

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection

(CBP) regulations to reflect the imposition of import restrictions on certain archaeological and ethnological material from Ecuador. These restrictions are being imposed pursuant to an agreement between the United States and Ecuador that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends CBP regulations by adding Ecuador to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. The final rule also contains the designated list that describes the types of archaeological and ethnological material to which the restrictions apply.

DATES: Effective February 12, 2020.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, *ot-otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2942, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (''the Cultural Property Implementation Act'') implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, ''the Convention'' (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation Act, the United States entered into a bilateral agreement with Ecuador to impose import restrictions on certain Ecuadorean archaeological and ethnological material. This rule announces that the United States is now imposing import restrictions on certain archaeological and ethnological material from Ecuador.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On October 19, 2018, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Ecuador that are described in the designated list set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Ecuador is in jeopardy from the pillage of archaeological or ethnological material representing Ecuador's cultural heritage dating from approximately 12,000 B.C. up to 250 years old, including material starting in the Pre-ceramic period and going into the Colonial period (19 U.S.C. 2602(a)(1)(A)); (2) that the Ecuadorean government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

The Agreement

On May 22, 2019, the United States and Ecuador entered into a bilateral agreement, ''Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Ecuador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Ecuador'' (''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement enables the promulgation of import restrictions on categories of archaeological and ethnological material representing Ecuador's cultural heritage that are at least 250 years old, dating as far back as the Pre-ceramic period (approximately 12,000 B.C.) through the Formative, Regional development, Integration, and Inka periods and into the Colonial period. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. Pursuant to the MOU, the import restrictions entered into force upon delivery of the U.S. diplomatic note to Ecuador on May 22, 2019. Therefore, the import restrictions will expire on May 22, 2024, unless extended.

Designated List of Archaeological and Ethnological Material of Ecuador

The Agreement includes, but is not limited to, the categories of objects described in the designated list set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Ecuador legally and not in violation of the export laws of Ecuador.

The designated list includes archaeological and ethnological material. Archaeological material of ceramic, stone, metal, and organic tissue ranges in date from approximately 12,000 B.C. to A.D. 1769, which is 250 years from the signing of the Agreement. Ethnological material includes Colonial period ecclesiastical paintings, sculpture, furniture, metalwork, textiles, documents, and manuscripts. In addition, ethnological material includes secular Colonial period paintings, documents, and manuscripts.

Additional Resource

National Institute of Cultural Patrimony, Ecuador, *Guía de identificación de bienes culturales patrimoniales* (Guide for identification of cultural patrimony goods) (2d ed. 2011), *http://patrimoniocultural.gob.ec/guia-de-identificacion-de-bienes-culturales-patrimoniales/.*

Categories of Materials

I. Archaeological Material

Archaeological material covered by the Agreement is associated with the diverse cultural groups that resided in this region from the earliest human settlement of the Pre-ceramic period and into the Colonial period (approximately 12,000 B.C. to A.D. 1769).

Approximate Chronology of Well-Known Archaeological Styles

(a) *Pre-ceramic period:* El Cubilán (12,606 B.C.), Montequinto (11,858 B.C.), Las Mercedes (11,500 B.C.), El Inga (11,000 B.C.), Guagua Canoayacu (9905 B.C.), Gran Cacao (9386 B.C.), Chobshi (9000–6500 B.C.), and Las Vegas (8800–4500 B.C.).

(b) *Formative period:* Valdivia (3800–1500 B.C.), Mayo Chinchipe (3000–2000 B.C.), Cerro Narrio (2000–400 B.C.), Cotocollao (1800–350 B.C.), Machalilla (1600–800 B.C.), and Chorrera (1000–100 B.C.).

(c) *Regional development period:* La Tolita (600 B.C.–A.D. 400), Tiaone (600 B.C.–A.D. 400), Bahía (500 B.C.–A.D. 650), Cosanga (500 B.C.–A.D. 1532), Jama Coaque I (350 B.C.–A.D. 100), Upano (300 B.C.–A.D. 500), and Guangala (100 B.C.–A.D. 800).

(d) *Integration period:* Puruhá (A.D. 300–1500), Cañari (A.D. 400–1500), Atacames (A.D. 400–1532), Jama-Coaque II (A.D. 400–1532), Milagro Quevedo (A.D. 400–1532), Manteño-Huancavilca (A.D. 500–1532), Pasto (A.D. 700–1500), Napo (A.D. 1200–1532), and Caranqui (A.D. 1250–1500).

(e) *Inka period:* A.D. 1470–1532.

(f) *Colonial period:* A.D. 1532–1822.

A. Stone

Early chipped stone tools mark the appearance of the first people to inhabit the region and continued to be used throughout history. Polished stone axes became common in the Formative period. Highly skilled stoneworkers created elaborately carved mortars, figurines, seats, and other items for use in daily and ceremonial life. Examples of archaeological stone objects covered in the Agreement include the following objects:

1. Chipped stone tools—Projectile points and tools for scraping, cutting, or perforating are made primarily from basalt, quartzite, chert, chalcedony, or obsidian and are 5–8 cm long.

2. Polished stone tools—Axes or hoes are typically made in basalt or andesite and are about 12 cm long and 8–9 cm wide with a cutting edge on one end and a flat or slightly grooved edge with ''ears'' on the other side to attach a handle. Some axes have a hole used to attach the handle with cord. Ceremonial axes are highly polished and lack use marks. Hooks, in the shape of small anvils or birds, and weights for spear-throwers (*i.e.,* atlatls) are made from quartzite, chalcedony, and serpentine. Mace heads and stone shields are made from polished stone.

3. Receptacles—Polished stone bowls may be undecorated or decorated with incisions or notches about 10–20 cm in diameter. Mortars made from volcanic rock may be undecorated or carved in the shape of animals, including felines (*e.g.,* Valdivia style mortars).

4. Ornaments—Beads are made of quartz, turquoise, and other stone. Round or oval obsidian mirrors are relatively thin with one unworked side and one polished side. Earrings and ear plugs are made from quartz or obsidian.

5. Figurines—Valdivia style human figurines are small (3–5 cm tall) and range from simple plaques to detailed three-dimensional statuettes. These figurines are made from calcium carbonate and often combine feminine and masculine attributes. Quitu-Chaupicruz monoliths are stone posts up to 90 cm tall with tapered bases topped with anthropomorphic figures.

6. Sculpture—Terminal Valdivia style rectangular or square plaques and blocks are made of white or gray volcanic tuff or other stone with smooth faces or faces decorated with lines or circles depicting human or avian imagery. Manteño style seats are monolithic sculptures with U-shaped seats resting on zoomorphic, anthropomorphic, or undecorated pedestals on a rectangular base.

B. Ceramic

The earliest-known pottery in Ecuador dates to the Formative period (about 4400 B.C.). Highly skilled potters in the region created diverse and elaborate vessels, figurines, sculptural pottery, musical instruments, and other utilitarian and ceremonial items. Ceramics vary widely between archaeological styles. Decorations include paint (red, black, white, green, and beige) or surface decorations such as incisions, excisions, punctations, combing, fingernail marks, corrugations, modelling, etc. Pre-Columbian vessels are never glazed; shiny surfaces are created only by burnishing. Pre-Columbian potters did not use a pottery wheel, so vessels do not have the regular striations or perfectly spherical shapes characteristic of wheel-made pottery. Examples of archaeological ceramic objects covered in the Agreement include the following objects:

1. Vessels—There are three basic types of vessels: Plates, bowls, and jars. Forms and decoration vary among archaeological styles and over time. Some of the most well-known types are highlighted below.

a. Plates have flat or slightly convex bases, occasionally with annular support. Rims are everted, inverted, or vertical, sometimes with zoomorphic modelled appliqué or masks on the exterior. The interior surface is often painted with geometric, anthropomorphic, or zoomorphic designs (*e.g.,* Carchi style plates). Most Inka style plates from Tomebamba have handles and vertical walls without interior paint and some are flat with handles in the form of a bird or llama. Napo culture platters (*fuentes*) often have polychrome designs.

b. Bowls and cups may have everted or inverted rims, and they may have annular or polypod bases. Interior and/or exterior decorations may be made with incisions, negative painting, iridescent paint, etc. Bowls with pedestal bases are known as *compoteras.* Carchi style *compoteras* have anthropomorphic and zoomorphic negative paint designs. A *llipta* box or *poporo* is a very small bowl decorated with incisions or paint in round, zoomorphic, or anthropomorphic shapes. [*Note: Llipta* is a mixture of lime and/or ash used when chewing coca leaves.] Related to bowls, cups may have everted rims (*e.g.,* Azuay style and Cañar style cups and Inka *keros*) or inverted rims (*e.g.,* Puruhá style *timbales*). Milagro-Quevedo style tripod or pedestal bowls known as *cocinas de brujos* sometimes have handles and are often decorated with modelled reliefs of snake heads, toads, serpents, and nude human figures.

c. Jars are globular vessels with short necks, sometimes with exterior decoration on the entire vessel or only on the upper half. Jars sometimes have feet, usually three. Bottles are a type of jar with a long spout attached to the body by a handle. Some bottles have stirrup handles. Some bottles have an interior mechanism that regulates movement of air and liquid to create a whistling sound. Very large jars are called *cántaros. Cántaros* have wide

mouths and typically have convex or conical bases; in a few cases, bases are flat and small. Carchi style *cántaros* or *botijuelas* are ovoid in shape, have long necks, are decorated with red or negative paint, and sometimes have a modelled human face attached to the neck. Puruhá style *cántaros* are rounder, with bodies covered in negative paint designs and an everted rectilinear neck that is usually decorated with handles and a modelled human face. *Chicha* jars or *tinajas* are very large, usually undecorated jars. Funerary urns may be various sizes depending on whether they contained skeletal remains or ashes. There are two types of Napo style funerary urns with polychrome decorations: Large, elongated vessels with a bulge at the base and anthropomorphic, ceramic statues. Inka style *aríbalos* have long necks with everted rims and bulging bodies with two handles near the base, a modelled zoomorphic knob near the neck, and a pointed base. Imperial style *aríbalos* have primarily geometric, polychrome painting. Local style *aríbalos* have the same shape but are roughly made and undecorated.

2. Figurines—Figurine manufacturing was common in pre-Columbian Ecuador. Anthropomorphic figurines are solid or hollow clay with diverse representations of the body. The size of the figurines varies from less than 10 cm tall to statues over 50 cm tall. Some of the best-known types are described below:

a. Valdivia style ceramic ''Venus figures'' are small, female figurines in fired clay with detailed treatment of the torso and head. Machalilla and Chorrera figures are larger (up to 40 cm) and usually mold-made and decorated with white slip and red painted designs with humans (more often women than men) depicted in the nude with arms by the side or slightly raised.

b. Low-relief, mold-made figurines were common, including Chorrera style figurines in zoomorphic and phytomorphic shapes (*e.g.,* squashes, *babacos,* monkeys, canines, opossums, felines, and birds).

c. Guangala style and Jama-Coaque style figurines use modeled clay to depict body adornments or clothing of men and women. Bodies and ornaments may be painted black, green, red, or yellow. Jama-Coaque figurines, some up to 30 cm tall, with abundant molded decorations and rich painting depict individuals' occupations and social statuses (*e.g.,* seated shamans with *llipta* boxes, farmers with bags of seeds and digging sticks, warriors with helmets, spear-throwers and shields, seated jewelry makers with jewels in their laps, hunters carrying or slaughtering their prey, masked figures, dancers with wings or fancy dress, and characters in costumes that indicate privileged status).

d. Figurines from Bahía are generally medium-sized (about 25 cm tall). The ''giants of Bahía'' are up to 50 cm tall and typically depict shaman figures or elite personages seated cross-legged or standing with elaborate attire, adornment, and headdresses. They often exhibit a necklace adorned with a one to three white tusk-like ornaments.

e. Tolita figurines include individuals of high status and representations of daily life as well as anthropomorphic figures with mammal or bird heads. Tolita style heads and small figures without slip and detailed facial expressions are common. Some hollow heads have perforations and may have been suspended from cords, similar to the *tzantzas* (shrunken heads) of the Shuar.

f. Manteño style figurines are standardized with polished, black surfaces, almost always standing and with body adornments. There are some seated figures, including Manteño style incense burners depicting men, apparently entranced, with wide plates on their heads and elaborate incisions depicting body tattoos.

g. Carchi *coquero* figurines depict a seated individual in a hallucinogenic trance with a bulging cheek indicating that the individual is chewing coca. The bulging cheek is also common in Cosanga figurines from Amazonia. Other figurines from Amazonia are rough and their typology is not well known.

3. Musical instruments—During the Integration period, flutes—typically with four finger holes—were common in the northern Sierra. Throughout the coast and highlands, whistles in human or animal form, frequently birds, were common. Ceramic whistles in the form of sea shells (sometimes called *ocarinas*) are often decorated with geometric, anthropomorphic, and zoomorphic designs.

4. Masks—Human and zoomorphic masks made of clay, shell, and metal with varied facial expressions were common in pre-Columbian Ecuador. Many masks have small holes along the upper edge so that they can be suspended as pectorals. Rectangular, clay plaques depicting humans, sometimes in erotic motifs, have similar holes for suspension.

5. Stamps—Stamps are made from solid clay, including cylindrical roller stamps and flat stamps with a small handle on one side. Low relief geometric designs include stylized anthropomorphic, phytomorphic, and zoomorphic motifs. Small conical clay spindle whorls called *torteros* or *fusaiolas* have similar designs and a hole in the middle to be attached to a spindle.

6. Beads—Beads are small round pieces of ceramic with polished edges and a hole in the center.

7. Graters—Graters are long thin plates, often in the shape of a fish, with a concentration of embedded sharp stones on one side for scraping or grating. Some scrapers lack embedded stones but are decorated with deep incisions in the scraping surface. Bowls occasionally contain embedded scraping stones.

8. Neck rests—Bahía style and Jama-Coaque style neck rests, called *descansanucas,* are made from a slightly concave, rectangular, ceramic slab resting on a pedestal made from a flat slab of the same size supporting columns or a wide pillar in the shape of a house or human face.

9. House models—House models, or *maquetas,* from the coastal region have slightly concave roofs and walls that rest on a base that contains stairs and, sometimes, human figures guarding the entrance. In some cases, the interior columns supporting the roof are visible. These are typically found in the Jama-Coaque and La Tolita cultures, and many of them are functioning bottle forms used in drinking rituals. In the northern highlands, models of round houses represent typical domestic structures of the region.

C. Metal

Objects of gold, platinum, silver, copper, and tumbaga (an alloy of copper and gold) were common in pre-Columbian Ecuador. Several pre-Columbian cultures practiced metalwork on the coast (*e.g.,* Guangala, Bahía, Jama-Coaque, La Tolita, Manteño and Milagro-Quevedo), in the highlands (*e.g.,* Capulí, Piartal, Puruhá and Cañari), and in Amazonia (*e.g.,* Cosanga). The Inka introduced bronze, an alloy of copper and tin. Metallurgists were skilled at creating alloys and gold- and copper-plating. Objects were made by using melted metal or hammering metal sheets. Parts of compound objects were made separately and assembled mechanically. Examples of archaeological metal objects covered in the Agreement include the following objects:

1. Tools—Chisels are flat copper strips about 7 cm long and are beveled on one end. Copper needles vary in size from 3 to 8 cm long. There are also copper fish hooks, cylindrical punches, and long-handled spoons. Functional copper axes are similar in shape to stone

axes. Ceremonial copper axes lack a cutting edge, are sometimes silver plated, and are decorated on both faces in high and low relief, often in geometric designs.

A *tumi* is a type of axe with a long handle and a semicircular or rectilinear blade. Axe-monies (*hachas monedas*) are thin, axe-shaped sheets of arsenical copper that are 7–8 cm long and often found in bundles or carefully grouped.

2. Body ornaments—Copper ear piercers may have a hollow handle to facilitate insertion of the post. Gold, silver, and copper crowns and diadems are decorated with engraved or embossed designs. Pre-Columbian people in the region used a wide variety of nose ornaments including oval or circular plates open at the top for insertion into the nasal septum, ornaments with tubular bodies, and scroll or zoomorphic ornaments. Solid or hollow ear ornaments, sometimes with hanging decorations, and labrets are also common. Concave copper disc pectorals with embossed human faces often have holes at the mouth suggesting the existence of a tongue that would have functioned as a rattle. Ornamental clothing pins (*tupos* or *tupus*) made of copper, silver, and gold are topped with a circular or semicircular plate. Gold masks are made of embossed thin gold sheets. Some masks are a single piece of gold, others have additional elements such as diadems, pendants, and platinum eyes. Necklaces vary and often combine metal, *Spondylus* shell, and semi-precious stones.

3. Weapons—Bronze star-shaped mace heads typically have six points. Spear or lance points are made from silver sheets rolled into cones leaving a hole for the shaft. Manteño style spear or lance points have a hollow, cylindrical stem to attach the shaft. Gold and silver helmets were made for high-ranking individuals or ceremonial use.

4. Figurines—Small Inka style figurines depict male, female, and animal figures in solid gold or silver.

D. Bone, Shell, and Other Organic Tissue

Ceremonial use and trade of *Spondylus princeps,* a bivalve mollusk native to the coastal Pacific Ocean from modern Panama to the Gulf of Guayaquil, began during the Formative period. Although preservation of organic material is poor in most of Ecuador, utilitarian tools, instruments, and body ornaments made in bone, shell, and other materials may be found. Examples of archaeological organic objects covered in the Agreement include the following objects:

1. Tools—Sharp bone awls are made from long bones and are often fired to strengthen them. Various bone tools used for weaving include spatulas, needles, combs, shuttles, pick-up sticks, etc. Ritual long-handled spoons are made from bone. Spoons also are made from shell. Shell fish hooks are 3–5 cm in diameter.

2. Musical instruments—Flutes and whistles with a single finger-hole are made from bone. Large gastropod sea shells (*e.g., Strombus* sp.) were used as trumpets beginning in Early Valdivia times (around 3000 B.C.).

3. Body ornaments—Ornamental clothing pins (*tupos* or *tupus*) made from bone usually are topped with a zoomorphic ornament. Shell bracelets, nose rings, and small earrings are common. *Ucuyayas* are human figures made from *Spondylus* shell.

4. Human remains—Skeletal remains, soft tissue, and ash from the human body may be preserved in burials and other contexts.

II. Ethnological Material

Ethnological material covered by the Agreement includes Colonial period ecclesiastical paintings, sculpture, furniture, metalwork, textiles, documents, and manuscripts. In addition, ethnological material includes secular Colonial period paintings, documents, and manuscripts. Quito School artists incorporated into mostly religious art of the Catholic Church particularities of the Andes such as local costumes, indigenous customs, local flora and fauna, and placement within the Andean countryside or cities.

A. Paintings

Colonial period paintings are made on canvas, copper, marble, or wood panels. Pigments are typically made from pulverized minerals mixed with linseed or almond oil. Early 16th-century paintings use muted color palates of reddish browns and grays. By the 18th century, paintings display greater movement, illumination, and color, including intense blues, reds, and greens. Some paintings are decorated with gold leaf rays, stars, or floral designs. Most paintings are anonymous works, but a few are signed. Examples of ethnological paintings covered in the Agreement include, but are not limited to, the following objects:

1. Colonial period ecclesiastical paintings—Ecclesiastical paintings depict religious subjects including Christ, saints, virgins, angels, bishops, popes, and others.

2. Colonial period secular paintings—Secular paintings include landscapes, portraits, allegorical paintings, and *casta* paintings depicting racial classifications used in the Spanish colonial empire.

B. Sculpture

Ecclesiastical sculpture from the Colonial period includes images of religious content carved in wood during the 16th, 17th, and 18th centuries. Sculpture may also incorporate silver, gold, bronze, gesso, vegetal ivory (*tagua*), ivory, porcelain, glass eyes, or human hair. Quito School artists produced the finest and most sought-after sculpture in Colonial period Latin America. Quito School 18th-century sculptures are the most famous, including works by Manuel Chili, also known as Caspicara. Examples of ethnological sculpture covered in the Agreement include, but are not limited to, the following objects:

1. Ecclesiastical statues—Ecclesiastical statues carved in wood represent virgins, saints, crucified Christ, baby Jesus, angels and archangels, and figures for nativity scenes. The images are usually life-size. Most statues include the body, face, hands, and clothing sculpted in wood. To give the flesh a luminescent, life-like appearance, artists used the technique of *encarnación,* a process of painting, varnishing, and sanding the sculpture several times. Clothing is decorated in high relief using techniques such as graffito and *estofado* that includes layering of paint, lacquer, and gold or silver leaf. Other statues include only carved face and hands attached to a simple wood frame that is covered in robes made from fabric, brocade, or cloth stiffened with gum or paste. Most statues have silver accessories; in the case of the Virgin Mary, these accessories may be halos or *coronas,* small hearts crossed by a dagger, or earrings or other jewelry.

2. Ecclesiastical relief carvings—Low reliefs or nearly flat sculptures depict saints.

3. Portable altars or triptychs—Small altars of gilded wood or different-colored wood close like boxes, and smaller religious sculptures are stored inside.

C. Furniture

Colonial period ecclesiastical furniture was created by teams of designers, carpenters, cabinetmakers, and craftspeople specializing in leather, veneers, or inlaid wood. Additionally, these teams of artisans included carvers, weavers, bronze smiths, locksmiths, and artistic blacksmiths. Examples of ecclesiastical ethnological furniture covered in the Agreement include, but are not limited to, the following objects:

1. Altarpieces or *retablos*—Elaborate ornamental structures placed behind the altar include attached paintings, sculptures, or other religious objects.

2. Reliquaries and coffins—Containers made from wood, glass, or metal hold and exhibit sacred objects or human remains.

3. Church furnishings—Furnishings used for liturgical rites include pulpits, tabernacles, lecterns, confessionals, pews, choir stalls, chancels, baldachins, and palanquins.

D. Metalwork

Colonial period ecclesiastical objects made of silver, gold, and other metals were crafted in silversmiths' workshops for use in religious ceremonies. Designs relate to the Eucharist, such as the Lamb of God, a fish, a dove, a cross, fruit, and vine leaves. These ecclesiastical metal objects incorporate precious stones and jewels. Examples of ecclesiastical ethnological metalwork covered in the Agreement include, but are not limited to, the following objects:

1. Sacred vessels—Pyxes, goblets, chalices, and patens were commonly used for religious ceremonies. Urns and *custodia* (monstrances) were used to display the communion wafer.

2. Altar furnishings—Candlesticks, candelabra, and processional or stationary crosses were used in religious ceremonies. Decorative plaques were affixed to altars.

3. Statue accoutrements—Crowns, radiations, wings, garment pins, and jewelry adorned many ecclesiastical statues.

E. Textiles

Textiles used to perform religious services are often made from fine cotton or silk and may be embroidered with metallic or silk thread, brocades, prints, lace, fabrics, braids, and bobbin lace. Examples of textiles covered in the Agreement include, but are not limited to, the following objects:

1. Religious vestments—Garments worn by the priest and/or other ecclesiastics include cloaks, tunics, surplices, chasubles, dalmatics, albs, amices, stoles, maniples, cinctures, rochets, miters, bonnets, and humeral veils complemented by the so-called *blancos* or ''whites.''

2. Coverings and hangings—Textiles used for liturgical celebrations include altar cloths, towels, and tabernacle veils.

F. Documents and Manuscripts

Original handwritten texts or printed texts of limited circulation made during the Colonial period are primarily on paper, parchment, and vellum. They include books, single folios, or collections of related documents bound with string. Documents may contain a wax, clay, or ink seals or stamps denoting a public or ecclesiastical institution. Seals may be affixed to the document or attached with cords or ribbons. Because many of these documents are of institutional or official nature, they may have multiple signatures, denoting scribes, witnesses, and other authorities. Documents are generally written in Spanish, but may be composed in an indigenous language such as Quichua. Examples of ethnological documents and manuscripts covered in the Agreement include, but are not limited to, the following objects:

1. Colonial period ecclesiastical documents and manuscripts—These include religious texts, hymnals, and church records.

2. Colonial period secular documents and manuscripts—These include, but are not limited to, notary documents (*e.g.,* wills, bills of sale, contracts) and documents of the city councils, Governorate of New Castile, Royal Audience of Quito, Viceroyalty of Peru, Viceroyalty of New Granada, or the Council of the Indies.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding Ecuador to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
*	* * * * * *	*
Ecuador	Archaeological and ethnological material representing Ecuador's cultural heritage that is at least 250 years old, dating from the Pre-ceramic (approximately 12,000 B.C.), Formative, Regional development, Integration, Inka periods and into the Colonial period to A.D. 1769.	CBP Dec. 20–03.
*	* * * * * *	*

* * * * *

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: February 11, 2020.

Timothy E. Skud,

Deputy Assistant Secretary, Department of the Treasury.

[FR Doc. 2020–03118 Filed 2–12–20; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: Effective February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114–74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

In December of every year, OMB issues guidance to agencies to calculate the annual adjustment. According to OMB, the cost-of-living adjustment multiplier for 2020 is 1.01764, based on the Consumer Price Index for the month of October 2019, not seasonally adjusted.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 (''The Chairman may assess a civil fine, not to exceed $52,596 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .''). The 2020 adjusted level of the civil monetary penalty is $53,524 ($52,596 x 1.01764).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate of more than $100 million per year on state, local, or tribal governments or the private sector. The rule also does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' Thus, a takings implication assessment is not required.

Federalism

Under the criteria in Executive Order 13132, this final rule has no 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.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments,* Executive Order 13175 (59 FR 22951, November 6, 2000), the Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a

study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The Commission is 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 that the Commission publishes must:

(a) Be logically organized;

(b) use the active voice to address readers directly;

(c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 575.4 [Amended]

■ 2. Amend the introductory text of § 575.4 by removing ''$52,596'' and adding in its place ''$53,524''.

Dated: January 17, 2020.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2020–01167 Filed 2–13–20; 8:45 am]

BILLING CODE 7565–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in March 2020. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective March 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for March 2020 measurement dates.

The March 2020 lump sum interest assumptions will be 0.00 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for February 2020, these assumptions represent a decrease of 0.25 percent in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during March 2020, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, rate set 317 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
317	3–1–20	4–1–20	0.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 317 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
317	3–1–20	4–1–20	0.00	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–02887 Filed 2–13–20; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0749]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events, Sector Miami

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising existing regulations and consolidating into one table special local regulations for recurring marine events at various locations within the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) Miami Zone. Consolidating marine events into one table simplifies Coast Guard oversight and public notification of special local regulations within COTP Miami Zone.

DATES: This rule is effective March 16, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0749 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 about this proposed rulemaking, contact Mr. Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at 305–535–4317 or by email: *Omar.Beceiro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Recurring boat races, swims, and other marine events within the Seventh Coast Guard District are currently listed in 33 CFR 100.701, Table to § 100.701. The process for amending the table (*e.g.* adding or removing marine events) is lengthy and inefficient since it includes recurring marine events for seven different COTP zones within the Seventh District. To expedite and simplify the rulemaking process for new marine events/special local regulations, COTP's resorted to creating individual rules rather than amending Table to § 100.701.

This rule serves two purposes: (1) Create a table of recurring marine events/special local regulations occurring solely within the COTP Miami Zone, and (2) consolidate into that table marine events/special local regulations previously established outside of Table to § 100.701. These revisions facilitate management of and public access to information about marine events and special local regulations within the COTP Miami Zone.

The Coast Guard published a notice of proposed rulemaking (NPRM) on October 2, 2019 titled, ''Special Local Regulations; Recurring Marine Events, Sector Miami'' (84 FR 52411). There we stated why we published the NPRM, and invited comments on our proposed regulatory. During the comment period that ended November 1, 2019, the Coast Guard did not receive any comments.

II. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP Miami has determined that creating a table of recurring marine events/special local regulations occurring within the COTP Miami Zone, and consolidating into that table marine events/special local regulations in new Table 1 to § 100.702, which were listed in Table to § 100.701 will facilitate management of and public access to information about marine events within the COTP Miami Zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, the Coast Guard did not receive any comments on the NPRM published October 2, 2019. Other than inserting a ''1'' in the table headings in § 100.701 and § 100.702, and renumbering event-date designators in Table 1 to § 100.702, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule creates a table of recurring marine events/special local regulations occurring solely within the COTP

Miami Zone, and consolidates into new Table 1 to § 100.702 marine events/special local regulations, which were previously listed in Table to § 100.701. These revisions will facilitate management of and public access to information about marine events within the COTP Miami Zone.

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 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 minimal effects of the rule. The rule is an administrative action only intended to facilitate management of and public access to information about marine events and special local regulations within the COTP Miami Zone.

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 did not receive any comments from the Small Business Administration on this rulemaking. 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.

As stated in section V.A above, this rule is an administrative action only intended to better manage information and will 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

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 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 involves an administrative reorganization of established special local regulations for recurring marine events within the COTP Miami Zone. Normally such actions are categorically excluded from further review under paragraphs L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum for the Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated in **ADDRESSES**.

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 in 33 CFR Part 100

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERSPART

■ 1. The authority citation for Part 100 continues to read as follows:

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

■ 2. Amend § 100.701 by revising the Table to § 100.701 read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District.

* * * * *

TABLE 1 TO § 100.701

No./date	Event	Sponsor	Location
(a) COTP Zone San Juan; Special Local Regulations			
1. 1st Friday, Saturday, and Sunday of February.	CNSJ International Regatta	Club Nautico de San Juan ..	San Juan, Puerto Rico; (i) Outer Harbor Race Area. All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°28.4′ N, 66°07.6′ W; then south to Point 2 in position 18°28.1′ N, 66°07.8′ W; then southeast to Point 3 in position 18°27.8′ N, 66°07.4′ W; then southeast to point 4 in position 18°27.6′ N, 66°07.3′ W; then west to point 5 in position 18°27.6′ N, 66°07.8′ W; then north to point 6 in position 18°28.4′ N, 66°07.8′ W; then east to the origin. (ii) Inner Harbor Race Area; All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°27.6′ N, 66°07.8′ W; then east to Point 2 in position 18°27.6′ N, 66°07.1′ W; then southeast to Point 3 in position 18°27.4′ N, 66°06.9′ W; then west to point 4 in position 18°27.4′ N, 66°07.7′ W; then northwest to the origin.
2. Last Full Weekend of March.	St. Thomas International Regatta.	St. Thomas Yacht Club	St. Thomas, U.S. Virgin Islands; All waters of St. Thomas Harbor encompassed within the following points: Starting at Point 1 in position 18°19.9′ N, 64°55.9′ W; thence east to Point 2 in position 18°19.97′ N, 64°55.8′ W; thence southeast to Point 3 in position 18°19.6′ N, 64°55.6′ W; thence south to point 4 in position 18°19.1′ N, 64°55.5′ W; thence west to point 5 in position 18°19.1′ N, 64°55.6′ W; thence north to point 6 in position 18°19.6′ N, 64°55.8′ W; thence northwest back to origin at Harbor, St. Thomas, San Juan.
3. Last week of April	St. Thomas Carnival	Virgin Islands Carnival Committee.	St. Thomas, U.S. Virgin Islands; (i) Race Area. All waters of the St. Thomas Harbor located around Hassel Island, St. Thomas, U.S. Virgin Island encompassed within the following points: Starting at Point 1 in position 18°20.2′ N, 64°56.1′ W; thence southeast to Point 2 in position 18°19.7′ N, 64°55.7′ W; thence south to Point 3 in position 18°19.4′ N, 64°55.7′ W; thence southwest to point 4 in position 18°19.3′ N, 64°56.0′ W; thence northwest to point 5 in position 18°19.9′ N, 64°56.5′ W; thence northeast to point 6 in position 18°20.2′ N, 064°56.3′ W; thence east back to origin. (ii) Jet Ski Race Area. All waters encompassed the following points: Starting at Point 1 in position 18°20.1′ N, 64°55.9′ W; thence west to Point 2 in position 18°20.1′ N, 64°56.1′ W; thence north to Point 3 in position 18°20.3′ N, 64°56.1′ W; thence east to Point 4 in position 18°20.3′ N, 64°55.9′ W; thence south back to origin. (iii) Buffer Zone. All waters of the St. Thomas Harbor located around Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N, 64°55.9′ W; thence southeast to Point 2 in position 18°19.7′ N, 64°55.7′ W; thence south to Point 3 in position 18°19.3′ N, 64°55.72′ W; thence southwest to Point 4 in position 18°19.2′ N, 64°56′ W; thence northwest to Point 5 in position 18°19.9′ N, 64°56.5′ W; thence northeast to Point 6 in position 18°20.3′ N, 64°56.3′ W; thence east back to origin. (iv) Spectator Area. All waters of the St. Thomas Harbor located east of Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N, 64°55.8′ W; thence southeast to Point 2 in position 18°19.9′ N, 64°55.7′ W; thence northeast to Point 3 in position 18°20.2′ N, 64°55.5′ W; thence northwest back to origin.
4. 1st Sunday of May	Ironman 70.3 St. Croix	Project St. Croix, Inc	St. Croix (Christiansted Harbor), U.S. Virgin Islands; All waters encompassed within the following points: point 1 on the shoreline at Kings Wharf at position 17°44′51″ N, 064°42′16″ W, thence north to point 2 at the southwest corner of Protestant Cay in position 17°44′56″ N, 064°42′12″ W, then east along the shoreline to point 3 at the southeast corner of Protestant Cay in position 17°44′56″ N, 064°42′08″ W, thence northeast to point 4 at Christiansted Harbor Channel Round Reef Northeast Junction Lighted Buoy RR in position 17°45′24″ N, 064°41′45″ W, thence southeast to point 5 at Christiansted Schooner Channel Lighted Buoy 5 in position 17°45′18″ N, 064°41′43″ W, thence southwest to point 6 at Christiansted Harbor Channel Buoy 15 in position 17°44′56″ N, 064°41′56″ W, thence southwest to point 7 on the shoreline north of Fort Christiansted in position 17°44′51″ N, 064°42′05″ W, thence west along the shoreline to origin.
5. July 4th	Fireworks Display	St. John Festival & Cul., Org	St. John (West of Cruz Bay/Northeast of Steven Cay), U.S. Virgin Islands; All waters from the surface to the bottom for a radius of 200 yards centered around position 18°19′55″ N, 064°48′06″ W.

TABLE 1 TO § 100.701—Continued

No./date	Event	Sponsor	Location
6. 3rd Week of July, Sunday	San Juan Harbor Swim	Municipality of Cataño	San Juan Harbor, San Juan, Puerto Rico; All waters encompassed within the following points: point 1: La Puntilla Final, Coast Guard Base at position 18°27′33″ N, 066°07′00″ W, then south to point 2: Cataño Ferry Pier at position 18°26′36″ N, 066°07′00″ W, then northeast along the Cataño shoreline to point 3: Punta Cataño at position 18°26′40″ N, 066°06′48″ W, then northwest to point 4: Pier 1 San Juan at position 18°27′40″ N, 066°06′49″ W, then back along the shoreline to origin.
7. 1st Sunday of September	Cruce A Nado International	Cruce a Nado Inc	Ponce Harbor, Bahia de Ponce, San Juan; All waters of Bahia de Ponce encompassed within the following points: Starting at Point 1 in position 17°58.9′ N, 66°37.5′ W; thence southwest to Point 2 in position 17°57.5′ N, 66°38.2′ W; thence southeast to Point 3 in position 17°57.4′ N, 66°37.9′ W; thence northeast to point 4 in position 17°58.7′ N, 66°37.3′ W; thence northwest along the northeastern shoreline of Bahia de Ponce to the origin.
8. 2nd Sunday of October	St. Croix Coral Reef Swim ..	The Buccaneer Resort	St. Croix, U.S. Virgin Islands; All waters of Christiansted Harbor within the following points: Starting at Point 1 in position 18°45.7′N, 64°40.6′ W; then northeast to Point 2 in position 18°47.3′ N, 64°37.5 W; then southeast to Point 3 in position 17°46.9′ N, 64°37.2′ W; then southwest to point 4 in position 17°45.51′ N, 64°39.7′ W; then northwest to the origin.
9. December 31st	Fireworks St. Thomas, Great Bay.	Mr. Victor Laurenza, Pyrotecnico, New Castle, PA.	St. Thomas (Great Bay area), U.S. Virgin Islands; All waters within a radius of 600 feet centered around position 18°19′14″ N, 064°50′18″ W.
10. December—1st week	Christmas Boat Parade	St. Croix Christmas Boat Committee.	St. Croix (Christiansted Harbor), U.S. Virgin Islands; 200 yards offshore around Protestant Cay beginning in position 17°45′56″ N, 064°42′16″ W, around the cay and back to the beginning position.
11. December—2nd week	Christmas Boat Parade	Club Nautico de San Juan ..	San Juan, Puerto Rico; Parade route. All waters of San Juan Harbor within a moving zone that will begin at Club Nautico de San Juan, move towards El Morro and then return, to Club Nautico de San Juan; this zone will at all times extend 50 yards in front of the lead vessel, 50 yards behind the last vessel, and 50 yards out from all participating vessels.
(b) COTP Zone Key West; Special Local Regulations			
1. 3rd Week of January, Monday–Friday.	Yachting Key West Race Week.	Premiere Racing, Inc.	Inside the reef on either side of main ship channel, Key West Harbor Entrance, Key West, Florida.
2. Last Friday of April	Conch Republic Navy Parade and Battle.	Conch Republic	All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and the Hilton Pier within the Key West Harbor in Key West, Florida.
3. 1st Weekend of June	Swim around Key West	Florida Keys Community College.	Beginning at Smather's Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Flemming Cut, south on Cow Key Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels.
4. 2nd Week of November, Wednesday-Sunday.	Key West World Championship.	Super Boat International Productions, Inc.	In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.
(c) COTP Zone St. Petersburg; Special Local Regulations			
1. 3rd Saturday of January ...	Gasparilla Children's Parade Air show.	Air Boss and Consulting	All waters of Hillsborough Bay north of an line drawn at 27°55′ N, west of Davis Islands, and south of the Davis Island Bridge.
2. Last Friday, Saturday, and Sunday of March.	Honda Grand Prix	Honda Motor Company and City of St. Petersburg.	Demens Landing St. Petersburg Florida; All waters within 100 ft. of the seawall.
3. Last Friday, Saturday, and Sunday of March.	St. Pete Grand Prix Air show.	Honda Motor Company and City of St. Petersburg.	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida, within two nautical miles of the Albert Whitted Airport.
4. Last Sunday of April	St. Anthony's Triathlon	St. Anthony's Healthcare	Gulf of Mexico, St. Petersburg, Florida within one nautical mile of Spa Beach.
5. July 4th	Freedom Swim	None	Peace River, St. Petersburg, Florida within two nautical miles of the US 41 Bridge.
6. 1st Sunday of July	Suncoast Offshore Grand Prix.	Suncoast Foundation for the Handicapped.	Gulf of Mexico in the vicinity of Sarasota, Florida from New Pass to Siesta Beach out to eight nautical miles.
7. 3rd Friday, Saturday, and Sunday of September.	Homosassa Raft Race	Citrus 95 FM radio	Homosassa River in Homosassa, Florida Between Private Green Dayboard 81 east located in approximate position 28°46′58.937″ N, 082°37′25.131″ W to private Red Dayboard 2 located in approximate position 28°47′19.939″ N, 082°36′44.36″ W.
8. September 30th	Clearwater Superboat Race	Superboat International	(i) Race Area; All waters of the Gulf of Mexico near St. Petersburg, Florida, contained within the following points: 27°58.96′ N, 82°50.05′ W, thence to position 27°58.60′ N, 82°50.04′ W, thence to position 27°58.64′ N, 82°50.14′ W, thence to position 28°00.43′ N, 82°50.02′ W, thence to position 28°00.45′ N, 82°50.13′ W, thence back to the start/finish position;

TABLE 1 TO § 100.701—Continued

No./date	Event	Sponsor	Location
			(ii) Buffer Area; All waters of the Gulf of Mexico encompassed within the following points: 27°58.4′ N, 82°50.2′ W, thence to position 27°58.3′ N, 82°49.9′ W, thence to position 28°00.6′ N, 82°50.2′ W, thence to position 28°00.7′ N, 82°49.7′ W, thence back to position 27°58.4′ N, 82°50.2′ W. (iii) Spectator Area; All waters of Gulf of Mexico seaward of the following points: 27°58.6′ N, 82°50.2′ W, thence to position 28°00.5′ N, 82°50.2′ W.
9. Last weekend of September.	Cocoa Beach Grand Prix of the Seas.	Powerboat P1–USA, LLC	Atlantic ocean at Cocoa Beach, Florida. Sheppard Park. All waters encompassed within the following points: Starting at point 1 in position 28°22.285′ N, 80°36.033′ W; thence east to Point 2 in position 28°22.253′ N, 80°35.543′ W; thence south to Point 3 in position 28°21.143′ N, 80°35.700′ W; thence west to Point 4 in position 28°21.195′ N, 80°36.214′ W; thence north back to the origin.
10. 2nd Friday, Saturday, and Sunday of October.	St. Petersburg Airfest	City of St. Petersburg	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida all waters within 2 nautical miles of the Albert Whitted Airport.
11. 3rd Thursday, Friday, and Saturday of November.	Ironman World Championship Triathlon.	City of Clearwater & Ironman North America.	Gulf of Mexico, Clearwater, Florida within 2 nautical miles of Clearwater Beach FL.
(d) COTP Zone Jacksonville; Special Local Regulations			
1. Last Saturday of February	El Cheapo Sheepshead Tournament.	Jacksonville Offshore Fishing Club.	Mayport Boat Ramp, Jacksonville, Florida; 500 foot radius from the boat ramp.
2. 1st Saturday of March	Jacksonville Invitational	Stanton Rowing Foundation (May vary).	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
3. 1st Saturday of March	Stanton Invitational (Rowing Race).	Stanton Rowing Foundation	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
4. 1st weekend of March	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N, 81°43′41″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin.
5. 2nd Full Weekend of March.	TICO Warbird Air Show	Valiant Air Command	Titusville; Indian River, FL: All waters encompassed within the following points: Starting at the shoreline then due east to Point 1 at position 28°31′25.15″ N, 080°46′32.73″ W, then south to Point 2 located at position 28°30′55.42″ N, 080°46′32.75″ W, then due west to the shoreline.
6. 3rd Weekend of March	Tavares Spring Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
7. Palm Sunday in March or April.	Blessing of the Fleet—Jacksonville.	City of Jacksonville Office of Special Events.	St. Johns River, Jacksonville, Florida in the vicinity of Jacksonville Landing between the Main Street Bridge and Acosta Bride.
8. Palm Sunday in March or April.	Blessing of the Fleet—St. Augustine.	City of St. Augustine	St. Augustine Municipal Marina (entire marina), St. Augustine Florida.
9. 1st Full Weekend of April (Saturday and Sunday).	Mount Dora Yacht Club Sailing Regatta.	Mount Dora Yacht Club	Lake Dora, Mount Dora, Florida—500 feet off Grantham Point.
10. 3rd Saturday of April	Jacksonville City Championships.	Stanton Rowing Foundation	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
11. 3rd weekend of April	Florida Times Union Redfish Roundup.	The Florida Times-Union	Sister's Creek, Jacksonville, Florida; All waters within a 100 yard radius of Jim King Park and Boat Ramp at Sister's Creek Marina, Sister's Creek.
12. 2nd Weekend in May	Saltwater Classic—Port Canaveral.	Cox Events Group	All waters of the Port Canaveral Harbor located in the vicinity of Port Canaveral, Florida encompassed within the following points: Starting at Point 1 in position 28°24′32″ N, 080°37′22″ W, then north to Point 2 28°24′35″ N, 080°37′22″ W, then due east to Point 3 at 28°24′35″ N, 080°36′45″ W, then south to Point 4 at 28°24′32″ N, 080°36′45″, then west back to the original point.
13. 1st Friday of May	Isle of Eight Flags Shrimp Festival Pirate Landing and Fireworks.	City of Fernandina Beach	All waters within a 500 yard radius around approximate position 30°40′15″ N, 81°28′10″ W.
14. 1st Saturday of May	Mug Race	The Rudder Club of Jacksonville, Inc.	St. Johns River; Palatka to Buckman Bridge.
15. 3rd Friday–Sunday of May.	Space Coast Super Boat Grand Prix.	Super Boat International Productions, Inc.	Atlantic Ocean in the vicinity of Cocoa Beach, Florida includes all waters encompassed within the following points: Starting at Point 1 in position 28°22′16″ N, 80°36′04″ W; thence east to Point 2 in position 28°22′15″ N, 80°35′39″ W; thence south to Point 3 in position 28°19′47″ N, 80°35′55″ W; thence west to Point 4 in position 28°19′47″ N, 80°36′22″ W; thence north back to origin.
16. 4th weekend of May	Memorial Day RiverFest	City of Green Cove Springs	St. Johns River, Green Cove Springs, Florida; All waters within a 500-yard radius around approximate position 29°59′39″ N, 081°40′33″ W.
17. Last full week of May (Monday–Friday).	Bluewater Invitational Tournament.	Northeast Florida Marlin Association.	There is a no-wake zone in affect from the St. Augustine City Marina out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m. during the above days.
18. 2nd weekend of June	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N, 81°43′41″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin.

TABLE 1 TO § 100.701—Continued

No./date	Event	Sponsor	Location
19. 1st Saturday of June	Florida Sport Fishing Association Offshore Fishing Tournament.	Florida Sport Fishing Association.	Port Canaveral, Florida from Sunrise Marina to the end of Port Canaveral Inlet.
20. 2nd weekend of June (Saturday and Sunday).	Kingfish Challenge	Ancient City Game Fish Association.	There is a no-wake zone in affect from the St. Augustine City Marina in St. Augustine, Florida out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m.
21. 3rd Friday-Sunday of June.	Daytona Beach Grand Prix of the Sea.	Powerboat P1–USA	All waters of the Atlantic Ocean East of Cocoa Beach, Florida encompassed within the following points: Starting at Point 1 in position 29°14′60″ N, 81°00′77″ W; thence east to Point 2 in position 29°14′78″ N, 80°59′802″ W; thence south to Point 3 in position 28°13′860″ N, 80°59′76″ W; thence west to Point 4 in position 29°13′68″ N, 81°00′28″ W; thence north back to origin.
22. 3rd Saturday of July	Halifax Rowing Association Summer Regatta.	Halifax Rowing Association	Halifax River, Daytona, Florida, south of Memorial Bridge—East Side.
23. 3rd week of July	Greater Jacksonville Kingfish Tournament.	Jacksonville Marine Charities, Inc.	Jacksonville, Florida; All waters of the St. Johns River, from lighted buoy 10 (LLNR 2190) in approximate position 30°24′22″ N, 081°24′59″ W to Lighted Buoy 25 (LLNR 7305).
24. Last weekend of September.	Jacksonville Dragon Boat Festival.	In the Pink Boutique, Inc	St. John's River, Jacksonville, Florida. In front of the Landing, between the Acosta & Main Street bridges From approximate position 30°19′26″ N, 081°39′47″ W to approximate position 30°19′26″ N, 81°39′32″ W.
25. 2nd week of October	First Coast Head Race	Stanton Rowing Foundation	St. Johns River and Arlington River, Jacksonville, Florida, starting near the Arlington Marina and ending on the Arlington River near the Atlantic Blvd. Bridge.
26. 1st weekend of November.	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N, 81°43′41″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin.
27. 3rd Weekend of November.	Tavares Fall Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
28. 2nd Saturday of December.	St. Johns River Christmas Boat Parade.	St. Johns River Christmas Boat Parade, Inc.	St. Johns River, Deland, Florida; Whitehair Bridge, Deland to Lake Beresford.
29. 2nd Saturday of December.	Christmas Boat Parade (Daytona Beach/Halifax River).	Halifax River Yacht Club	Daytona Beach, Florida; Halifax River from Seabreeze Bridge to Halifax Harbor Marina.
(e) COTP Zone Savannah; Special Local Regulations			
1. May, 2nd weekend, Sunday.	Blessing of the Fleet—Brunswick.	Knights of Columbus—Brunswick.	Brunswick River from the start of the East branch of the Brunswick River (East Brunswick River) to the Golden Isles Parkway Bridge.
2. 3rd full weekend of July	Augusta Southern Nationals Drag Boat Races.	Augusta Southern Nationals	Savannah River, Augusta, Georgia, from the US Highway 1 (Fifth Street) Bridge at mile 199.5 to Eliot's Fish Camp at mile 197.
3. Last weekend of September.	Ironman 70.3	Ironman	All waters of the Savannah River encompassed within the following points: Starting at Point 1 in position 33°28′44″ N, 81°57′53″ W; thence northeast to Point 2 in position 33°28′50″ N, 81°57′50″ W; thence southeast to Point 3 in position 33°27′51″ N, 81°55′36″ W; thence southwest to Point 4 in position 33°27′47″ N, 81°55′43″ W; thence northwest back to origin.
4. 1st Saturday after Thanksgiving Day in November.	Savannah Harbor Boat Parade of Lights and Fireworks.	Westin Resort, Savannah	Savannah River, Savannah Riverfront, Georgia, Talmadge bridge to a line drawn at 146 degrees true from Dayboard 62.
5. 2nd Saturday of November	Head of the South Regatta	Augusta Rowing Club	Savannah River, Augusta, Georgia; All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51′20″ N, 079°54′06″ W, South along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N, 079°53′49″ W, South along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N, 079°54′39″ W. There will be a temporary Channel Closer from 0730 to 0815 on June 01, 2013 between Wando River Terminal Buoy 3 (LLNR 3305), and Wando River Terminal Buoy 5 (LLNR 3315). The zone will at all times extend 75 yards in front of the lead safety vessel preceding the first race participants; 75 yards behind the safety vessel trailing the last race participants; and at all times extending 100 yards on either side of the race participants and safety vessels.
(f) COTP Zone Charleston; Special Local Regulations			
1. 2nd and 3rd weekend of April.	Charleston Race Week	Sperry Top-Sider	Charleston Harbor and Atlantic Ocean, South Carolina, All waters encompassed within an 800 yard radius of position 32°46′39″ N, 79°55′10″ W, All waters encompassed within a 900 yard radius of position 32°45′48″ N, 79°54′46″ W, All waters encompassed within a 900 yard radius of position 32°45′44″ N, 79°53′32″ W.

TABLE 1 TO § 100.701—Continued

No./date	Event	Sponsor	Location
2. 1st week of May	Low Country Splash	Logan Rutledge	Wando River, Cooper River, Charleston Harbor, South Carolina, including the waters of the Wando River, Cooper River, and Charleston Harbor from Daniel Island Pier, in approximate position 32°51′20″ N, 079°54′06″ W, south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N, 079°53′49″ W, south along the coast of Mt. Pleasant, South Carolina, to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N, 079°54′39″ W, and extending out 150 yards from shore.
3. 2nd week of June	Beaufort Water Festival	City of Beaufort	Atlantic Intracoastal Waterway, Bucksport, South Carolina; All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.5″ N, 079°05′36.8″ W; thence west to point 2 in position 33°39′12.2″ N, 079°05′47.8″ W; thence south to point 3 in position 33°38′39.5″ N, 079°05′37.4″ W; thence east to point 4 in position 33°38′42.3″ N, 79°05′30.6″ W; thence north back to origin.
4. 3rd week of September	Swim Around Charleston	Kathleen Wilson	Wando River, main shipping channel of Charleston Harbor, Ashley River, Charleston, South Carolina; A moving zone around all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N, 79°54′27″ W, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50′14″ N, 80°01′23″ W.
5. 2nd week of November	Head of the South	Augusta Rowing Club	Upper Savannah River mile marker 199 to mile marker 196, Georgia.
6. 2nd week December	Charleston Harbor Christmas Parade of Boats.	City of Charleston	Charleston Harbor, South Carolina, from Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina.

■ 3. Add § 100.702 to read as follows:

§ 100.702 Special Local Regulations; Marine Events within the Captain of the Port Miami.

The following regulations apply to the marine events listed in Table 1 of this section and will be effective annually for the duration listed. The Coast Guard will notify the maritime community of exact dates and times each regulation will be in effect and the nature of each event (*e.g.* location, number of participants, type of vessels involved, etc.) through a Notice of Enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

(a) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* The term ''Designated Representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, others operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Miami in the enforcement of the regulated areas.

(2) *Spectators.* All persons and vessels not registered with the event sponsor as participants.

(b) *Event Patrol.* The Coast Guard may assign an event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF Channel 16.

(c) *Special Local Regulations.* (1) The COTP Miami or Designated Representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in removal from the area, citation for failure to comply, or both.

(2) The COTP Miami or Designated Representative may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area, unless otherwise authorized by the COTP Miami or Designated Representative.

(4) Spectators may request permission from the COTP Miami or Designated Representative to enter, transit, remain within, or anchor in the regulated area. If permission is granted, spectators must abide by the directions of the COTP Miami or a Designated Representative. The COTP Miami or Designated Representative may delay or terminate any event in this subpart at any time to ensure safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation, or participant behavior.

TABLE 1 TO § 100.702—SPECIAL LOCAL REGULATIONS; MARINE EVENTS WITHIN THE CAPTAIN OF THE PORT MIAMI

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
1. One weekend (Friday, Saturday, and Sunday) in May. *Time (Approximate):* 8 a.m. to 7:30 p.m.	Stuart Sailfish Regatta (Boat Race). *Sponsor:* The Stuart Sailfish Regatta, Inc.	Stuart, FL	*Location:* All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within a line connecting the following points, with the exception of the spectator area: Starting at Point 1 in position 27°12′47″ N, 80°11′43″ W; thence southeast to Point 2 in position 27°12′22″ N, 80°11′28″ W; thence northeast to Point 3 in position 27°12′35″ N, 80°11′00″ W; thence northwest to Point 4 in position 27°12′47″ N, 80°11′04″ W; thence northeast to Point 5 in position 27°13′05″ N, 80°11′01″ W; thence southeast back to origin.

TABLE 1 TO § 100.702—SPECIAL LOCAL REGULATIONS; MARINE EVENTS WITHIN THE CAPTAIN OF THE PORT MIAMI—Continued

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
2. One weekend (Friday, Saturday, and Sunday) in May. *Time (Approximate):* 10 a.m. to 5 p.m.	Miami Beach Air and Sea Show. *Sponsor:* The City of Miami Beach.	Miami Beach, FL.	*Location:* All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25°47′52″ N, 080°6′55″ W; thence southwest to Point 2 in position 25°45′40″ N, 080°7′16″ W; thence northwest to Point 3 in position 25°45′50″ N, 080°07′49″ W; thence north to Point 4 in position 25°47′56″ N, 080°07′30″ W; thence back to the origin at Point 1.
3. One weekend (Friday, Saturday, and Sunday) in May. *Time (Approximate):* 9 a.m. to 6 p.m.	Fort Lauderdale Air Show. *Sponsor:* The City of Fort Lauderdale.	Fort Lauderdale, FL.	*Location:* All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 26°11′01″ N 080°05′42″ W; thence due east to Point 2 in position 26°11′01″ N 080°05′00″ W; thence south west to Point 3 in position 26°05′42″ N 080°05′35″ W; thence west to Point 4 in position 26°05′42″ N 080°06′17″ W; thence following the shoreline north back to the point of origin.
4. One weekend day (Saturday or Sunday) in September. *Time (Approximate):* 6 a.m. to 10 a.m.	Publix Escape to Miami Triathlon. *Sponsor:* Life Time Fitness Triathlon Series, LLC.	Miami, FL	*Location:* All waters of Biscayne Bay, east of Margaret Pace Park, Miami, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°47′40″ N, 80°11′07″ W; thence northeast to Point 2 in position 25°48′13″ N, 80°10′48″ W; thence southeast to Point 3 in 25°47′59″ N, 80°10′34″ W; thence south to Point 4 in position 25°47′52″ N, 80°10′34″ W; thence southwest to Point 5 in position 25°47′33″ N, 80°11′07″ W; thence north back to origin.
5. One weekend (Saturday, and Sunday) in October. *Time (Approximate):* 9 a.m. to 6 p.m.	Columbus Day Regatta. *Sponsor:* Columbus Day Regatta, Inc.	Miami, FL	*Location:* All waters of Biscayne Bay encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25°43′24″ N 080°12′30″ W; thence east to Point 2 in position 25°43′24″ N 080°10′30″ W; thence south to Point 3 in position 25°33′00″ N 080°11′30″ W; thence west to Point 4 in position 25°33′00″ N 080°15′54″ W; thence north west to point 5 in position 25°40′00″ N 080°15′00″ W; thence back to the origin at Point 1.
6. One weekend day (Saturday or Sunday) in October. *Time (Approximate):* 6 a.m. to 11 a.m.	Ironman 70.3 (Swim Event). *Sponsor:* Miami Tri Events, LLC.	Miami, FL	*Location:* All waters of Biscayne Bay located east of Bayfront Park and encompassed within a line connecting the following points: Starting at Point 1 in position 25°46′44″ N, 080°11′00″ W; thence southeast to Point 2 in position 25°46′24″ N, 080°10′44″ W; thence southwest to Point 3 in position 25°46′18″ N, 080°11′05″ W; thence north to Point 4 in position 25°46′33″ N, 080°11′05″ W; thence northeast back to origin.
7. One weekend Saturday, and Sunday in November. *Time (Approximate):* 8 a.m. to 4 p.m.	P1 Fort Lauderdale Grand Prix of the Seas. *Sponsor:* Powerboat P1 USA LLC.	Fort Lauderdale, FL.	*Location:* All waters of the Atlantic Ocean contained within a line connecting the following points: beginning at Point 1 in position 26°6′21″ N, 080°5′51″ W; thence west to Point 2 in position 26°6′21″ N, 080°6′13″ W; thence north to Point 3 in position 26°6′57″ N, 080°6′13″ W; thence east to Point 4 in position 26°6′57″ N, 080°5′52″ W, thence back to origin at point 1.
8. One weekend day (Friday, Saturday or Sunday) in December. *Time (Approximate):* 6 p.m. to 10 p.m.	Boynton Beach & Delray Beach Holiday Boat Parade. *Sponsor:* The Boynton Beach CRA.	Boynton Beach, FL. Delray Beach, FL.	*Location:* All waters within a moving zone that will begin at Boynton Inlet and end at the C–15 Canal, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
9. One weekend day (Friday, Saturday or Sunday) in December. *Time (Approximate):* 4:30 p.m. to 9:30 p.m.	Palm Beach Holiday Boat Parade. *Sponsor:* Marine Industries Association of Palm Beach County, Inc.	Palm Beach, FL.	*Location:* All waters within a moving zone that will begin at Lake Worth Daymarker 28 in North Palm Beach and end at Loxahatchee River Daymarker 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
10. One weekend day (Friday, Saturday or Sunday) in December. *Time (Approximate):* 5 p.m. to 10 p.m.	Miami Outboard Holiday Boat Parade. *Sponsor:* The Miami Outboard Club.	Miami, FL	*Location:* All waters within a moving zone that will transit as follows: The marine parade will begin at the Miami Outboard Club on Watson Island, head north around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. This will include a buffer zone extending to 50 yards ahead of the lead vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
11. One weekend day (Friday, Saturday or Sunday) in December. *Time (Approximate):* 1:30 p.m. to 12:30 a.m.	Seminole Hard Rock Winterfest Boat Parade. *Sponsor:* Winterfest, Inc.	Fort Lauderdale, FL.	*Location:* All waters within a moving zone that will begin at Cooley's Landing Marina and end at Lake Santa Barbara, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
12. One weekend day (Friday, Saturday or Sunday) in December. *Time (Approximate):* 6 p.m. to 10 p.m.	City of Pompano Beach Holiday Boat Parade. *Sponsor:* The Greater Pompano Beach Chamber of Commerce.	Pompano Beach, FL.	*Location:* All waters within a moving zone that will begin at Lake Santa Barbara and head north on the Intracoastal Waterway to end at the Hillsboro Bridge, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.

§§ 100.723, 100.726, and 100.729 [Removed]

■ 4. Remove § 100.723, § 100.726, and § 100.729.

Dated: 14 January 2020.

J.F. Burdian,

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

[FR Doc. 2020–01934 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0513; FRL–10004–95–Region 1]

Air Plan Approval; Connecticut; Transport State Implementation Plan for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 2008 ozone national ambient air quality standard (NAAQS) (*i.e.,* ozone transport SIP). The EPA is approving the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on March 16, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2019–0513. 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, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

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

Table of Contents

I. Background

On December 26, 2019 (84 FR 70913), EPA published a notice of proposed rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of SIP revisions that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 2008 ozone national ambient air quality standard (NAAQS) (*i.e.,* ozone transport SIP). The formal SIP revision was submitted by Connecticut on June 15, 2015. In this action, we are approving Connecticut's transport SIP for the 2008 ozone NAAQS.

The rationale for EPA's proposed action is given in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving a transport SIP that was submitted by Connecticut to address interstate transport requirements for CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS as a revision to the Connecticut SIP.

III. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: January 29, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(122) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(122) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on June 15, 2015.

(i) [Reserved]

(ii) *Additional materials.* (A) The Connecticut Department of Energy and Environmental Protection document, ''Demonstration that Connecticut Complies with the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I) for the 2008 Ozone National Ambient Air Quality Standard'' Final, June 11, 2015.

(B) [Reserved]

■ 3. Section 52.386 is amended by adding paragraph (d) to read as follows:

§ 52.386 Section 110(a)(2) infrastructure requirements.

* * * * *

(d) The Connecticut Department of Energy and Environmental Protection submitted the following infrastructure SIP on this date: 2008 ozone NAAQS—June 15, 2015 (CAA section 110(a)(2)(D)(i)(I) transport provisions). This infrastructure SIP is approved.

[FR Doc. 2020–02011 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0990; FRL–10005–04–Region 5]

Air Plan Approval; Ohio; Prevention of Significant Deterioration Greenhouse Gas Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a revision to Ohio's State Implementation Plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) on March 30, 2011, and amended on August 22, 2019 and December 10, 2019. The revision to Ohio's SIP modifies Ohio's Prevention of Significant Deterioration (PSD) program to establish emission thresholds for determining when stationary source projects are potentially subject to Ohio's PSD permitting requirements for greenhouse gas (GHG) emissions. Consistent with Ohio's requests, EPA is taking no action on paragraphs (B), (C), and (D) of Ohio's GHG rule.

DATES: This final rule is effective on March 16, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0990. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Richard Angelbeck, Environmental Scientist, at (312) 886–9698 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Richard Angelbeck, Environmental Scientist, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9698, *angelbeck.richard@epa.gov.*

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

I. Background Information

On November 18, 2019, EPA proposed to approve a revision to Ohio's PSD rules contained in Ohio Administrative Code (OAC) 3745–31 to include Ohio's 3745–31–34 GHG rule. See 84 FR 63601, November 18, 2019. An explanation of the CAA requirements, a detailed analysis of the proposed revision, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM), and will not be restated here. The public comment period for this proposed rule ended on December 18, 2019. EPA received four comments on the proposal.

II. Response to Comments

During the comment period, EPA received four comments on the November 18, 2019 NPRM. None of the four comments were adverse to the proposed action.

The first comment was anonymous and was in support of the proposed approval of Ohio's GHG rule, and also asked why the rule was only being implemented in Ohio. The second comment was Ohio's December 10, 2019 request that EPA not act on the OAC 3745–31–34(B) paragraph in the submittal. The third comment was from the Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association and was in support of Ohio's December 10, 2019 request that

EPA not act on paragraph (B) of Ohio's OAC 3745–31–34 GHG rule. The last comment was anonymous and not germane or relevant to this action because it lacks the required specificity to the proposed SIP revision and relevant requirements of CAA section 110(l). Moreover, the comment does not recommend a different action on the SIP submission from what EPA proposed. All of the comments received are included in the docket for this action. A summary of the comments and EPA's responses are provided below.

Comment 1: The anonymous commenter was in support of the proposed approval of Ohio's GHG rule, but also asked why this GHG rule was only being implemented in Ohio seeing that there are plenty of other states with stationary source projects.

Response 1: OEPA is the air permitting authority for the State of Ohio and can only regulate emissions from permitted sources in Ohio. Other states have developed GHG rules to regulate GHG emissions from their own respective state.

Comment 2: On December 10, 2019, Ohio submitted a comment on the proposed approval of their GHG rule. This comment requested that EPA not act on OAC 3745–31–34(B), thus, this request amends the March 30, 2011 SIP revision submittal. Ohio is considering changes to OAC 3745–31–34(B), (C), and (D), as well as the OAC 3745–77–11 GHG title V rule, thus, requested that EPA not act on those sections.

Response 2: EPA will grant Ohio's request to not act on paragraph (B) of their OAC 3745–31–34 GHG rule. Paragraph (B) is the portion of Ohio's submittal that would have allowed GHG sources with actual emissions of GHGs less than 100,000 tons per year (tpy) to have their potential to emit of GHGs be considered to be less than the 100,000 tpy GHG threshold if they submitted a permit application prior to July 1, 2011. EPA agrees that paragraph (B) is not needed in the Ohio SIP because it is moot due to the fact that Ohio doesn't have any pending permit applications for which might be affected by this rule section which dealt with permit applications submitted prior to July 1, 2011.

Comment 3: The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce and the Ohio Manufacturers' Association expressed support of Ohio's request (see comment 2 above) for EPA to not act on OAC 3744–31–34(B). They explained their concern that paragraph (B) is mooted by time because Ohio doesn't have any pending permit applications prior to July 1, 2011, and that paragraph (B) deals with GHG Tailoring Rule Step 2 sources which are no longer regulated by EPA. The comment further states that approval of paragraph (B) would serve no purpose and would only create confusion over the proper mechanisms for avoiding GHG PSD requirements for sources covered by GHG Tailoring Rule Step 1 sources.

Response 3: EPA agrees with the commenter and will not act on OAC 3745–31–34(B).

III. Final Action

EPA is approving Ohio's March 30, 2011 SIP submittal, as amended on August 22, 2019 and December 10, 2019, relating to PSD requirements for GHG-emitting sources in OAC 3745–31–34. Specifically, Ohio's SIP revision establishes appropriate emissions thresholds for determining PSD applicability for new and modified GHG-emitting sources in accordance with EPA's GHG Tailoring Rule and the 2014 *Utility Air Regulatory Group (UARG)* v. *EPA, 134 S. Ct. 2427* decision. Per Ohio's August 22, 2019 and December 10, 2019 amended SIP requests, EPA is not acting on OAC 3745—31–34(B), (C), and (D), or OAC 3745–77–11, which is Ohio's GHG title V rule. In the November 18, 2019 NPRM, EPA proposed to approve OAC 3745–31–34(B), but EPA is not acting on that paragraph due to Ohio's December 10, 2019 request.

As a result of EPA's approval of Ohio's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Ohio's SIP, paragraph (b) in 40 CFR 52.1873, as included in EPA's PSD Narrowing Rule, is no longer necessary. In this final action, EPA is also amending 40 CFR 52.1873 to remove this unnecessary regulatory language.

IV. Incorporation by Reference

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

V. Statutory and Executive Order Reviews

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

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

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

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: January 23, 2020.

Kurt A. Thiede,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended by adding an entry in numerical order under ''Chapter 3745–31 Permit-to Install New Sources and Permit-to-Install and Operate Program'' for ''3745–31–34'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Subject	Ohio effective date	EPA approval date	Comments
*	*	*	*	*
Chapter 3745–31 Permit-to Install New Sources and Permit-to-Install and Operate Program				
*	*	*	*	*
3745–31–34 ...	Permits to install for major stationary sources and major modifications of sources emitting greenhouse gases.	3/31/2011	2/14/2020, [insert **Federal Register** citation].	Except for (B), (C) and (D).
*	*	*	*	*

* * * * *

§ 52.1873 [Amended]

■ 3. Section 52.1873 is amended by removing and reserving paragraph (b).

[FR Doc. 2020–02267 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0029; FRL–10005–05–Region 1]

Air Plan Approval; New Hampshire; Approval of a Single Source Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision approves a single source order for PSI Molded Plastics. The intended effect of this action is to approve this item into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective April 14, 2020, unless EPA receives adverse comments by March 16, 2020. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0029 at *https://www.regulations.gov,* or via email to *mcconnell.robert@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1046. *mcconnell.robert@epa.gov.*

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

Table of Contents

I. Background

CAA section 182(b)(2)(A) requires ozone nonattainment areas classified as Moderate or above to revise their SIPs to include provisions to implement reasonably available control technology (RACT). CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the Ozone Transport Region (OTR). Pursuant to CAA section 184(a), New Hampshire is a member state of the OTR. States subject to RACT are required to adopt air pollution emission controls for major sources and for sources covered by a Control Technique Guideline (CTG) document issued by the agency either via the adoption or regulations, of by issuance of single source Orders or Permits that outline what the source is required to do to meet RACT.

II. Summary of SIP Revision and EPA Analysis

On December 10, 2019, New Hampshire submitted RACT Order RO–0005, dated November 20, 2019, which it issued to PSI Plastic Moldings located in Wolfeboro. The facility produces custom molded products and uses metal and plastic parts coatings in its operation. The facility is subject to New Hampshire regulation Env-A 1212, which contains VOC content limits for miscellaneous metal and plastic parts coatings. Some of the coatings used by the facility exceed the VOC content limit of Env-A 1212, but others are below those limits. RACT Order RO–0005 allows the facility to demonstrate compliance with Env-A 1212 using a weighted averaging technique that demonstrates that total emissions from all coatings are equal to or less than what emissions would be if all of the coatings met the emission limits within Env-A 1212. The facility is required to demonstrate compliance using this weighted averaging technique, referred to as a ''bubble calculation'' described within the Order, on a monthly basis. We agree that this compliance method described within Order RO–0005 is an acceptable, enforceable approach, and are approving the Order into the New Hampshire SIP.

III. Final Action

We are approving a single source order establishing VOC RACT for PSI Molded Plastics in Wolfeboro, into the New Hampshire SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective April 14, 2020 without further notice unless the Agency receives relevant adverse comments by March 16, 2020.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 14, 2020 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire RACT Order RO–0005, dated November 20, 2019, described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov,* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is

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

not significant under Executive Order 12866;

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 30, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 EE—New Hampshire

■ 2. In § 52.1520, amend the table in paragraph (d) by adding the entry ''PSI Molded Plastics'' at the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Additional explanations/ § 52.1535 citation
*	*	*	*	*
PSI Molded Plastics	RO–0005	11/20/2019	2/14/2020 [Insert **Federal Register** citation]	VOC RACT Order.

* * * * *

[FR Doc. 2020–02227 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2018–0715; FRL–10004–70–Region 6]

Air Plan Approval; Texas; Houston-Galveston-Brazoria Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; Section 185 Fee Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is approving revisions to the Texas State Implementation Plan (SIP) that pertain to the Houston-Galveston-Brazoria (HGB) area and the 1979 1-hour and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard). The EPA is approving the plan for maintaining the 1-hour and 1997 ozone NAAQS through the year 2032 in the HGB area. The EPA is determining that the HGB area continues to attain the 1979 1-hour and 1997 8-hour ozone NAAQS and has met the five CAA criteria for redesignation. Therefore, the EPA is terminating all anti-backsliding obligations for the HGB area for the 1-hour and 1997 ozone NAAQS. The EPA is also approving the Texas Severe Ozone Nonattainment Area Failure to Attain Fee regulations for the HGB area as an equivalent alternative program to address section 185 of the CAA for the 1-hour ozone NAAQS.

DATES: This rule is effective on March 16, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0715. 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.,* 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 *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–6521, *paige.carrie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background and Summary of Final Action

The background for this action is discussed in detail in our May 16, 2019 Proposal (84 FR 22093, ''Proposal''). In that document we proposed to: (1) Approve the plan for maintaining both the revoked 1979 1-hour and 1997 8-hour ozone NAAQS [1] through 2032 in the HGB area; (2) Approve 30 Texas Administrative Code (TAC) sections 101.100–101.102, 101.104, 101.106–101.110, 101.113, 101.116, 101.117, 101.118(a)(1), 101.118(a)(3), and 101.120–101.122 as an equivalent alternative 185 fee program to address CAA section 185; (3) Determine that the HGB area is continuing to attain both the revoked 1-hour and 1997 ozone NAAQS; (4) Determine that Texas (''the State'') has met the CAA criteria for redesignation of the HGB area; and, (5) Terminate all anti-backsliding obligations for the HGB area for both the 1-hour and 1997 ozone NAAQS.

In this final action, we are approving the plan for maintaining both the 1-hour and 1997 ozone NAAQS through the year 2032 in the HGB area. We are also approving the HGB Severe Ozone Nonattainment Area Failure to Attain Fee regulations program as an equivalent alternative program to address section 185 of the CAA for the 1-hour ozone NAAQS. We are also determining that the HGB area continues to attain both the 1-hour and 1997 ozone NAAQS and has met the five criteria in CAA section 107(d)(3)(E) for redesignation.

The EPA revoked both the 1-hour and 1997 ozone NAAQS along with associated designations and classifications (69 FR 23951, April 30, 2004; and, 80 FR 12264, March 6, 2015), and thus, the HGB area has no designation under both the 1-hour or 1997 ozone NAAQS that can be changed through redesignation as governed by CAA section 107(d)(3)(E). Therefore, we are not promulgating a redesignation of the HGB area under CAA section 107(d)(3)(E). However, because the HGB area has met the five criteria in section 107(d)(3)(E) for redesignation, we are terminating all anti-backsliding obligations for the HGB area for both the revoked 1-hour and 1997 ozone NAAQS.

To determine the criteria under CAA section 107(d)(3)(E) are met, we must do the following: (1) Determine that the area has attained the NAAQS; (2) Fully approve the applicable implementation plan for the area under CAA section 110(k); (3) Determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions; (4) Fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and, (5) Determine the state containing such area has met all requirements applicable to the area under CAA section 110 (Implementation plans) and Part D (Plan Requirements for Nonattainment Areas).

As discussed in our Proposal, in the Technical Support Document (TSD) for this action,[2] and in the remainder of this preamble, the five criteria above have been met. In past actions, we have determined that the area has attained the 1-hour and 1997 ozone NAAQS due to permanent and enforceable measures (Criteria 1 and 3). As discussed in the Proposal and in this final action, air quality in the HGB area has been meeting the 1-hour standard since 2013 and the 1997 ozone standard since 2014. As documented in the Proposal and the TSD, numerous State, Federal and local measures have been adopted and implemented including NOx and Highly Reactive Volatile Organic Compounds (HRVOC) [3] mass emissions cap and trade programs and federal on- and off-road emissions control programs which have resulted in significant reductions and resulted in attainment of the 1-hour and 1997 ozone standards.

We are also finding that the area has met all requirements under CAA section

[1] Throughout this document, we refer to the 1979 1-hour ozone NAAQS as the ''1-hour ozone NAAQS'' and the 1997 8-hour ozone NAAQS as the ''1997 ozone NAAQS.''

[2] There are three TSDs in the docket for this action. The first of the TSDs relates to the CAA section 107(d)(3)(E) criteria, including, but not limited to the maintenance plan for the HGB area for the revoked 1-hour and 1997 ozone NAAQS. The other two TSDs that are referred to later in this action relate to the HGB equivalent alternative section 185 program. Unless otherwise noted, ''TSD'' refers to the first instance described herein.

[3] HRVOCs are important to control as they react quickly to form ozone.

110 and part D that are applicable for purposes of redesignation, and all such requirements have been fully approved (Criteria 2 and 5). As discussed in the Proposal, for the revoked ozone standards at issue here, over the past three decades the State has submitted numerous SIPs for the HGB area to implement those standards, improve air quality with respect to those standards, and address anti-backsliding requirements for those standards. The TSD documents many of these actions and EPA approvals. However, EPA has consistently held the position that not every requirement to which an area is subject is applicable for purposes of redesignation. *See, e.g.,* September 4, 1992, Memorandum from John Calcagni (''Calcagni Memorandum'').[4] As described in the Calcagni Memorandum, some of the Part D requirements, such as demonstrations of reasonable further progress, are designed to ensure that nonattainment areas continue to make progress toward attainment. EPA has interpreted these requirements as not ''applicable'' for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v) because areas that are applying for redesignation to attainment are already attaining the standard. Similarly, as explained further below, EPA believes that the CAA section 185 fee requirement is not applicable for the purposes of redesignation. We note that we are approving the HGB equivalent alternative section 185 fee program for the revoked 1-hour ozone standard separately in this action but do not believe it is an applicable requirement for redesignation. This means that we are terminating this requirement.

Finally, we are fully approving the maintenance plan for the HGB area. As discussed in the Proposal, we agree that Texas has provided a plan that demonstrates that the HGB area will maintain attainment of the revoked 1-hour and 1997 standards until 2032. The plan also includes contingency measures that would be implemented in the HGB area should the area monitor a violation of these standards in the future.

II. Response to Comments

We received comments from six entities on the proposed rulemaking. These comments are available for review in the docket for this rulemaking. The comments were submitted by the following: Earthjustice (on behalf of five national, regional, and grassroots groups); Baker Botts, L.L.P on behalf of the Section 185 Working Group and BCCA Appeal Group (''Baker Botts''); the Texas Commission on Environmental Quality (TCEQ or State); the Texas Oil and Gas Association (TXOGA); and two anonymous commenters. Our responses to all relevant comments follow. Any other comments received were either deemed irrelevant or beyond the scope of this action and are also included in the docket to this action.

A. Comments on the Plan for Maintaining the Revoked Ozone Standards

Comment: An anonymous commenter (''Commenter'') states that EPA mistakenly evaluates annual emissions inventories for nitrogen oxides (NO_X) and volatile organic compounds (VOC) to show maintenance of the NAAQS. Commenter states that EPA must re-evaluate based on typical ozone season day values and show that permanent and enforceable measures have been enacted to maintain ozone season day averages that limit 1-hour and 8-hour ozone levels.

Response: As described in our TSD, attainment of these ozone NAAQS is determined by reviewing specific data averaged over a three-year period. For example, the 1997 ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm [5] (69 FR 23857, April 30, 2004).[6] Also, as mentioned in our TSD, ground-level ozone is formed when NO_X and VOC react in the presence of sunlight. Therefore, having an inventory of emissions for NO_X and VOC at the time the area first met both of these NAAQS (*i.e.,* in 2014) helps determine what levels of emissions would be needed to maintain these NAAQS in the HGB area. As indicated in our Proposal, the 2014 base year emission inventories (EIs) for NO_X and VOC represent the first year in which the HGB area is attaining both the 1-hour and 1997 ozone NAAQS and thus provide a starting point against which to evaluate the EI levels estimated for future years. In addition, consistent with the Calcagni Memorandum regarding a Maintenance Demonstration, ''[a] State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.'' Calcagni Memorandum at 4. Because the State's estimated future EIs for the HGB area do not exceed the 2014 base year EI (*i.e.,* the attainment inventory), we would not expect the area to have emissions leading to a violation of the 1-hour or 1997 ozone NAAQS.

We disagree that we must re-evaluate based on ''typical ozone season day values'' because the EIs submitted by the State and evaluated in our Proposal were comprised of ozone season daily emissions of NO_X and VOC. No re-evaluation is necessary. We agree that we must determine that improvements in air quality are due to permanent and enforceable reductions in emissions in the HGB area, and we listed such measures in Appendix A of our TSD. For example, one of the emission reduction measures adopted in the HGB Area under the 1-hour ozone NAAQS is the HRVOC emissions cap, whose estimated VOC emission reductions were 135.79 tons per day (tpd) (see 71 FR 52656, September 6, 2006). See Appendix A in the TSD for a list of the permanent and enforceable measures approved in the HGB area under the 1-hour and 1997 ozone NAAQS.[7] Finally, in prior final actions, we established that the HGB area has attained the 1-hour and 1997 ozone NAAQS due to permanent and enforceable emission reductions.[8]

B. Comments on Termination of Anti-Backsliding Obligations for the Revoked Ozone Standards

We proposed to find that the HGB area met all five redesignation criteria in CAA section 107(d)(3)(E), consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018) (''*South Coast II*'') for the revoked ozone standards and to terminate the anti-backsliding obligations for the HGB area associated with these standards. In the alternative, we proposed to redesignate the HGB area to attainment for the revoked ozone standards, taking comment on whether

[4] As referenced in our Proposal, see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992. To view the memo, please visit *https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

[5] This value becomes 0.084 ppm or 84 ppb when rounding is considered.

[6] Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. For details, please see 40 CFR 50, Appendix I.

[7] The TSD is in the docket for this action and Appendix A begins on page 14 of the TSD.

[8] See 80 FR 63429, October 20, 2015 and 81 FR 78691, November 8, 2016.

we had authority to do so. In this action, based upon comments received, we are finalizing the first option.

Comment: Earthjustice states that ozone is a serious health problem in Houston.

Response: We agree that ozone is a significant health issue in the HGB area, but we also recognize that significant progress has been made in reducing ozone levels in the area. This action recognizes that the HGB area has met air emissions reductions milestones with respect to both the revoked 1-hour and 1997 ozone NAAQS. We also recognize that further air quality improvement is necessary in the area to meet the two current 2008 and 2015 ozone NAAQS and to protect public health. The HGB area was designated as nonattainment for both the revoked 1-hour and 1997 ozone NAAQS and is designated as nonattainment for the two current (2008 and 2015) 8-hour ozone NAAQS.[9] As a result, the State and HGB area—including local governments, business and industry—have implemented measures to reduce emissions of NO_X and VOC that form ozone (*see, e.g.,* Appendix A: Permanent and Enforceable Measures Implemented in the HGB Area, in the TSD for this action). Accordingly, the HGB area has seen its 1-hour ozone design values decrease from over 200 parts per billion (ppb) in 1997 to 112 ppb in 2018. Likewise, the HGB area design values for the 8-hour ozone NAAQS have decreased from 102 ppb in 2003 to 78 ppb in 2018.[10] Because the area has attained the revoked 1-hour and 1997 ozone NAAQS, and has also met the other CAA statutory requirements for redesignation for these standards, we believe it is appropriate to terminate the anti-backsliding requirements associated with these revoked NAAQS.

The area will remain designated nonattainment for the 2008 and 2015 ozone NAAQS. The HGB area was recently reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, and therefore the State must submit SIP revisions and implement controls to satisfy the statutory and regulatory requirements for a Serious nonattainment area for the 2008 ozone standard.[11]

Comment: Earthjustice states that EPA cannot lawfully or rationally apply the criteria at CAA section 107(d)(3)(E) to terminate anti-backsliding protections for the Houston area, because that statutory provision provides only minimum criteria that must be satisfied before a designated nonattainment area may be redesignated to attainment. Earthjustice states that the provision provides no authority to terminate anti-backsliding on the basis of an area meeting its criteria for a revoked standard. The commenter also states that EPA does not and cannot identify a source of authority for its application of the statutory provision for the purposes of terminating anti-backsliding provisions and has not purported to create regulations here under its general rulemaking authority of Clean Air Act section 301(a) to do so. Finally, the commenter alleges that the EPA's reliance on *South Coast II* to support its authority to terminate HGB's anti-backsliding requirements for the two revoked ozone NAAQS is unlawful and arbitrary. Earthjustice argues that the D.C. Circuit in *South Coast II* held only that the redesignation substitute was unlawful because it fell short of certain statutory requirements and did not address any other reasons why the regulation was unlawful and arbitrary. The commenter alleges that *South Coast II* ''says nothing'' about whether EPA could lawfully authorize termination of anti-backsliding requirements in the circumstance addressed here, where the area continues to violate the 2008 and 2015 ozone NAAQS, and where termination ''weakens protections in the area.'' Earthjustice states that the *South Coast II* court's holding with respect to the EPA's authority to reclassify areas after revocation is irrelevant to the question of the EPA's authority to change an area's designation after revocation.

Response: We disagree that the EPA lacks authority to terminate an area's anti-backsliding requirements for a revoked NAAQS and that we may not do so here for the HGB area with respect to the two revoked ozone NAAQS in question. The commenter's suggestion that the EPA may not look to the statutory redesignation criteria in CAA section 107(d)(3)(E) for authority to terminate the HGB area's anti-backsliding requirements is contradicted by the D.C. Circuit's decision in *South Coast II.* In that decision, the court faulted the redesignation substitute, one of the EPA's mechanisms for terminating anti-backsliding, but only because it had addressed only some, and not all, of the statutory redesignation criteria:

> ''The redesignation substitute request 'is based on' the Clean Air Act's 'criteria for redesignation to attainment' under [CAA section 107(d)(3)(E)], 80 FR at 12,305, but it does not require full compliance with all five conditions in [CAA section 107(d)(3)(E)]. The Clean Air Act unambiguously requires nonattainment areas to satisfy all five of the conditions under [CAA section 107(d)(3)(E)] before they may shed controls associated with their nonattainment designation. The redesignation substitute lacks the following requirements of [CAA section 107(d)(3)(E)]: (1) The EPA has 'fully approved' the [CAA section 110(k)] implementation plan; (2) the area's maintenance plan satisfies all the requirements under [CAA section 175A]; and (3) the state has met all relevant [CAA section 110 and Part D] requirements. 80 FR at 12,305. Because the 'redesignation substitute' does not include all five statutory requirements, it violates the Clean Air Act.''

882 F.3d at 1152.

We disagree that the D.C. Circuit ''said nothing'' with respect to how anti-backsliding controls could be lawfully terminated for areas under a revoked NAAQS. The court stated that the Act ''unambiguously'' requires that all five statutory redesignation criteria be met before anti-backsliding controls (*i.e.,* controls associated with the nonattainment designation for a revoked NAAQS) could be shed. *Id.* The court's express basis for vacating the redesignation substitute was that the mechanism failed to incorporate all of the statutory criteria as preconditions. *Id.* (''Because the 'redesignation substitute' does not include all five statutory requirements, it violates the Clean Air Act.''). We do not agree with the commenter's suggestion that the EPA may not rely on the court's plain interpretation of the Act and act in accordance with it. The EPA had previously approved redesignation substitutes for the HGB area for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. As discussed in our Proposal, this final action replaces our previous approvals of the Houston area redesignation substitutes for the 1-hour and 1997 ozone NAAQS.

Furthermore, we reject the commenter's suggestion that nonattainment of the newer, current NAAQS is a unique set of circumstances that would reasonably alter the EPA's ability to either redesignate an area or terminate anti-backsliding requirements for a prior NAAQS. Nothing in CAA section 107(d)(3) suggests that the EPA's approval of a redesignation or termination of anti-backsliding for one

[9] For the 1-hour and 1997 and 2008 8-hour ozone standards: The Houston nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties (56 FR 56694, November 6, 1991; 69 FR 23858, April 30, 2004; and 77 FR 30088, May 21, 2012). For the 2015 8-hour ozone NAAQS: The Houston nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties (83 FR 25776, June 4, 2018).

[10] See the TCEQ ozone reports posted at *https://www.tceq.texas.gov/airquality/monops/ozone.*

[11] See 83 FR 25576, June 4, 2018, and 84 FR 44238, August 23, 2019.

NAAQS should include evaluation of attainment of another newer NAAQS. It is common practice that areas designated nonattainment for an earlier, less stringent NAAQS come into compliance with that NAAQS, meet the requirements for redesignation for that NAAQS, and are redesignated to attainment for that NAAQS, while remaining nonattainment for a newer more stringent standard for the same pollutant. Indeed, with Congress' directive that the EPA review and revise the NAAQS as appropriate no less frequently than every five years, it would be nearly impossible for areas to be redesignated to attainment for an older NAAQS if nonattainment of a newer (often more stringent) standard barred EPA from approving redesignation requests for the older standard.

We also disagree that this action's effects terminating anti-backsliding requirements are in any way ''unique.'' Areas that are redesignated to attainment are permitted to stop applying nonattainment area New Source Review offsets and thresholds and transition to the Prevention of Significant Deterioration program, which the EPA does not agree is an unwarranted ''weakening'' of protections. In this case, because the HGB area remains nonattainment for the newer ozone NAAQS, it will continue to be subject to nonattainment new source review (NNSR) emissions offsets and threshold requirements, tailored to the current classifications that apply to the area. We do not agree that it is arbitrary or unlawful to hold areas that were nonattainment for a revoked NAAQS to the same standards that apply to areas that are nonattainment for the current NAAQS. EPA does not agree with commenter's suggestion that areas that have reached attainment should be subject to a more stringent process to shed obligations under a revoked NAAQS than the process required to shed obligations for a current NAAQS.

Finally, with respect to Earthjustice's comment that the *South Coast II* court's holding regarding reclassification does not support an interpretation that the EPA has the authority to alter designations, the EPA is not finalizing a change in designation for the area for the two revoked NAAQS. Because we are not redesignating the HGB area to attainment no further response to this specific comment is required.

Comment: Earthjustice states that EPA cannot lawfully or rationally change Houston's designation under revoked standards.

Response: The EPA is not changing the designation for the HGB area under the 1-hour or 1997 ozone NAAQS in this action. As noted above, the designations for these areas were revoked when the NAAQS were revoked. In this action, EPA is terminating the anti-backsliding requirements associated with the two revoked NAAQS in this area.

Comment: Earthjustice states that EPA arbitrarily fails to consider the consequences of terminating anti-backsliding protections. The commenter asserts that the EPA is not legally obligated to redesignate an area that meets criteria of CAA section 107(d)(3)(E), and that additionally, the EPA must also determine whether it *should* redesignate the area. Earthjustice states that finalization of this Proposal would ratify termination of key anti-backsliding protections, particularly the Severe area NNSR protections that would otherwise apply to proposed new and modified stationary sources and work to impose more stringent limits on harmful ozone-forming pollution attributable to those new and modified stationary sources. By authorizing Houston to have weaker protections than it otherwise would, while still having severely harmful levels of ozone air pollution, Earthjustice claims that the EPA's action irrationally deprives Houston communities of CAA public health protections intended to bring the area expeditiously into compliance with health-based ozone standards.

Response: As stated previously, we are not in this action redesignating the HGB area for the revoked NAAQS. Rather, we find that all five CAA statutory criteria for redesignation are met, and therefore anti-backsliding obligations for the revoked NAAQS are appropriately terminated. We do not agree that the facts and circumstances before us support the commenter's reading that, despite Texas having met all five statutory criteria, the EPA should withhold approval of the state's request.

We note that we have considered the consequence of terminating anti-backsliding protections raised by the commenter, *i.e.,* the Severe classification requirements for NNSR. We believe that the improvement in air quality due to the permanent, enforceable controls included in the Texas SIP for the HGB area makes termination of these Severe area requirements appropriate and, as discussed previously, consistent with the Act's provisions.

We note NNSR is still in place because the area remains nonattainment under the 2008 and 2015 standards. The HGB area is classified as a Marginal nonattainment area under the 2015 ozone NAAQS, and a Serious nonattainment area under the 2008 ozone NAAQS and as such, is required to implement NNSR consistent with the Serious area classification, as required by CAA sections 182(c)(6), 182(c)(7), 182(c)(8), and 182(c)(10).[12] [13] In addition, approval of this final action does not relieve sources in the area of their obligations under previously established permit conditions. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NNSR for ozone that will continue to apply in the HGB area even after final approval of this action.[14] Each of these permitting regulations has been evaluated and approved by EPA into the SIP as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a NAAQS. Thus, new sources and modifications will continue to be permitted and authorized under the existing SIP permitting requirements if they are determined to be protective of air quality.

This action recognizes that the HGB area met the requirements for redesignation for both the revoked 1-hour and 1997 ozone NAAQS and as a result it is appropriate to relieve the area of the Severe NNSR requirements associated with these revoked standards.

Comment: Earthjustice states that Houston was the only area in Texas to report violations of the revoked 1-hour standard in 2018, exceeding the standard at eleven air monitor locations on five days. Earthjustice states that EPA cannot rationally terminate anti-backsliding protections in Houston as the area continues to experience some of the worst air pollution in the nation.

Response: We do not agree that the HGB area experienced violations of the 1-hour ozone NAAQS in 2018. The area has consistently continued to attain that NAAQS since 2013. As noted above, the statutory requirements for redesignation (and in this case, for termination of anti-

[12] See 84 FR 44238.

[13] Liberty and Waller Counties are designated as attainment/unclassifiable for the 2015 ozone NAAQS, but these two counties are included in the Serious nonattainment area under the 2008 ozone NAAQS, so they must implement NNSR as a Serious ozone nonattainment area.

[14] For example, see the Texas SIP-approved rules addressing Prevention of Significant Deterioration (PSD) at 30 TAC 116.12(20)(A), published at 79 FR 66626, November 10, 2014, and in *www.regulations.gov* docket ID: EPA–R06–OAR–2013–0808.

backsliding) are not dependent on whether the area is failing to attain newer, more stringent NAAQS. Nor do we think it would be appropriate to disapprove a state's request to terminate anti-backsliding because an area experienced worse air quality than other areas in the nation, if that area met the statutory criteria associated with redesignation for that prior revoked NAAQS. The HGB area continues to be subject to the CAA statutory and regulatory requirements to meet the more stringent ozone NAAQS, and this action does not alter that obligation.

We acknowledge that in 2018 the HGB area experienced several exceedances of the 1-hour ozone NAAQS. An exceedance of the 1-hour ozone NAAQS occurs when the maximum hourly average concentration at an ozone monitor is above 0.12 parts per million (or 120 ppb) [15] and as Earthjustice notes, there were exceedances at monitors in the HGB area. Six of the regulatory monitors in the HGB area each recorded one exceedance, and a seventh regulatory monitor recorded two exceedances.[16] However, these exceedances did not result in a violation of the 1-hour ozone NAAQS. As described earlier in this document and in our TSD, the 1-hour ozone NAAQS is determined by reviewing specific data averaged over a three-year period. The number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1. A violation occurs when this average is greater than 1. Table 1 in this final action shows the 1-hour ozone exceedances by monitor in the HGB area for calendar years 2014 through 2018 to demonstrate the area's continued attainment of the 1-hour ozone NAAQS.[17] In addition, Table 1 in our Proposal provided the preliminary 2016–2018 1-hour and 1997 ozone design values for the HGB area. Quality-assured data collected through 2018 and preliminary data for 2019 indicate that the area has continued to maintain these NAAQS (see Table 2).

TABLE 1—ONE-HOUR OZONE EXPECTED EXCEEDANCES BY MONITOR IN THE HGB AREA

HGB monitoring site (AQS site)	Expected exceedances by year					3 Years expected exceedances (average)		
	2014	2015	2016	2017	2018	2014–2016	2015–2017	2016–2018
Manvel Croix (48–039–1004)	1.0	0.0	0.0	0.0	0.0	0.3	0.0	0.0
Lake Jackson (48–039–1016)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Galveston (48–167–1034)	0.0	1.0	0.0	0.0	0.0	0.3	0.3	0.0
Houston Aldine (48–201–0024)	0.0	3.0	0.0	0.0	1.0	1.0	1.0	0.3
Channelview (48–201–0026)	0.0	0.0	0.0	0.0	2.0	0.0	0.0	0.7
Tomball (48–201–0029)	0.0	0.0	0.0	0.0	1.1	0.0	0.0	0.4
Houston N Wayside (48–201–0046)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Lang (48–201–0047)	0.0	1.0	0.0	0.0	1.0	0.3	0.3	0.3
Croquet (48–201–0051)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Houston Bissonett (48–201–0055)	0.0	1.0	0.0	0.0	0.0	0.3	0.3	0.0
Monroe (48–201–0062)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Houston Hwy 6 (48–201–0066)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Polk (48–201–0070) [18]	NA	NA	NA	NA	NA	NA	NA	NA
Park Place (48–201–0416)	0.0	3.0	0.0	0.0	0.0	1.0	1.0	0.0
Lynchburg Ferry (48–201–1015)	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.3
Baytown Garth (48–201–1017)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Houston East (48–201–1034)	0.0	1.1	0.0	0.0	1.0	0.4	0.4	0.3
Clinton Drive (48–201–1035)	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.3
Deer Park 2 (48–201–1039)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Seabrook (48–201–1050)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Conroe (48–339–0078)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

TABLE 2—1-HOUR AND 1997 OZONE DESIGN VALUES FOR THE HGB AREA

Years	1-Hour ozone design value (ppb)	1997 ozone design value (ppb)
2011–2013	121	87
2012–2014	111	80
2013–2015	120	80
2014–2016	120	79
2015–2017	120	81
2016–2018	112	78
2017–2019 (preliminary) [19]	114	81

[15] For ease of communication, many reports of ozone concentrations are provided in ppb. To convert, ppb = ppm × 1000 (0.12 × 1000 = 120). Thus, 0.12 ppm = 120 ppb (this value becomes 124 ppb when rounding is considered).

[16] See Table 1 in this final action.

[17] Table 1 in our Proposal TSD provided the 1-hour ozone expected exceedances by monitor in the HGB area for 2014 through 2017. At the time of this writing, data for the last quarter of 2019 are not yet posted in EPA's Air Quality System (AQS) and thus, we are unable to add such to Table 1 in this final action. For more information on the AQS, visit *https://www.epa.gov/aqs.*

[18] The ozone monitor on Polk Avenue (AQS site number 48–201–0070), was discontinued after 2012.

[19] At the time of this writing, the preliminary ozone data for 2019 are posted on the TCEQ website but are not yet posted in AQS. See *https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl.*

Comment: Earthjustice states that unhealthy levels of ozone and other air pollutants disproportionally affect communities of color in the Houston nonattainment area, including facilities that handle extremely hazardous substances whose emissions must be reported to the Toxic Release Inventory (TRI). Earthjustice includes a document with their submitted comments titled, ''Evaluation of Vulnerability and Stationary Source Pollution in Houston'' that evaluates particulate matter, total VOCs, and a 19-pollutant index over three time periods (2007–2016, 2012–2016, and 2016). Earthjustice states that the weakened NNSR requirements will allow more VOC emissions than otherwise would be permitted, and communities along the Houston Ship Channel already bear a disproportionate burden of VOC emissions.

Response: The EPA appreciates the work the commenter has performed to evaluate potential disproportionate impacts in vulnerable communities; in this final action, however, we are addressing only the determination that the HGB area is attaining the revoked standards and meets the five criteria for redesignation, which leads to the termination of anti-backsliding measures. We note that emissions of hazardous air pollutants (HAPs), which are reported to the TRI, are regulated by other provisions of the CAA and concerns regarding those emissions are outside the scope of this action.[20]

The report referred to by the commenter examined the geographic distribution of 4 classes of emissions and whether certain communities are disproportionately impacted by these pollutants. The pollutants examined were Particulate Matter (PM), *i.e.,* $PM_{2.5}$ and $PM_{10,}$ VOCs and an index of 19 pollutants that are hazardous air pollutants. Ozone was not one of the pollutants examined. The approvability of this action is based on requirements for ozone and the revoked standards being considered here. As discussed elsewhere, monitors throughout the Houston area have recorded levels meeting both the 1 hour and 1997 8-hour standards for some time. Moreover, Texas will continue to have to work to reduce ozone precursors to meet the 2008 and 2015 ozone standards. Finally, we note that the monitors violating the 2015 ozone standard in the Houston area are located in Brazoria, Galveston, Harris, and Montgomery Counties.[21]

Comment: Earthjustice states that EPA arbitrarily concludes that relevant statutory and executive order reviews are not required for this rule and EPA wrongly asserts that the proposed action would only accomplish a revision to the Texas SIP that EPA can only approve or disapprove. Earthjustice states that through this rule, EPA proposes to change and adopt national positions regarding its authority to redesignate areas under CAA section 107(d)(3)(E) and terminate anti-backsliding protections for revoked standards. Earthjustice states these actions are not SIP revisions and thus necessitate the statutory and executive order reviews EPA avoids by citing only a portion of the actions it is taking in this rulemaking. Earthjustice states that, in addition to the environmental justice concerns relevant to the review required by Executive Order 12898, EPA ignores other important considerations that are a part of rational decision-making like effects on children's health and other public health factors.

Response: As stated previously, we are not in this action redesignating the HGB area for the two revoked NAAQS. Earthjustice has not provided much detail regarding which statutory and executive order reviews it believes are applicable and that the EPA has not addressed. In section V of this notice, we discuss EPA's assessment of each statutory and executive order that potentially applies to this action. We note that the introductory paragraph to section VII of the Proposal preamble contains a typographical error that may have caused some of the commenter's concern. The last sentence of that paragraph appears to indicate that the reason for EPA's proposed assessment that the action is exempt from the enumerated statutory and executive orders is solely that the action is a review of a SIP. However, that sentence was intended to be inclusive of all the reasons stated in the introductory paragraph, including that the approval of the request to terminate anti-backsliding does not impose new requirements on sources (*i.e.,* ''For that reason'' more appropriately would have read ''For these reasons'').

With respect to the commenter's concern that EPA has not adequately addressed environmental justice, we do not agree that Executive Order 12898 applies to this action because this action does not affect the level of protection provided to human health or the environment. In this action the level of protection is provided by the ozone NAAQS and this action does not revise the NAAQS. As noted earlier in this final action, the HGB area will remain designated nonattainment for the 2008 and 2015 ozone NAAQS. The HGB area was recently reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, and therefore the State must submit SIP revisions and implement controls to satisfy the statutory and regulatory requirements for a Serious area for the 2008 ozone standard.[22]

With respect to commenter's concern that we have not adequately addressed executive orders regarding children's health, we do not agree that Executive Order 13045 applies to this action. Executive Order (E.O.) 13045 applies to ''economically significant rules under E.O. 12866 that concern an environmental health or safety risk that EPA has reason to believe may disproportionately affect children.'' See 62 FR 19885, April 23, 1997. As noted in the Proposal and below in section V of this preamble, this rule is not ''economically significant'' under E.O. 12866 because it will not have ''an annual effect on the economy of $100 million or more or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' 62 FR 19885.[23]

Comment: Earthjustice states that EPA should not revise the attainment designations in 40 CFR 81 because it has failed to consider the consequences of doing so, including whether changes in the designations listing will affect remaining maintenance plan and other requirements after redesignation.

Response: In this action, we are not revising the designations for the HGB area for the two revoked ozone NAAQS, and therefore the comments regarding consequences of changing the area's designation are beyond the scope of this final action. We are revising the 40 CFR part 81 tables for the HGB area, which currently reflect the approvals of the area's redesignation substitutes from 2015 and 2016. For revoked standards, the sole purpose of the part 81 table is to help identify applicable anti-backsliding obligations. Therefore, we are revising the part 81 tables to reflect that the HGB area has met all the redesignation criteria for the two revoked ozone NAAQS and therefore anti-backsliding obligations associated

[20] Additional information on HAPs, including what is being done to reduce HAPs, may be found at *https://www.epa.gov/haps.*

[21] See data posted at *https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl.*

[22] See 83 FR 25576 and 84 FR 44238.

[23] See also ''Guide to Considering Children's Health When Developing EPA Actions: Implementing Executive Order 13045 and EPA's Policy on Evaluating Health Risks to Children.'' *https://www.epa.gov/children/guide-considering-childrens-health-when-developing-epa-actions-implementing-executive-order.*

with those two revoked NAAQS are terminated.

Comment: Earthjustice states that EPA arbitrarily flouts important considerations relevant to this rulemaking, and states that this action's consequences on interstate and intrastate ozone transport are not considered. Earthjustice states EPA failed to consider how redesignation will affect Texas' interstate ozone transport obligations under existing regulations and how redesignation of the Houston area will affect attainment in other Texas areas, such as San Antonio and Dallas, both of which struggle with existing ozone pollution and are in nonattainment for several standards. Earthjustice states EPA must consider the interstate and intrastate consequences of redesignating and relaxing anti-backsliding controls in the Houston area.

Response: We are not redesignating the HGB area for the revoked 1-hour and 1997 ozone NAAQS. We disagree that EPA is required under the CAA to consider the effect of this action on interstate and intrastate ozone transport before it may terminate the HGB area's anti-backsliding requirements with respect to the two revoked ozone NAAQS in question, and we do not agree that such considerations are important or relevant to this rulemaking. At the outset, we note that the State is projecting HGB area ozone precursor emissions will decrease, reducing the HGB area's impact on other areas.

Interstate ozone transport is addressed under CAA section 110(a)(2),[24] and Texas' interstate transport obligations under the Act are not in any way altered by this action. To the extent that Texas has outstanding interstate ozone transport obligations under CAA section 110(a)(2)(D), they remain obligated to address those statutory requirements after finalization of this action.

The TCEQ has also proposed Serious Area attainment plans for the Houston and Dallas-Fort Worth (DFW) areas for the 2008 eight-hour ozone standard, and those submittals—including any obligation to address intrastate transport as necessary to attain the NAAQS—will also be evaluated in separate actions.

Comment: Earthjustice states that EPA's Proposal leaves important modeling questions unaddressed. Earthjustice states EPA predicts that point source VOC emissions will remain exactly the same in 2032 and in all intermediate years as they were in 2014, at 77.56 tpd. In its TSD, EPA does not explain how it arrived at its modeling prediction and given the tremendous growth of industrial facilities along the Houston Ship Channel that are known to emit huge quantities of VOCs, it is difficult to see how this prediction holds. NO_X emissions from point sources steeply increase from 95.11 to 128.77 tpd between 2014 and 2020 and remain practically identical until 2032, but EPA offers no explanation for the disparity.

Response: As described in our Proposal and TSD, EPA evaluated the emission inventories submitted by the State in its Maintenance Plan and we found the State's approach and methods of calculating the base year and future year EIs appropriate.[25] We disagree that we or the State did not provide an explanation for holding the point source VOC emissions constant for the projection years for the purposes of demonstrating that the standard would be maintained. As TCEQ explains in its SIP, it was following EPA guidance (noting that emissions trends for ozone precursors have generally declined) and thus, for planning purposes, TCEQ found it reasonable to hold point source emissions constant, rather than show such emissions as declining.[26] For projection year EIs, TCEQ designated the 2016 EI as the baseline from which to project future-year emissions because using the most recent point source emissions data would capture the most recent economic conditions and any recent applicable emissions controls. As TCEQ further describes in its SIP, TCEQ noticed that the 2014 attainment year VOC emissions are higher than future-year emissions projected from the sum of the 2016 baseline emissions plus available emission credits.[27] Therefore, future point source VOC emissions were projected by using the 2014 values as a conservative estimate for all future interim years. This approach is consistent with EPA's Emissions Inventory Guidance document at 26.

For point source NO_X emissions, TCEQ took a different approach that is also conservative and fully explained in the SIP submittal. We disagree that there is any disparity. As explained in the SIP submittal some 90% of point source NO_X emissions are covered under the Mass Emissions Cap and Trade (MECT) program.[28] The 2016 base year emissions were adjusted to estimate future daily emissions. TCEQ applied the entire MECT cap to the first interim year inventory (2020), which we believe is a conservative estimate. In over 10 years of implementation of the MECT, most facilities keep their emissions under the cap, to maintain compliance with the allowable limits. For NO_X emissions sources not listed in the MECT program, TCEQ also assumed that additional emissions would occur based on the possible use of emission credits, which are banked emissions reductions that may return to the HGB area in the future through the use of emission reduction credits (ERCs) and discrete emissions reduction credits (DERCs). All banked (*i.e.,* available for use in future years) and recently-used ERCs and DERCs were added [29] to the future year inventories. We believe this is a conservative estimate because historical use of the DERC has been less than 10 percent of the projected rate—including all the banked ERCs and DERCs in the 2020 inventory assumes a scenario where all available banked credits would be used in 2020, which is inconsistent with past credit usage.

Despite the conservative assumptions for point source growth, the total emissions estimated by the State for all anthropogenic sources of NO_X and VOC in the HGB area for 2020, 2026, and 2032 are lower than those estimated for

[24] See ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. To view the guidance, see *https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf.*

[25] See *https://www.epa.gov/moves/emissions-models-and-other-methods-produce-emission-inventories#locomotive.*

[26] See EPA's ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' published May 2017, EPA–454/b–17–002. Section 5, beginning on p. 119 of this Guidance document addresses *Developing Projected Emissions Inventories.* This Guidance document is available on EPA's website at *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-documents.*

[27] Not to be confused with the 2016 baseline and as noted earlier in this action, the 2014 base year EIs for NO_X and VOC represent the first year in which the HGB area is attaining both the 1-hour and 1997 ozone NAAQS and thus, the 2014 EI is also called the attainment inventory. The 2014 attainment inventory provides a starting point against which to evaluate the EI levels estimated for future years.

[28] The MECT is mandatory under the Texas SIP for stationary facilities that emit NO_X in the HGB area which are subject to emission specifications in the Texas NO_X rules at 30 TAC Sections 117.310, 117.1210, and 117.2010; and which are located as a site where they collectively have an uncontrolled design capacity to emit 10 tpy or more of NO_X. The program sets a cap on NO_X emissions and facilities are required to meet NO_X allowances on an annual basis. Facilities may purchase, bank, or sell their allowances. 82 FR 21919, May 11, 2017.

[29] The ERCs were divided by 1.15 before being added to the future year EIs to account for the NNSR permitting offset ratio for moderate ozone nonattainment areas. Since the area is now classified as a Serious ozone nonattainment area however, any ERCs actually used will have to be divided by 1.2. See the SIP submittal for more specific detail on how Texas assumed and calculated the ERC and DERC use for the future EI years.

2014 (the attainment inventory year). Consistent with the Calcagni Memorandum regarding a Maintenance Demonstration, ''[a] State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.'' Calcagni Memorandum at 4. Because the State's estimated future EIs for the HGB area do not exceed the 2014 attainment year EI, we do not expect the area to have emissions sufficient to cause a violation of the 1-hour or 1997 ozone NAAQS.

In addition, NNSR offsets will continue to be required in the HGB area because all eight counties are also designated nonattainment, and currently classified as Serious, under the 2008 ozone NAAQS. The required NNSR offset for the HGB area at this time is 1.2:1 for sources emitting at least 50 tpd, consistent with the Serious area requirements provided in CAA section 182(c)(10).[30] Whether a new or modified major source in the HGB area chooses to offset NO_X or VOC or a combination of the two, the offsets must be made in the same eight-county ozone nonattainment area.

Finally, despite population and economic growth, emissions of NO_X and VOC in the HGB area have been decreasing since 1990. Emissions of NO_X in the 8-county HGB area have dropped from approximately 1368.97 tpd (1990 base year under the 1-hour ozone NAAQS) to 459.94 tpd (2011 base year under the 2008 ozone NAAQS) and emissions of VOC have dropped from approximately 1491.65 tpd (1990 base year) to 531.40 tpd (2011 base year).[31] *See* 59 FR 55586, November 8, 1994, and 84 FR 3708, February 13, 2019.[32] The HGB SIP must be further revised to meet the emission reductions required by CAA section 182(c)(2)(B) for the Serious ozone nonattainment classification under the 2008 ozone NAAQS.[33] This progress reflects efforts by the State, area governments and industry, federal measures, and others.[34]

Comment: Earthjustice asserts that EPA must either create regulations to authorize termination of anti-backsliding protections when certain conditions are met or reverse its duly adopted, nationally applicable position that EPA lacks authority to redesignate areas under revoked standards. Earthjustice states that either action would be reviewable exclusively in the D.C. Circuit. Earthjustice further asserts that even if aspects of EPA's action constitute a locally or regionally applicable action that overbears the nationally applicable aspects of the action, Earthjustice believes that EPA's action would still be ''based on a determination of nationwide scope and effect'' (citing CAA section 307(b)(1)). Earthjustice asserts that ''EPA expressly proposed in its FR publication to base action on that determination (via either pathway),'' but also states that if a more specific finding and publication were necessary, that EPA is obligated to make the finding and publish it because EPA's action here is a determination of nationwide scope and effect. The commenter concludes that the venue for judicial review of this action therefore necessarily lies in the D.C. Circuit.

Response: First, as noted earlier, the EPA is not in this action changing HGB's designation, so Earthjustice's comments on that point are beyond the scope of this final action. Second, we disagree that promulgation of a regulation authorizing the action taken here is necessary or being undertaken in this notice. As mentioned earlier in this final action, we believe the D.C. Circuit's decision in *South Coast II* regarding the vacatur of the redesignation substitute mechanism made clear that under the CAA, areas may shed anti-backsliding controls where all five redesignation criteria are met. Through this final action, we are replacing our previous approvals of the redesignation substitutes for the HGB area for the revoked 1979 1-hour and 1997 ozone NAAQS, because that mechanism was rejected by the D.C. Circuit for its failure to include all five statutory redesignation criteria. Per the D.C. Circuit's direction, this action examines all five criteria, finds them to be met in the HGB area, and terminates the relevant anti-backsliding obligations for the HGB area, thereby replacing the prior invalid approvals for the HGB area. We do not agree that given the circumstances here, the parties must wait for EPA to promulgate a national regulation codifying what the D.C. Circuit has already indicated the CAA allows before we may replace the redesignation substitutes for the HGB area.

As such, we do not agree that this action is reviewable exclusively in the D.C. Circuit. Under CAA section 307(b)(1),

> A petition for review of action of the Administrator in promulgating [certain enumerated actions] or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of [certain enumerated actions] or any other final action of the Administrator under this chapter . . . which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.

To the extent the commenter is asserting otherwise, we do not agree that this is a ''nationally applicable'' action under CAA section 307(b)(1). This final action approves a request from the State of Texas to find that the State has met all five of the statutory criteria for redesignation under CAA section 107(d)(3)(E) for the HGB area, it approves the submitted CAA section 175A(d) maintenance plan for the HGB area into the Texas SIP, and it approves the State's submitted equivalent alternative program addressing fees under CAA section 185 for the HGB area. The legal and immediate effect of the action terminates anti-backsliding controls for only the HGB area with respect to two revoked NAAQS and amends the 40 CFR part 81 tables accordingly for only the HGB area. Nothing in this action has legal effects in any area of the country outside of the HGB area or Texas on its face. *See Dalton Trucking, Inc.* v. *EPA,* 808 F.3d 875, 881 (D.C. Cir. 2015) (''To determine whether a final action is nationally applicable, 'this Court need look only to the face of the rulemaking, rather than to its practical effects.' '' (internal citations omitted)). The fact that this is

[30] The HGB area is designated as a Serious ozone NAA under the 2008 ozone NAAQS (84 FR 44238).

[31] The 1990 base year includes 335.47 tpd in biogenic VOC emissions. Biogenic emissions, *i.e.,* emissions from natural sources such as plants and trees, are not required to be included in the 2011 base year.

[32] We approved the area's Reasonable Further Progress (RFP) plan for the Moderate ozone NAAQS under the 2008 ozone NAAQS showing 15% emission reductions from 2011 through the attainment year (2017), plus an additional 3% emission reductions to meet the contingency measure requirement.

[33] The State recently proposed a SIP revision to meet RFP Serious area requirements for HGB with an additional average of 3% emission reductions from 2017 through the attainment year (2020), plus an additional 3% emissions reductions to meet the contingency measure requirement (see *https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone* for the State's proposed Serious area RFP). See also 84 FR 44238.

[34] See also *https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health.*

the first area in the country for which EPA will have approved termination of anti-backsliding per CAA requirements after *South Coast II* does not entail that the action itself is ''nationally applicable.''

Earthjustice next contends that even if it is true that EPA's final action is not nationally applicable but is locally or regionally applicable, that judicial review of this action should still reside in the D.C. Circuit because EPA's action is based on a determination of nationwide scope or effect. The commenter alleges that ''EPA has expressly proposed in its FR publication to base action on that determination (via either pathway).'' This is plainly untrue. Nowhere in the Proposal or in this final action did EPA make a finding that the action is based on a determination of nationwide scope or effect. The requirements under CAA section 307(b)(1) that would allow for review of a locally or regionally applicable action in the D.C. Circuit—*i.e.,* that EPA makes a finding that the action is based on a determination of nationwide scope or effect and that EPA publishes such a finding—have not been met. *See Dalton Trucking,* 808 F.3d at 882.

Comment: The TCEQ states that Table 1 in the Proposal (84 FR 22093, 22095) incorrectly lists the preliminary 2016–2018 1-hour ozone design value as 110 parts per billion (ppb) and the design value should be updated to 112 ppb.

Response: We agree and have updated the data (see Table 2) in this rulemaking action.

Comment: TCEQ, Baker Botts, and TXOGA submitted comments supporting our alternative Proposal to redesignate the HGB area to attainment for the revoked 1-hour and 1997 ozone standards.

Response: After carefully considering comments on this issue, we continue to believe that we cannot redesignate areas to attainment for the revoked ozone standards (80 FR 12264, 12296–97, 12304–05, March 6, 2015). When we revoked the ozone standards, we also revoked the designations for those standards (69 FR 23951, 23969–70, April 30, 2004 and 80 FR 12264, 12287, March 6, 2015). Therefore, the HGB area has no designation under the 1-hour or 1997 ozone NAAQS that can be changed through redesignation as governed by CAA section 107(d)(3)(E). Thus, we are not redesignating the HGB area to attainment for the revoked ozone standards. Where we find an area has met the requirements of CAA section 107(d)(3)(E), we can and believe we should terminate anti-backsliding requirements that are carried with these revoked standards.

Comment: The TCEQ stated that our past failure to provide for a legally valid mechanism for termination of anti-backsliding obligations for revoked standards has created uncertainty and our reluctance to redesignate for the revoked standards creates severe economic consequences for the public, regulated industry, and states. TCEQ added that (1) certainty on the issue of how the EPA must act to remove anti-backsliding requirements is an absolute necessity for states, potentially impacted regulated businesses, and citizens and (2) continued implementation of programs required for revoked, less stringent standards is costly and takes resources away from states and localities that are necessary to meet more stringent standards.

Response: We understand the value of regulatory certainty. We also understand that there is a cost for implementing required programs for revoked, less stringent standards. We have endeavored to provide flexibility to states on implementation approaches and control measures. The D.C. Circuit has upheld our revocation of previous ozone standards as long as sufficient anti-backsliding measures are maintained. In *South Coast II,* the court was clear that anti-backsliding measures could be shed if all five requirements for redesignation in CAA section 107(d)(3)(E) had been met. We are finding here that Texas has met all redesignation criteria necessary for termination of the anti-backsliding measures for the HGB area.

Comment: TCEQ, Baker Botts, and TXOGA (''Commenters'') state that (1) we continue to have authority to redesignate areas from ''nonattainment'' to ''attainment'' post-revocation of a NAAQS; and (2) if we determine we do not have authority to redesignate areas to attainment post-revocation, we clearly have authority to determine that an area has met all redesignation requirements necessary for termination of anti-backsliding requirements. Commenters state that EPA should redesignate the Houston area to attainment under the revoked 1-hour and 1997 ozone NAAQS. Commenters state that EPA provides no statutory basis not to redesignate the area under these NAAQS. Commenters state that the D.C. Circuit recently held that EPA must continue to revise an area's classification under a revoked standard should the area fail to timely attain, and that it is not clear why the D.C. Circuit's holding as to classifications should not be extended to designations. Commenters encourage EPA to determine that it also has the authority to, and should, revise the listings in Part 81 of the Code of Federal Regulations to show the HGB area as an attainment area under the revoked 1-hour and 1997 ozone NAAQS. Commenters contend that such an approach will more fully clarify that the area has satisfied all requirements with respect to the revoked NAAQS, mitigating the potential for future challenges or confusion due to uncertainty regarding the area's attainment status.

Response: EPA disagrees with Commenters regarding our authority to redesignate an area under the revoked 1-hour and 1997 ozone NAAQS. As explained above, in revoking both the 1-hour and 1997 ozone standards, EPA revoked the associated designations under those standards and stated we had no authority to change designations. *See* 69 FR 23951, April 30, 2004, 80 FR 12264, March 6, 2015, and *NRDC* v. *EPA,* 777 F.3d 456 (D.C. Cir. 2014) (explaining that EPA revoked the 1-hour NAAQS ''in full, including the associated designations'' in the action at issue in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) (''*South Coast I*''). The recent D.C. Circuit decision addressing reclassification under a revoked NAAQS did not address EPA's interpretation that it lacks the ability to alter an area's designation post-revocation of a NAAQS. Moreover, the court's reasoning for requiring EPA to reclassify areas under revoked standards was that a reclassification to a higher classification is a control measure that constrains ozone pollution by imposing stricter measures associated with the higher classification. The same logic does not apply to redesignations, because redesignations do not impose new controls and can provide areas the opportunity to shed nonattainment area controls, provided doing so does not interfere with maintenance of the NAAQS. Therefore, we do not think it follows that the EPA is required to statutorily redesignate areas under a revoked standard simply because the court held that the Agency is required to continue to reclassify areas to a higher classification when they fail to attain. However, consistent with the *South Coast II* decision, we do have the authority to determine that an area has met all the applicable redesignation criteria for a revoked ozone standard and terminate the remaining anti-backsliding obligations for that standard. We are therefore revising the tables in 40 CFR part 81 to reflect that the HGB area has attained the revoked 1979 1-hour and revoked 1997 8-hour NAAQS, and that all anti-backsliding

obligations with respect to those two NAAQS are terminated.

Comment: TCEQ stated that when we began stating that we no longer make findings of failure to attain or reclassify areas for revoked standards, we provided no rationale supporting why we would no longer do so.

Response: As noted above, in the Phase I rule to implement the 1997 ozone standard, we revoked the 1-hour NAAQS and designations for that standard (*see* 69 FR 23951, 23969–70, April 30, 2004). Accordingly, there was neither a 1-hour standard against which to make findings for failure to attain nor 1-hour nonattainment areas to reclassify. We also explained that it would be counterproductive to continue to impose new obligations with respect to the revoked 1-hour standard given on-going implementation of the newer 8-hour 1997 NAAQS. *Id. at* 23985. We recognize that subsequent court decisions, such as the *South Coast II* decision, have affected our view. The *South Coast II* decision vacated our waiver of the statutory attainment deadlines associated with the revoked 1997 ozone NAAQS, for areas that fail to meet an attainment deadline for the 1997 ozone standard, and we are determining how to implement that decision going forward.

Comment: TCEQ commented that if we interpreted revocation of ozone standards as limiting our authority to implement all statutory rights and obligations, including the rights of states to be redesignated to attainment, it would cause an absurd result: *i.e.,* implementing anti-backsliding measures in perpetuity. The commenter added that it would subvert one of the foundational principles of the CAA—restricting the right of states to be freed from obligations that apply to nonattainment areas upon the states achieving the primary purpose of Title I of the CAA—to attain the NAAQS.

Response: The ''absurd result'' noted by the commenter is that an area would need to implement anti-backsliding measures in perpetuity. Through this action we are terminating anti-backsliding controls for the HGB area upon a determination that the five statutory criteria of CAA section 107(d)(3)(E) have been met. Therefore, although we are not redesignating the HGB area to attainment for the revoked ozone standards, the ''absurd result'' noted by the commenter does not remain.

The EPA does believe it is appropriate for states to be freed from anti-backsliding requirements in place for the revoked NAAQS in certain circumstances, and we believe the court in *South Coast II* was clear that this could be done if all the CAA criteria for a redesignation had been met.

Comment: TCEQ commented that the CAA makes no distinction between revoked or effective standards regarding EPA's authority to redesignate. TCEQ also commented that reading the CAA section granting authority for designations generally, it is apparent that Congress intended the same procedures be followed regardless of the status of the NAAQS in question. TCEQ added that nothing in CAA section 107 creates differing procedures when we revoke a standard or qualifies our mandatory duty to act on redesignation submittals from states.

Response: None of the substantive provisions of the CAA make distinctions between revoked and effective NAAQS and the redesignation provision in section 107 is no different. Nonetheless, as noted above, at the time that we revoked the ozone NAAQS in question, we also revoked all designations associated with that NAAQS. We therefore do not think a statutory redesignation is available for an area that no longer has a designation. However, in *South Coast II,* the D.C. Circuit found that the CAA allows areas under a revoked NAAQS to shed anti-backsliding controls if the statutory redesignation criteria are met.

Comment: The TCEQ suggests that the EPA should expand upon the rationale provided in our Proposal for our decision to take no action on the maintenance motor vehicle emission budgets (MVEBs) related to the 1-hour and 1997 ozone NAAQS.

Response: The conformity discussion in our May 21, 2012 rulemaking (77 FR 30160) to establish classifications under the 2008 ozone NAAQS explains that our revocation of the 1-hour standard under the 1997 ozone Phase I implementation rule and the associated anti-backsliding provisions were the subject of the *South Coast I* litigation (*South Coast Air Quality Management District,* 472 F.3d at 882). The Court in *South Coast I* affirmed that conformity determinations need not be made for a revoked standard. Instead, areas would use adequate or approved MVEBs that had been established for the now revoked NAAQS in transportation conformity determinations for the new NAAQS until the area has adequate or approved MVEBs for the new NAAQS. As explained in our May 16, 2019 proposal, the HGB area already has NO_X and VOC MVEBs for the 2008 ozone NAAQS, which are currently used to make conformity determinations for both the 2008 and 2015 ozone NAAQS for transportation plans, transportation improvement programs, and projects according to the requirements of the transportation conformity regulations at 40 CFR part 93.[35]

The TCEQ offers its own basis to expand the rationale for EPA's action by citing the transportation conformity regulations at 40 CFR 93.109(c), which provides that a regional emissions analysis for conformity is only required for a nonattainment or maintenance area until the effective date of revocation of the applicable NAAQS. The TCEQ concludes that this sufficiently justifies EPA's determination not to act on the MVEBs in this SIP submittal because the effective date of revocation for both the 1-hour and 1997 ozone NAAQS has passed, and therefore a regional emissions analysis for conformity is no longer required for these NAAQS in the HGB area. However, EPA notes that 40 CFR 93.109 represents the criteria and procedures for determining conformity *in cases where a determination is required.* As previously explained, the HGB area is not required to demonstrate conformity under the revoked 1-hour and 1997 ozone NAAQS, hence 40 CFR 93.109(c) is not an applicable rationale for the HGB area.

Comment: TCEQ stated that we have the authority to, and should, revise the designations listing in 40 CFR 81 to better reflect the status of applicable anti-backsliding obligations for the areas.

Response: We believe that we have the authority to revise the tables in 40 CFR 81 to better reflect the status of applicable anti-backsliding obligations, particularly because those tables currently reflect the invalid redesignation substitutes that this final action is replacing. We are making ministerial changes to the tables for the 1-hour and 1997 ozone standards in 40 CFR 81.344 to better reflect the status of applicable anti-backsliding obligations for the HGB area.

C. Comments on the HGB Section 185 Fee Equivalent Alternative Program

Comment: Comments were received from Earthjustice and an anonymous commenter that the CAA does not allow for approval of any alternative program for the CAA section 185 fee program. Earthjustice states that by its plain terms CAA section 172(e) applies directly only to the circumstance where EPA weakens a standard and that is not the circumstance here. They further state

[35] *Transportation Conformity Guidance for the South Coast II Court Decision,* EPA–420–B–18–050. November 2018, available on EPA's web page at *https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation.*

that the rational interpretation of section 172(e) for when EPA strengthens a standard is that it bars weakening of protections but does not authorize EPA to depart from the program Congress unambiguously required. The anonymous commenter also stated that EPA's 2010 guidance pertaining to section 185 fee programs is illegal as the CAA does not allow for any alternative methods.

Response: CAA section 172(e) provides that when the Administrator relaxes a NAAQS, the EPA must ensure that all areas which have not attained that NAAQS maintain ''controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.'' EPA agrees with the commenter that section 172(e) does not apply directly to supplanting one NAAQS with a stronger standard, but the EPA has long applied the principles of CAA section 172(e) following revocation of ozone standards. *See* 80 FR 12264 (March 6, 2015) (revoking the 1997 ozone NAAQS); 69 FR 23951 (April 30, 2004) (revoking the 1979 1-hour ozone NAAQS). Because EPA has historically applied the principles of section 172(e) to define what are reasonable anti-backsliding controls following revocation of the 1-hour and 1997 standards, we believe it is reasonable to continue to look to that provision to determine that it is reasonable to provide for equivalent alternative programs to address anti-backsliding requirements. For the past ten years, the EPA has interpreted the principles of section 172(e) as authorizing the Administrator to approve on a case-by-case basis and through rulemaking, alternatives to the applicable CAA section 185 fee programs associated with a revoked ozone NAAQS that are ''not less stringent.'' *See generally* 80 FR 12264, 12306 (March 6, 2015); 84 FR 12511 (April 2, 2019) (approval of a section 185 fee equivalent alternative program for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area for the 1-hour ozone NAAQS); 77 FR 74372 (December 14, 2012) (same for the South Coast nonattainment area); 77 FR 50021 (August 20, 2012) (same for the San Joaquin Valley nonattainment area); and the January 5, 2010 EPA guidance on developing CAA section 185 fee programs for the 1-hour ozone standard (2010 guidance).[36] EPA's ability to approve section 185 fee equivalent alternative programs has been affirmed by the United States Court of Appeals for the Ninth Circuit in *Natural Res. Def. Council* v. *EPA,* 779 F.3d 1119 (9th Cir. 2015) (finding that ''[b]ecause EPA reasonably interpreted CAA § 172(e) to give it authority to approve programs that are alternative to, but not less stringent than, § 185 fee programs, EPA's approval of . . . such an alternative program, after reasoned consideration and notice and comment procedure regarding [the rule's] stringency and approach to fee collecting, was proper.'').

To the extent the anonymous commenter is challenging the 2010 guidance document itself, that is outside the scope of this action. Although the 2010 guidance pertaining to section 185 fee programs was previously vacated and remanded by the D.C. Circuit, the court's holding was based on procedural grounds. The court did not adversely rule on the permissibility of equivalent alternative programs, stating ''neither the statute nor our case law obviously precludes that alternative.'' *NRDC* v. *EPA,* 643 F.3d 311, 321 (D.C. Cir. 2011).

Comment: Earthjustice commented that even if EPA could allow an alternative fees program, EPA cannot approve the HGB alternative program because it is less stringent than what the CAA requires as it allows impermissible VOC and NO_X baseline aggregation. Earthjustice alleges that this is less stringent than CAA section 185, which requires each major stationary source of VOCs to reduce emissions or pay a fee. Earthjustice comments that section 182(f) similarly extends an independent fee obligation to each major stationary source of NO_X. Earthjustice further alleges that the HGB program allows aggregation of emissions across sources in different locations but under common control, which is less stringent than direct application of section 185. Earthjustice also commented that VOC and NO_X baseline aggregation creates serious environmental justice issues. The commenter noted under the HGB program major sources can offset higher VOC emissions by reducing NO_X emissions and that among VOCs are highly toxic compounds, like the carcinogen benzene.

Response: We do not believe anything in the Act precludes provisions that allow aggregation of VOC and NO_X emissions in calculating a source's baseline emissions. CAA section 185 expressly applies only to VOC, but section 182(f) extends the application of this provision to NO_X, by providing that ''plan provisions required under [subpart D] for major stationary sources of [VOC] shall *also* apply to major stationary sources . . . of [NO_X].'' [37] Nothing in the language of CAA sections 182(f) and 185 states that VOC and NO_X cannot be aggregated in the baseline calculation for a source and the commenters have not provided a reasoned explanation for why this would be so.

The overall goal of subpart 2 of Part D of Title 1 is to bring areas into attainment of the ozone standard. Both VOCs and NO_X are precursors in the formation of ozone and reductions of both are beneficial to reducing ozone in the HGB area. Therefore, we believe it is reasonable that Texas provided flexibility in establishing the baseline to allow aggregation of the pollutants.

With regard to aggregating emissions among major sources in different locations but under common control, this provides for some consistency with the HGB attainment plan for the 1-hour ozone standard (71 FR 52670, September 6, 2006). The 1-hour ozone plan achieved very significant reductions through Cap and Trade Programs for NO_X and for HRVOCs. (As noted earlier, HRVOCs react quickly to form ozone, thus making them important to control with regard to the 1-hour ozone standard.) These cap and trade programs allowed sources to trade NO_X and HRVOCs allowances amongst themselves, providing the flexibility for more controls to be applied to one source to offset less controls applied to another source. Overall, the Cap and Trade Program for NO_X was designed to achieve a nominal 80% reduction in area-wide point source NO_X emissions. The HRVOC Cap and Trade Program also achieved significant reduction of these emissions. The flexibility provided by these emissions trading programs was important to the success of the 1-hour ozone plan in achieving its aggressive goals to significantly reduce ozone levels and attain the 1-hour ozone standard. Given our prior SIP approval of the HGB area Cap and Trade Programs, which helped to achieve significant ozone emission reductions and eventual attainment of the 1-hour standard in the area, it is reasonable to approve the HGB equivalent alternative section 185 fee program that allows for similar aggregation of emissions from sources in different locations but under common control.

[36] ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS'', January 5, 2010 memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, available at: *https://www.epa.gov/sites/production/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf.*

[37] Under CAA section 182(f) areas may obtain a ''NO_X waiver'' from these requirements, but such a waiver does not exist for the HGB area.

With respect to the commenter's concern that baseline aggregation could result in higher VOC emissions that include toxic compounds, the CAA's provisions for implementing the ozone NAAQS do not directly address emissions of toxic VOCs. As noted above, nothing in the CAA prohibits the aggregation of VOC and NO_X emissions in establishing the baseline under section 185. Our approval or disapproval of the HGB equivalent alternative section 185 fee program considers whether the program is as stringent for the purposes of ozone control as a section 185 fee program. While the CAA's NAAQS provisions do not directly address emissions of toxic VOCs, other CAA provisions address toxic VOCs. *See* CAA section 112.

Comment: Earthjustice commented that the HGB alternative program is less stringent than what the CAA requires as it creates no new incentives for reducing emissions and uses programs that are already part of the Texas SIP for the HGB area. With respect to the Texas Emissions Reduction Plan (TERP), the commenter cited to a May 11, 2017 EPA action approving 30 TAC 101.357 (Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)) for the HGB area, in which we stated that HGB ''[s]ite owners or operators unable to meet [emissions limitations in a cap and trade program] and desiring to use TERP emission reductions for compliance relief, can petition the TCEQ Executive Director for a determination of technical infeasibility'' (82 FR 21919, 21983). With respect to Low Income Repair Assistance Program (LIRAP), the commenter cited to an October 7, 2016 EPA action in which we stated ''[a]lthough the LIRAP is not required by the CAA, certain provisions relating to the program fees have been approved into the Texas SIP to allow for full implementation of the State's [vehicle inspection and maintenance] program'' (81 FR 69679).

Response: In the HGB equivalent alternative section 185 fee program, fees for TERP and LIRAP collected in the HGB area from on-road and off-road mobile sources are used to offset the point source fee obligation. The TERP program was and is designed to accelerate the achievement of NO_X reductions by repowering or retrofitting diesel equipment that would otherwise operate for many years before being replaced with new low emitting equipment. The TERP program was established by the Texas Legislature in 2001 and is approved in the Texas SIP as an economic incentive program (70 FR 48647, August 19, 2005).[38] Texas relied upon reductions from the TERP program in the HGB 1-hour ozone SIP submitted December 17, 2004 and approved in 2006 (70 FR 52670, September 6, 2006). Based on the money allocated to TERP through 2007, the State committed in the 1-hour ozone attainment planning SIP that 38.8 tpd of emission reductions would be achieved by the TERP program before the 1-hour attainment date. The emission reductions were achieved through issuance of grants to equipment owners and operators to implement projects by 2007. While the State has continued to allocate money to the TERP after the 1-hour ozone NAAQS attainment date of 2007, the money goes to projects whose emissions reductions are surplus to the 1-hour ozone attainment demonstration, *i.e.,* Texas has not otherwise taken credit for these emission reductions in the 1-hour ozone NAAQS nonattainment planning (70 FR 52670, 52677). The continuation of the TERP program after 2007 was not required under the previously approved HGB 1-hour ozone standard SIP and any funds collected and resulting emission reductions achieved after 2007 are surplus to what was required under the 1-hour ozone standard attainment SIP. As there was no requirement to continue the TERP program after 2007, we believe that the HGB equivalent alternative section 185 fee program can take credit for continued funding of, and emissions reductions creditable to, the TERP program.

As explained in the prior paragraph, the 1-hour ozone SIP does not take credit for any funds collected or emission reductions achieved after 2007. In the May 11, 2017 EPA SIP action that the commenter cites, we approved the State's rule that under limited conditions the Texas SIP does allow for a facility in the HGB area to pay $75,000 per ton of NO_X to the TERP fund in lieu of reducing NO_X emissions in the HGB MECT (30 TAC 101.357). This is not part of the approved HGB 1-hour ozone standard attainment demonstration, however. We do note that such payments would not affect calculation of the facility's section 185 fee obligation which is based on a facility's actual emissions.

The LIRAP is a voluntary program designed to facilitate repair or replacement of vehicles that did not pass the inspection and maintenance (I/M) test by providing funding to eligible vehicle owners. As such, it could improve timely compliance with the I/M program. Consistent with the I/M program implemented in the HGB area, vehicles must comply with the applicable vehicle emissions I/M requirements in order to pass the inspection. These I/M requirements apply regardless of whether the vehicle operator is eligible for the LIRAP. The LIRAP was not included as a control measure relied on in the attainment demonstration for the 1-hour ozone standard in the HGB area and therefore is not part of the SIP for the HGB area. In the October 7, 2016 action that the commenter cites, we were referring to EPA approval of LIRAP provisions for Travis and Williamson Counties. Specifically, the footnote for the sentence that the commenter cites refers to a final rule published August 8, 2005 (70 FR 45542). In that rule, we approved into the SIP provisions to implement the LIRAP as a voluntary program for Travis and Williamson Counties in the Austin-Round Rock area. We did note in our October 7, 2016 **Federal Register** action that LIRAP is a voluntary program that any county participating in the Texas vehicle I/M program may elect to implement in order to enhance the objectives of the Texas I/M program (81 FR 69679, 69680). In a later action finalizing approval of the LIRAP removal in the Austin-Round Rock area, we noted that the State's LIRAP implementation rules for the HGB area and other ozone nonattainment areas found at 30 TAC 114 Subchapter C, Division 2 adopted by TCEQ created a voluntary program that could be implemented within the vehicle I/M areas in Texas ozone nonattainment areas and are not part of the approved Texas SIP (84 FR 50305, 50306, September 25, 2019).

The funds provided in and the implementation of the TERP and LIRAP on-road and off-road mobile source programs were additional to what would have occurred in the previously-approved 1-hour ozone standard SIP in the HGB area after the missed attainment deadline. Therefore, we disagree that the HGB equivalent alternative section 185 fee program created no new funding and emission reductions that can be counted in determining that the HGB alternative program is in fact equivalent to direct application of CAA section 185.

In sum, the HGB equivalent alternative section 185 fee program for the 1-hour ozone standard does not rely on programs or emissions reductions already required by the applicable 1-hour ozone SIP.

[38] *See* ''Texas Emissions Reduction Plan Biennial Report (2017–2018), Report to the 86th Texas Legislature, December 2018, SFR–079/18''. The document is available at: *https://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/079-18.pdf.*

Comment: Earthjustice commented that the HGB alternative section 185 fee equivalent program irrationally focuses on mobile source programs for section 185 fee offsets given that a significant percentage of daily VOC and NO_X emissions are attributable to point sources, rather than mobile sources. The commenter acknowledges that EPA's previously-approved South Coast fee equivalent alternative program focused on mobile sources, and states that mobile sources accounted for 80% of pollution in the air district. The commenter alleges that targeting mobile source emissions in the HGB area reaches only a small amount of ozone precursor emissions and does not achieve the emissions reductions envisioned by CAA section 185.

Response: EPA has consistently provided that an alternative program may be found to be equivalent to direct application of section 185 if the state can demonstrate that expected fees and/or emissions reductions directly attributable to application of section 185 is comparable to or exceeded by the expected fees and/or emissions reductions from the proposed alternative program. *See* the 2010 guidance, 77 FR 50021 (August 20, 2012), 77 FR 74372 (December 14, 2012) and 84 FR 12511 (April 2, 2019). The commenter fails to point to anything in the Clean Air Act or the legislative history that indicates Congress intended for the collection of the fees from the point sources to be used for point sources. In fact, both are silent are how the collected fees are to be used. Therefore, we believe it is reasonable that, as long as either an equivalent amount of fees are collected or an equivalent amount of emissions are reduced, or some combination thereof, an alternative program that includes such fees or emission reductions from mobile sources is ''no less stringent'' than direct application of section 185 in line with the principles of CAA section 172(e).

In addition, we dispute the commenter's contention that reduction of emissions from mobile sources is not important in the HBG area. Tables 2, 3 and 4 in our Proposal provide point source, on-road mobile source and off-road mobile source emission inventories for the years 2011, 2014, 2020, 2026 and 2032 (84 FR 22093, 22097–98, May 16, 2019). As discussed previously, reductions in NO_X emissions and a small subset of VOC emissions termed HRVOCs have been determined to be the most effective means of reducing ozone levels in the Houston area. As a result, it is important to reduce emissions of NO_X from mobile sources. While emissions from mobile sources (on-road and off-road) are expected to continue decreasing, these emissions were and continue to be a significant source of ozone precursors in the HGB area, particularly with respect to NO_X. In 2011 (a year in which the area had not attained the 1-hour ozone standard), mobile sources accounted for 72% of the area's NO_X emissions. In 2014 (a year in which the area maintained the 1-hour ozone standard), mobile sources accounted for 65% of the area's NO_X emissions. In 2020, it is projected that mobile sources will account for 48% of the area's NO_X emissions. As (1) an objective of the HGB equivalent alternative section 185 fee program was to bring about attainment of the 1-hour ozone standard and (2) on-road and non-road mobile sources were a significant portion of the emissions preventing attainment of the 1-hour ozone standard, we believe that a program focused on fees and emission reductions from mobile source programs is rational and can be considered equivalent to section 185.

Comment: Earthjustice commented that the HGB alternative section 185 fee equivalent program unlawfully and arbitrarily departs from the CAA by substituting publicly funded dollars for privately paid fees. The commenter further stated that ''EPA provides no explanation (and there is none) of how it is equally stringent to shift a new obligation to pay fees away from the producers of harmful emissions to the broad citizenry, which already funds TERP and LIRAP.''

Response: We disagree that the HGB equivalent alternative section 185 fee program unlawfully and arbitrarily departs from the CAA by substituting publicly funded dollars for privately paid fees. The commenter does not explain why this distinction is significant and why it should lead EPA to the conclusion that Texas's program is not at least as stringent as a 185 program. As noted above, we have historically considered an equivalent alternative program to be permissible if the state can demonstrate that expected fees and/or emissions reductions directly attributable to applicable of section 185 would be equal to or exceeded by the expected fees and/or emissions reductions from the proposed alternative program. The Texas program is equally stringent as it provides greater or equivalent fees and emission reductions than those that would be provided by direct application of section 185.

We also note that there is no requirement in the CAA that penalty fees collected from major stationary sources under section 185 be used by the State for control of air pollution. However, in the HGB equivalent alternative section 185 fee program, mobile source program fees are used to fund emission reductions in the HGB area. These emission reductions helped the area attain and maintain the 1-hour ozone standard.

Comment: Earthjustice commented that carry over credits, which allow for accumulation of credits from mobile source programs from previous years to offset stationary source fees in future years, violate section 185 of the CAA. The commenter further stated that the offset and carry over features of the HGB alternative program ensure that fees will never be paid by Houston area stationary sources; the fee obligation is an annual obligation, not one that may be met by a one-time payment and accounting tricks; and that EPA has not explained how carry over credits are equally stringent as what the CAA requires.

Response: The commenter fails to explain the significance of annual accounting as opposed to ensuring, as EPA has done here, that an overall equivalent amount of fees and/or emissions reductions have been achieved over the lifetime of the equivalent alternative program. Under the Texas program, fees collected from mobile sources in the HGB area for emission reduction projects go into a Fee Equivalency Account. Money in this account then is used to offset the annual fee obligation of major stationary sources. Any surplus in the Fee Equivalency Account in one year is available to be used (or carried over) to offset the next year's annual fee obligation of major stationary sources. If there are insufficient funds in this account, major stationary sources would need to make up the difference.

Comment: Earthjustice commented that the HGB alternative section 185 fee program is not enforceable, including by citizens; the CAA requires SIPs to be enforceable; and to ensure such enforceability, EPA must require Texas to report and publicly post information about equivalency, track the efficacy of emission reduction projects funded by the putative alternative fee source and report and make publicly available such information.

Response: As implemented in 30 TAC Chapter 101 and explained in our TSD, the HGB equivalent alternative section 185 fee program is enforceable. The program was adopted by the appropriate State authority and is binding on subject sources. Texas submitted the program to EPA and through this action we are incorporating the program into the

Texas SIP. The program is explicit and clear as to what is required when it is in operation: *i.e.,* that point sources must provide TCEQ with emissions reports and, if appropriate, pay fees while the program is in operation. The public has the right to request and view information on the HGB equivalent alternative section 185 program under the Texas Public Information Act.[39] TCEQ—using information that is available to the public (including EPA) under the Texas Public Information Act—provided a report summarizing the implementation of the HGB alternative section 185 fee equivalent program over its duration. The report is available in the electronic docket for this action (*https://www.regulations.gov/document?D=EPA-R06-OAR-2018-0715-0015*). The TCEQ report found that the TERP fees collected for emission reduction projects in the HGB area for on-road mobile and off-road mobile sources more than fully offset the fees that would have been collected from major point sources under a direct application of section 185.

Comment: Earthjustice commented that rather than take no action, EPA should disapprove the aspects of the HGB alternative program that (1) end the program with an attainment finding (30 TAC 101.118(a)(2)) and (2) hold the program in abeyance after three consecutive years of data demonstrating that the 1-hour standard was not exceeded (30 TAC 101.118(b)). Baker Botts and TXOGA commented that rather than take no action, we should approve 30 TAC 101.118(b).

Response: As stated in the Proposal, we have decided not to take action on these aspects of the program at this time. Given that we did not issue a Proposal to approve or disapprove the aspects of the HGB equivalent alternative section 185 fee program cited by the commenters, we cannot now take final action on these portions of the HGB program. Any EPA action on the listed aspects of the HGB equivalent alternative section 185 fee program would occur through a separate rulemaking process, which would allow for public participation by the commenters.

Comment: TCEQ commented that EPA is obligated to ensure that states may be relieved of the CAA section 185 penalty fee obligation in a timely manner. The commenter further states that (1) EPA has not issued rules to specify the requirements for state programs that implement the CAA 185 fee requirement and (2) EPA's changing interpretations of the CAA section 185 fee requirement resulted in the issuance of limited guidance over the course of many years discussing specific issues states should consider when developing their fee programs.

Response: Where it is appropriate to relieve states of the CAA section 185 fee obligation, we agree that we should endeavor to do so in a timely manner when a request is made by a state. We acknowledge that we have not issued rules for the CAA section 185 fee requirement but we have issued guidance for specific issues on setting baselines[40] and for equivalent alternative programs (the 2010 guidance). As noted in earlier responses, EPA has approved equivalent alternative programs for several areas, and these outline factors that EPA considers in determining whether an equivalent alternative program is approvable. If states have specific questions about section 185 fee programs or equivalent alternative programs, they are encouraged to contact their respective EPA Regional office.

Comment: TCEQ, Baker Botts, and TXOGA submitted comments supporting EPA's Proposal pertaining to the HGB equivalent alternative section 185 fee program.

Response: We acknowledge the support for the Proposal.

Comment: TCEQ commented that EPA should correct typographical and other minor errors in the TSD for the Proposal to approve the HGB equivalent alternative section 185 fee program. TCEQ added that these errors inadvertently result in either incomplete or inaccurate statements regarding the HGB program.

Response: We appreciate the feedback on typographical and other minor errors. An additional TSD titled ''TSD for the HGB Equivalent Alternative Section 185 Fee Program with Corrections Identified by the Texas Commission on Environmental Quality'' is being added to the electronic docket.

III. Final Action

A. Plan for Maintaining the Revoked Ozone Standards

We are approving the maintenance plan for both the revoked 1-hour and 1997 ozone NAAQS in the HGB area because we find it demonstrates the two ozone NAAQS (1979 1-hour and 1997 8-hour) will be maintained for 10 years following this final action (in fact, the state's plan demonstrates maintenance of those two standards through 2032). As further explained in our Proposal and above, we are not approving the submitted 2032 NO_X and VOC MVEBs for transportation conformity purposes because mobile source budgets for more stringent ozone standards are in place in the HGB area. We are finding that the projected emissions inventory which reflects these budgets is consistent with maintenance of the revoked 1-hour and 1997 ozone standards.

B. Redesignation Criteria for the Revoked Standards

We are determining that the HGB area continues to attain the revoked 1-hour and 1997 ozone NAAQS. We are also determining that all five of the redesignation criteria at CAA section 107(d)(3)(E) for the HGB area have been met for these two revoked standards.

C. Termination of Anti-Backsliding Obligations

We are terminating the anti-backsliding obligations for the HGB area with respect to the revoked 1-hour and 1997 ozone NAAQS. Consistent with the *South Coast II* decision, anti-backsliding obligations for the revoked ozone standards may be terminated when the redesignation criteria for those standards are met. This final action replaces the redesignation substitute rules that were previously promulgated for the revoked 1-hour ozone NAAQS (80 FR 63429, October 20, 2015) and the 1997 ozone NAAQS (81 FR 78691, November 8, 2016.) for the HGB area.

D. HGB Equivalent Alternative Section 185 Fee Program

We are approving 30 TAC sections 101.100–101.102, 101.104, 101.106–101.110, 101.113, 101.116, 101.117, 101.118(a)(1), 101.118(a)(3) and 101.120–101.122 as an equivalent alternative section 185 fee program. We are taking no action on 30 TAC sections 101.118(a)(2) and 101.118(b) at this time. We additionally are finding that the section 185 fee program is not an applicable requirement for redesignation.

As noted above, the EPA has consistently held the position that not

[39] See *http://foift.org/resources/texas-public-information-act/* and Chapter 552 of the Texas Government Code at *https://statutes.capitol.texas.gov/SOTWDocs/GV/htm/GV.552.htm.*

[40] *See* ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date'', March 21, 2008 memorandum from William T. Harnett, Director, EPA Air Quality Policy Division, available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf.*

every requirement an area is subject to is applicable for purposes of evaluating an area's request for redesignation, or in this case, a request to terminate an area's anti-backsliding requirements based on the redesignation criteria. Calcagni Memorandum at 4. EPA has consistently held that requirements designed to help an area plan for attainment—such as developing modeling demonstrating how the area will attain the NAAQS, adopting reasonably available control measures (RACM) that would advance attainment by one year or more, and demonstrating reasonable further progress towards attainment—are not applicable requirements under CAA section 107(d)(3)(E)(ii) and (v) because by definition those areas will already have attained the NAAQS in question. The Agency's position is based on the reasonable interpretation that Congress would not have intended to impose the substantial and costly administrative burden on states of adopting measures and making demonstrations that are aimed at progressing the area towards attainment when the area has already achieved the end goal of attainment. The EPA has also interpreted the submission of nonattainment area plan contingency measures, which apply if an area fails to timely achieve attainment or fails to demonstrate reasonable further progress to attainment, as not applicable requirements for purposes of redesignation.[41] Other requirements such as an approved nonattainment new source review program, which by definition ends upon redesignation, are also not required to be approved prior to redesignation.[42]

The CAA section 185 fee program must be implemented if an area fails to attain by its Severe or Extreme area attainment date. Like nonattainment new source review, the program is terminated once an area is redesignated to attainment. In the case of an area that is subject to a revoked NAAQS, the CAA section 185 fee program is an anti-backsliding requirement,[43] and anti-backsliding requirements associated with a revoked NAAQS are terminated by EPA's approval of a demonstration that all five redesignation criteria have been met. Additionally, the purpose of CAA section 185 is to provide incentives for emission reductions to occur that would provide for attainment and maintenance of an ozone standard in a Severe or Extreme nonattainment area that missed the attainment deadline for that standard. If a Severe or Extreme area has in fact attained the standard and has appropriate controls in place for maintaining the standard, the purpose of section 185 will have been met. Consistent with EPA's position with regard to other nonattainment area requirements that are not CAA applicable requirements that must be approved prior to redesignation, we believe an area need not have an approved SIP revision addressing the CAA section 185 provision in order to determine that all the redesignation criteria to be met since that determination will (1) terminate the fee collection requirement and (2) meet the purpose underlying the CAA section 185 program.

[41] John Seitz Memorandum, Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard (May 10, 1995).

[42] Mary Nichols, Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment (Oct. 14, 1994).

[43] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882, 902 (D.C. Cir. 2006).

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the State of Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the air quality designation status of geographical areas and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements. While we are not in this action redesignating any areas to attainment, we are approving the state's demonstration that all five redesignation criteria have been met. Similar to a redesignation, the termination of anti-backsliding requirements in this action does not impose any new requirements.

With regard to the SIP approval portions of this action, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, where EPA is acting on the SIPs in this action, we are merely approving State law as meeting Federal requirements and are not imposing additional requirements beyond those imposed by State law.

For these reasons, this action as a whole:

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Nitrogen Oxides, Volatile organic compounds.

Dated: January 29, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

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 SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by adding an entry under Chapter 101 for ''Subchapter B—Failure to Attain Fee''; and

■ b. In paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end of the table for ''Houston-Galveston-Brazoria Redesignation Request and Maintenance Plan for the 1979 1-hour and 1997 8-hour Ozone Standards''.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter B—Failure to Attain Fee				
Section 101.100	Definitions	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.101	Applicability	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.102	Equivalent Alternative Fee	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.104	Equivalent Alternative Fee Accounting.	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.106	Baseline Amount Calculation	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.107	Aggregated Baseline Amount	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.108	Alternative Baseline Amount	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.109	Adjustment of Baseline Amount	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.110	Baseline Amount for New Major Stationary Source, New Construction at a Major Stationary Source, or Major Stationary Sources with Less Than 24 Months of Operation.	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.113	Failure to Attain Fee Obligation	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 101.116	Failure to Attain Fee Payment	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.117	Compliance Schedule	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.118(a)(1) and (a)(3).	Cessation of Program	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	SIP does not include 101.118(a)(2) or 101.118(b).
Section 101.120	Eligibility for Equivalent Alternative Obligation.	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.121	Equivalent Alternative Obligation	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
Section 101.122	Using Supplemental Environmental Project to Fulfill an Equivalent Alternative Obligation.	5/22/2013	2/14/2020, [Insert **Federal Register** citation].	
*	*	*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/ effective date	EPA approval date	Comments
*	*	*	*	*	*	*
Houston-Galveston-Brazoria Redesignation Request and Maintenance Plan for the 1-hour and 1997 8-hour Ozone Standards.	Houston-Galveston-Brazoria, TX.	12/12/2018	2/14/2020, [Insert **Federal Register** citation].	

* * * * *

■ 3. Section 52.2275 is amended by revising paragraphs (j) and (n) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(j) *Determination of Attainment.* Effective November 19, 2015, the EPA has determined that the Houston-Galveston-Brazoria 1-hour ozone nonattainment area has attained the 1-hour ozone standard.

* * * * *

(n) Termination of Anti-backsliding Obligations for the Revoked 1-hour and 1997 8-hour ozone standards. Effective March 16, 2020 EPA has determined that the Houston-Galveston-Brazoria area has met the Clean Air Act criteria for redesignation. Anti-backsliding obligations for the revoked 1-hour and 1997 8-hour ozone standards are terminated in the Houston-Galveston-Brazoria area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.344 is amended:

■ a. In the table titled ''Texas—Ozone (1-Hour Standard)'' by:

■ i. Removing the footnote number ''2'' in the title heading ''Texas-Ozone (1-Hour Standard)'' and adding in its place footnote number ''1'';

■ ii. Under column headings ''Designation'' and ''Classification'' in the both headings for ''Date,'' removing the footnote number ''1'' and adding in its place the footnote number ''2'';

■ iii. Revising the entry for ''Houston-Galveston-Brazoria Area, TX''; and

■ iv. Revising footnotes 1, 2, and 4.

■ b. Amend table titled ''Texas—1997 8-Hour Ozone NAAQS [Primary and Secondary]'' by:

■ i. Adding footnote ''1'' to the table heading;

■ ii. Revising footnotes 1 and 4; and

■ iii. Revising the entry for ''Houston-Galveston-Brazoria Area, TX,'' including the removal of footnote 7.

The revisions and additions read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

[1-Hour standard] [1]

Designated area	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* *	*	* *	*	*
Houston-Galveston-Brazoria Area, TX:	See footnote 4	See footnote 4	See footnote 4	See footnote 4.
Brazoria County [4]				
Chambers County [4]				
Fort Bend County [4]				
Galveston County [4]				
Harris County [4]				
Liberty County [4]				
Montgomery County [4]				
Waller County [4]				
* *	*	* *	*	*

[1] The 1-hour ozone standard, designations and classifications are revoked effective June 15, 2005 for areas in Texas except the San Antonio area where they are revoked effective April 15, 2009.

[2] The date at the time designations were revoked is October 18, 2000, unless otherwise noted.

* * * * * * *

[4] The Houston-Galveston-Brazoria Area was designated and classified as ''Severe-17'' nonattainment on November 15, 1990 and was so designated and classified when the 1-hour ozone standard, designations and classifications were revoked. The area has since attained the 1-hour ozone standard and met all the Clean Air Act criteria for redesignation. All 1-hour ozone standard anti-backsliding obligations for the area are terminated effective March 16, 2020.

* * * * *

TEXAS—1997 8-HOUR OZONE NAAQS

[Primary and secondary] [1]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Houston-Galveston-Brazoria, TX:	See footnote 4	See footnote 4	See footnote 4	See footnote 4.
Brazoria County [4]				
Chambers County [4]				
Fort Bend County [4]				
Galveston County [4]				
Harris County [4]				
Liberty County [4]				
Montgomery County [4]				
Waller County [4]				
* *	*	* *	*	*
* *	*	* *	*	*

[1] The 1997 8-hour ozone NAAQS, designations and classifications were revoked effective April 6, 2015. The date at the time designations were revoked is June 15, 2004, unless otherwise noted.

* * * * * * *

[4] The Houston-Galveston-Brazoria, TX area was designated nonattainment effective June 15, 2004 and was classified as ''Severe-15'' effective October 31, 2008. The area has since attained the 1997 8-hour ozone standard and met all the Clean Air Act criteria for redesignation. All 1997 8-hour ozone standard anti-backsliding obligations for the area are terminated effective March 16, 2020.

* * * * *

[FR Doc. 2020–02053 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0279; FRL–10003–07]

Propanamide, 2-hydroxy-N, N-dimethyl-; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation established exemptions from the requirement of a tolerance for residues of propanamide, 2-hydroxy-N, N-dimethyl-, when used as an inert ingredient (solvent/co-solvent) in pesticides applied to growing crops and raw agricultural commodities after harvest, or in pesticides applied to animals, limited to 50% by weight in the pesticide formulations. Spring Trading Company,

LLC on behalf of BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of propanamide, 2-hydroxy-N, N-dimethyl-, when used in accordance with the terms of these exemptions.

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0279, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0279 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0279, 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 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.*

II. Petition for Exemption

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11271) by Spring Trading Company (203 Dogwood Trail, Magnolia, TX 77354–5201) on behalf of BASF Corporation (100 Campus Drive, Florham Park, NJ 07932). The petition requested that existing exemptions from the requirement of a tolerance for residues of propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9) when used as an inert ingredient (solvent/co-solvent) applied to growing crops and raw agricultural commodities after harvest (40 CFR 180.910) or in pesticides applied to animals (§ 180.930) be amended by increasing the limitation in pesticide formulations from 20% to 50%. That document referenced a summary of the petition prepared by Spring Trading Company on behalf of BASF Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* One relevant comment was received on the notice of filing. EPA's response to this comment is discussed in Unit V.B.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will

result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. EPA is required to consider the factors of section 408(b)(2)(C) and (D) in making determinations of safety for exemptions. 21 U.S.C. 346a(c)(2)(B). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for propanamide, 2-hydroxy-N, N-dimethyl- including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with propanamide, 2-hydroxy-N, N-dimethyl- follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by propanamide, 2-hydroxy-N, N-dimethyl- as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Propanamide, 2-hydroxy-N, N-dimethyl- is of low acute oral, dermal and inhalation toxicity in rats; all LD_{50}s are greater than 1,000 mg/kg. Dermal irritation is not observed in rabbits. It is mildly irritating to the eyes of rabbits. It is not a dermal sensitizer in mice in the lymph node assay.

The toxicity studies summarized below were all conducted with propanamide, 2-hydroxy-N, N-dimethyl- except the chronic toxicity study. That study was conducted with N, N-dimethylacetamide, a structurally similar chemical. The only difference between the two chemicals is that N, N-dimethylacetamide is missing a hydroxyl group on a carbon atom. Both compounds are expected to undergo similar metabolism (in this case, N-oxidation) by cytochrome P450 enzymes and have similar toxicological profiles; therefore, the Agency has determined the data to be suitable for evaluating propanamide.

In rats, 90 days of oral exposure to propanamide, 2-hydroxy-N, N-dimethyl- results in increased cholesterol and triglyceride levels, increased liver weights and centrilobular hypertrophy at 1,000 mg/kg/day, the limit dose. The NOAEL is 500 mg/kg/day. Reproduction parameters, estrus cyclicity and sperm parameters were also evaluated in this study and were found to be unaffected at 1,000 mg/kg/day.

A developmental toxicity study in rats showed no maternal toxicity at 500 mg/kg/day, the highest dose tested. Quantitative fetal susceptibility was observed as reduced body weight in pups at 500 mg/kg/day. The developmental NOAEL was 200 mg/kg/day.

Propanamide, 2-hydroxy-N, N-dimethyl- was not mutagenic in the Chinese hamster ovary (CHO) cells HGPRT locus gene mutation assay or the micronucleus test.

Propanamide, 2-hydroxy-N, N-dimethyl- is not expected to be carcinogenic based on the absence of structural alerts using Derek Nexus program and the lack of mutagenicity. It is not expected to be neurotoxic based on the functional observation battery or on motor activity in the 90-day oral toxicity study in rats.

Immunotoxicity studies for propanamide, 2-hydroxy-N, N-dimethyl- were not available for review. However, evidence of immunotoxicity was not observed in the submitted studies.

Chronic studies with propanamide, 2-hydroxy-N, N-dimethyl- are not available for review. However, a chronic study conducted for 12 months in rats treated with N, N-dimethylacetamide, a structurally similar chemical, was used as surrogate data. In this study toxicity manifested as reduced bodyweight was observed at 300 mg/kg/day. The NOAEL is 100 mg/kg/day.

A dermal penetration study in rats showed that 50% of 2-hydroxy-N, N-dimethyl- is absorbed following 8 hours of exposure on skin. Therefore, the dermal absorption factor of 50% was used for risk assessment purposes.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

An acute effect was not found in the database therefore an acute dietary assessment is not necessary. The chronic reference dose (cRfD) as well as the toxicity endpoint applicable to all exposure scenarios was based on the 12-month chronic toxicity study in rats. In this study, the NOAEL was 100 mg/kg/day based on reduced bodyweights at 300 mg/kg/day, the LOAEL. This

represents the lowest NOAEL in the most sensitive species in the toxicity database. The standard uncertainty factors were applied to account for interspecies (10X) and intraspecies (10X) variations. The FQPA safety factor was reduced to 1x. The dermal absorption factor of 50% was applied based on a dermal penetration study in rats. A default value of 100% was used for the inhalation absorption factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propanamide, 2-hydroxy-N, N-dimethyl-, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from propanamide, 2-hydroxy-N, N-dimethyl- in food as follows:

Dietary exposure (food and drinking water) to propanamide, 2-hydroxy-N, N-dimethyl- can occur following ingestion of foods with residues from treated crops and animals. Because no adverse effects attributable to a single exposure of propanamide, 2-hydroxy-N, N-dimethyl- are seen in the toxicity databases, an acute dietary risk assessment is not necessary. For the chronic dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™, Version 3.16, and food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for propanamide, 2-hydroxy-N, N-dimethyl-. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. One hundred percent crop treated was assumed, default processing factors, and tolerance-level residues for all foods and use limitations of not more than 50% by weight in pesticide formulations. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening-level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for propanamide, 2-hydroxy-N, N-dimethyl-, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Propanamide, 2-hydroxy-N, N-dimethyl- may be used in inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and round the home. The Agency conducted an assessment to represent worst-case residential exposure by assessing propanamide, 2-hydroxy-N, N-dimethyl- in pesticide formulations (outdoor scenarios) and in disinfectant-type uses (indoor scenarios), limited to 5% by weight in pesticide formulations.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found propanamide, 2-hydroxy-N, N-dimethyl- to share a common mechanism of toxicity with any other substances, and propanamide, 2-hydroxy-N, N-dimethyl- does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that propanamide, 2-hydroxy-N, N-dimethyl- does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The toxicity database for propanamide, 2-hydroxy-N, N-dimethyl- contains a subchronic, developmental, chronic, and mutagenicity studies. There is no indication of neurotoxicity or immunotoxicity in the available studies; therefore, there is no need to require neurotoxicity or immunotoxicity studies. Quantitative fetal susceptibility was observed in the developmental study in rats. Fetal toxicity (reduced bodyweight) was observed at 500 mg/kg/day, the highest dose tested, while toxicity was not observed in maternal animals. The developmental NOAEL was 200 mg/kg/day. However, fetal effects are not of concern since the cRfD (1 mg/kg/day) will be protective of effects seen at 500 mg/kg/day. In addition, the Agency used conservative exposure estimates, with 100 percent crop treated, tolerance-level residues, conservative drinking water modeling numbers, and a worst-case assessment of potential residential exposure for infants and children. Based on the adequacy of the toxicity and exposure databases and the lack of concern for prenatal and postnatal sensitivity, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate

PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propanamide, 2-hydroxy-N, N-dimethyl- from food and water will utilize 70.6% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propanamide, 2-hydroxy-N, N-dimethyl- may be used as an inert ingredient in pesticide products that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to propanamide, 2-hydroxy-N, N-dimethyl-. Using the exposure assumptions described above, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in MOEs of 374 for both adult males and females. Adult residential exposure combines high-end dermal and inhalation handler exposure from liquids/trigger sprayer/home garden with a high-end post-application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 132 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, this MOEs is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propanamide, 2-hydroxy-N, N-dimethyl- may be used as an inert ingredient in pesticide products that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to propanamide, 2-hydroxy-N, N-dimethyl-. Using the exposure assumptions described above, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 498 for adult males and females. Adult residential exposure combines liquids/trigger sprayer/home garden with a high-end post-application dermal exposure from contact with treated lawns. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 137 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on a DEREK structural alert analysis, the lack of mutagenicity and the lack of specific organ toxicity in the chronic toxicity study, propanamide, 2-hydroxy-N, N-dimethyl- is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to propanamide, 2-hydroxy-N, N-dimethyl-.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of propanamide, 2-hydroxy-N, N-dimethyl- in or on any food commodities. EPA is establishing a limitation on the amount of propanamide, 2-hydroxy-N, N-dimethyl- that may be used in pesticide formulations applied to growing crops. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for use on growing crops for sale or distribution that exceeds 50% by weight of propanamide, 2-hydroxy-N, N-dimethyl-.

B. Response to Comments

The Agency received one relevant comment opposing a tolerance exemption for an increased concentration of 2-hydroxy-N, N-dimethyl- in pesticide formulations. Under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide chemical tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide chemical meets the safety standard imposed by the statute. EPA has sufficient data to evaluate the potential adverse effects from exposure to this pesticide chemical, including data on the potential for long-term effects. After evaluating that data and other information, EPA has determined that the tolerance exemptions for this chemical are safe. The commenter has not provided any information supporting a conclusion that the tolerance exemption is not safe.

VI. Conclusions

Therefore, the exemptions from the requirement of a tolerance under 40 CFR 180.910 and under 40 CFR 180.930 for residues of propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9) when used as an inert ingredient (solvent/co-solvent) are modified to allow use at a maximum concentration of 50% by weight in pesticide formulations applied to growing crops or raw agricultural commodities after harvest when used in pesticide formulations applied to animals, respectively.

VII. Statutory and Executive Order Reviews

This action amends exemptions to the requirement for a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations

under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2020.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, revise the inert ingredient ''Propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9)'' in the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * *	* * *	*
Propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9).	Not to exceed 50% by weight in pesticide formulation	Solvent/co-solvent.
* * *	* * *	*

■ 3. In § 180.930, revise the inert ingredient ''Propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9)'' in the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Propanamide, 2-hydroxy-N, N-dimethyl- (CAS Reg. No. 35123–06–9).	Not to exceed 50% by weight in pesticide formulation	Solvent/co-solvent.
* * *	* * *	*

[FR Doc. 2020–02042 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0784; FRL–10004–12]

Acetamiprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acetamiprid in or on multiple commodities that are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0784, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0784 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0784, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 19, 2019 (84 FR 16430) (FRL–9991–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8715) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of acetamiprid, (1*E*)-*N*-[(6-chloro-3-pyridinyl)methyl]-*N*′-cyano-*N*-methylethanimidamide, including its metabolites and degradates in or on the following raw agricultural commodities: Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.50 parts per million (ppm); leafy greens subgroup 4–16A at 3.0 ppm; leaf petiole vegetable subgroup 22B at 3.0 ppm; celtuce at 3.0 ppm; Florence fennel at 3.0 ppm; *Brassica,* leafy greens, subgroup 4–16B at 15 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at 1.2 ppm; kohlrabi at 1.2 ppm; fruit, stone, group 12–12 at 1.5 ppm; nut, tree, group 14–12 at 0.10 ppm; rapeseed subgroup 20A at 0.01 ppm; and cottonseed subgroup 20C at 0.70 ppm.

Additionally, the petition requested to amend 40 CFR 180.578 by removing the established tolerances for residues of acetamiprid in or on the following raw agricultural commodities: Vegetable, leafy, except *Brassica,* group 4 at 3.00 ppm; *Brassica,* leafy greens, subgroup 5B at 15 ppm; turnip, greens at 15 ppm; *Brassica,* head and stem, subgroup 5A at 1.20 ppm; fruit, stone, group 12, except plum, prune at 1.20 ppm; plum, prune, fresh at 0.20 ppm; nut, tree, group 14 at 0.10 ppm; pistachio at 0.10 ppm; canola, seed at 0.010 ppm; mustard, seed at 0.010 ppm; and cotton, undelinted seed at 0.60 ppm.

That document referenced a summary of the petition prepared by Nippon Soda Co., Ltd. c/o Nisso America Inc, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Pursuant to its authority in FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances that vary slightly from what the petitioner requested. The reasons for these changes are in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes

exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acetamiprid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with acetamiprid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In all species tested, generalized nonspecific toxicity was observed as decreases in body weight/body weight gain, food consumption, and food efficiency. Hepatocellular hypertrophy was observed in both mice and rats, and hepatocellular vacuolation in the rat, but these liver effects alone are considered adaptive and not indicative of an adverse effect. Other effects observed in the oral studies include amyloidosis of multiple organs in the mouse carcinogenicity study, tremors in high dose females in the mouse subchronic study, and micro-concretions in the kidney papilla and mammary hyperplasia in the rat chronic/carcinogenicity study.

Acetamiprid is rapidly absorbed, metabolized, and eliminated. The metabolism study in rats indicates 96–99% absorption following an oral administration. Peak blood concentrations in the rat occur within 1–2 hours at the low dose (1 mg/kg), 3–6 hours post-dosing at the high dose (50 mg/kg), and the main route of excretion is through the urine, which is nearly complete by 48 hours for all doses. Metabolites of acetamiprid account for 79–86% of the administered radioactivity, with 6-Chloronicotinic (IC–O) acid being the most abundant metabolite. There were no significant sex differences noted in the ADME profile in rats.

No effects were observed in the 21-day dermal study in the rabbit and no inhalation studies were conducted. EPA has used a refined value of 10% as a dermal absorption factor based on the rat dermal absorption study and weight of evidence.

Evidence of qualitative susceptibility was observed in the 2-generation reproductive study, with the offspring effects (significant reductions in pup weights, reduction in litter size and viability, significant delays in weaning indices and the age to attain vaginal opening and preputial separation) considered more severe than the decrease in parental body weights. Qualitative susceptibility was also seen in the developmental neurotoxicity study (DNT) with offspring effects (decreased body weight, pre-weaning survival, and startle response) occurring in the presence of marginal parental body weight decreases.

Evidence of neurotoxicity was observed in the rat acute neurotoxicity study (decrease in locomotor activity, and at higher doses: Tremors, difficulty in handling, walking on toes, dilated pupils, chewing, coldness to the touch, abnormal gaits and/or posture, decreased forelimb grip strength, and hind limb foot splay), subchronic toxicity study in mice (tremors), the DNT (decreased startle response), and comparative metabolism study (decreased alertness, reactivity, spontaneous activity, locomotor activity, rearing, muscle tone, and grip strength; as well as tremors, staggering, and depressed reflexes in the rat, mouse, and/or rabbit). Subchronic immunotoxicity studies were performed in both sexes in rats and mice, with no effects on the immune system observed up to the highest dose tested. Acetamiprid and its metabolites IC–0, IM–1–2, IM–1–4, IM–2–1, and IM–0 tested negative for mutagenicity. With no treatment-related tumors seen in rats or mice, the Agency has classified acetamiprid as not likely to be carcinogenic to humans.

Specific information on the studies received and the nature of the adverse effects caused by acetamiprid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Acetamiprid. Human Health Risk Assessment for Proposed Use on Tropical and Subtropical, Medium to Large Fruit, Smooth, Inedible Peel Subgroup 24B; Greenhouse-grown Peppers; and Crop Group Conversions and Expansions'' on pages 38–43 in docket ID number EPA–HQ–OPP–2018–0784.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for acetamiprid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACETAMIPRID FOR USE IN FFDCA HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations)	NOAEL = 10 mg/kg/ day UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 0.1 mg/ kg/day aPAD = 0.1 mg/kg/ day	Co-critical studies. *Developmental Neurotoxicity in rat.* LOAEL = 45 mg/kg/day based on decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males. *Acute Neurotoxicity Study in rat.* LOAEL = 30 mg/kg/day based on decreased locomotor activity.
Chronic dietary (All populations)	NOAEL= 7.1 mg/kg/ day UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.071 mg/kg/day cPAD = 0.071 mg/ kg/day	*Chronic Toxicity/Carcinogenicity Study in rats.* LOAEL = 17.5 mg/kg/day based on decreased body weight and body weight gains in females and hepatocellular vacuolation in males.
Incidental oral short-term (1 to 30 days).	NOAEL= 10 mg/kg/ day UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	*Developmental Neurotoxicity in rat.* LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.
Incidental oral long-term (greater than 6 months).	NOAEL= 7.1 mg/kg/ day UF_A= 10X UF_H= 10X FQPA SF = 1X	LOC for MOE = 100	*Chronic Toxicity/Carcinogenicity Study in rats.* LOAEL = 17.5 mg/kg/day based on decreased body weight and body weight gains in females and hepatocellular vacuolation in males.
Dermal short- and intermediate-term (1 to 30 days; 1 to 6 months).	Oral study NOAEL = 10 mg/kg/day UF_A = 10X UF_H = 10X DAF = 10% FQPA SF = 1X	LOC for MOE = 100	*Developmental Neurotoxicity in rat.* LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.
Dermal long-term (greater than 6 months).	Dermal (or oral) study NOAEL = 7.1 mg/kg/day UF_A = 10X UF_H = 10X DAF = 10% FQPA SF = 1X	LOC for MOE = 100	*Chronic Toxicity/Carcinogenicity Study in rats.* LOAEL = 17.5 mg/kg/day based on decreased body weight and body weight gains in females and hepatocellular vacuolation in males.
Inhalation short-term (1 to 30 days).	Oral study NOAEL = 10 mg/kg/day Inhalation toxicity assumed to be equivalent to oral toxicity UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	*Developmental Neurotoxicity in rat.* LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be carcinogenic to humans''.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). DAF = Dermal Absorption Factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acetamiprid, EPA considered exposure under the petitioned-for tolerances as well as all existing acetamiprid tolerances in 40 CFR 180.578. EPA assessed dietary exposures from acetamiprid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for acetamiprid. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and

Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute dietary exposure assessment was unrefined and used tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, the chronic dietary exposure assessment was slightly refined using PCT information for some commodities. Aside from these commodities, the analyses were based on tolerance-level residues and the assumption of 100 PCT. In addition, conservative default processing factors were used for many processed commodities, while empirical processing factors were used for a limited number of processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acetamiprid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

In the acute assessment, 100 PCT was assumed for all commodities.

In the chronic assessment, the PCT estimates used were as follows: 1% of almonds, 30% of apples, 10% of apricots, 5% of asparagus, 10% of blueberries, 5% of broccoli, 10% of cabbage, 5% of caneberries, 15% of cantaloupes, 10% of cauliflower, 40% of celery, 5% of cherries, 5% of cotton, 2.5% of cucumbers, 2.5% of grapefruit, 2.5% of grapes, 2.5% of lemons, 15% of lettuce, 1% of nectarines, 2.5% of onions, 2.5% of oranges, 5% of peaches, 35% of pears, 1% of pecans, 5% of peppers, 5% of pistachios, 2.5% plums/prunes, 2.5% of potatoes, 5% of pumpkins, 10% of spinach, 5% of squash, 30% of strawberries, 1% of sweet corn, 5% of tomatoes, 15% of walnuts, and 5% of watermelons.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which acetamiprid may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acetamiprid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acetamiprid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide in Water Calculator (PWC) and Provisional Cranberry Model, the estimated drinking water concentrations (EDWCs) of acetamiprid for acute exposures are estimated to be 88.1 parts per billion (ppb) in surface water and 211 ppb in ground water, and for chronic exposures are estimated to be 12.7 ppb in surface water and 175 ppb in ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 211 ppb was used to assess the contribution from drinking water. For the chronic dietary risk assessment, the water concentration of value 175 ppb was used to assess the contribution from drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Acetamiprid is currently registered for the following uses that could result in residential exposures: Gardens and trees, spot-on pet treatment, fly control, indoor crack/crevice, mattresses for bed bug control, and animal barns. EPA assessed residential exposure using the following assumptions: Residential handler dermal and inhalation exposure are expected to occur from the use of the registered acetamiprid formulations on ornamentals, vegetables, and fruit trees. All residential handler exposures are expected to be short-term in duration. Residential handler dermal exposure is expected to occur from the registered acetamiprid spot-on product when applied to dogs. Inhalation exposure from spot-on products is considered to be negligible. Residential handler

dermal and inhalation exposures from applications to indoor environments was not assessed based on current Agency policy because the labels for the products that are used in indoor environments require personal protective equipment (PPE). Residential handler exposure from the fly bait use was not assessed, as exposures are expected to be insignificant due to incorporation of acetamiprid in the glue.

There is the potential for post-application exposure for individuals exposed as a result of being in an environment that has been treated with acetamiprid. The quantitative risk assessment for residential post-application exposures is based on the following scenarios: Short-term dermal exposure to gardens (gardens, trees, indoor plants); short-, intermediate-, and long-term dermal and incidental oral exposure to the dog spot-on treatment; short-term dermal, inhalation, and incidental oral exposure from the indoor crack and crevice and bed bug mattress uses; and short-term dermal and incidental oral exposure from the fly bait granule use. Post-application dermal exposures from foundation, perimeter, and spot treatments outdoors, along with post-application inhalation exposure, are considered negligible and were not assessed. Acetamiprid is also registered for use as a termiticide. A quantitative assessment for potential post-application inhalation and dermal exposure resulting from a commercial termiticide application in a residential setting is not needed, as all applications are made to the soil/foundation around/underneath a structure. In this case, exposure to acetamiprid vapors is not expected. Additionally, EPA believes that inhalation and dermal exposure to acetamiprid from bed bug treatments (applied directly to the space where people are living vs. application to the foundation/structure) would be protective of the termiticide uses of acetamiprid.

The lifestages selected for each post-application scenario are based on the Agency's 2012 Residential SOPs. While not the only lifestage potentially exposed for these post-application scenarios, the lifestage that is included in the quantitative assessment, (*i.e.,* Children (1 < 2 years), children (3 < 6 years), children (6 < 12 years), adult), is health protective for the exposures and risk estimates for any other potentially exposed lifestage.

Based on the proposed uses, short- and intermediate-term exposures are expected for the proposed use profile. Since the same endpoint and POD were selected for short- and intermediate-term durations, short-term exposure and risk estimates are considered protective of potential intermediate-term exposure and risk.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found acetamiprid to share a common mechanism of toxicity with any other substances, and acetamiprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetamiprid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Evidence of qualitative susceptibility was observed in the 2-generation reproductive study, with the offspring effects (significant reductions in pup weights, reduction in litter size and viability, significant delays in weaning indices and the age to attain vaginal opening and preputial separation) considered more severe than the decrease in parental body weights. Qualitative susceptibility was also seen in the DNT with offspring effects (decreased body weight, pre-weaning survival, and startle response) occurring in the presence of marginal parental body weight decreases.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for acetamiprid is complete.

ii. Acetamiprid produced signs of neurotoxicity in the high dose groups in the acute and developmental neurotoxicity studies in rats and the subchronic toxicity study in mice. However, no neurotoxic findings were reported in the subchronic neurotoxicity study in rats. Additionally, there are clear NOAELs identified for the effects observed in the toxicity studies. The doses and endpoints selected for risk assessment are protective and account for all toxicological effects observed in the database.

iii. No quantitative or qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to acetamiprid was observed in the developmental toxicity study in either rats or rabbits. Although increased qualitative susceptibility was seen in the reproduction toxicity and the DNT study, the degree of concern for the effects is low. There are clear NOAELs for the offspring effects and regulatory doses were selected to be protective of these effects. No other residual uncertainties were identified with respect to susceptibility. The endpoints and doses selected for acetamiprid are protective of adverse effects in both offspring and adults.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues, and the chronic dietary exposure assessment was slightly refined using PCT information for some commodities. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acetamiprid in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by acetamiprid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetamiprid will occupy 89% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetamiprid from food and water will utilize 48% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

Long-term aggregate risk assessments were conducted to assess risks for adults and children and include exposure through oral (children only) and dermal routes. The oral and dermal endpoints for long-term exposure durations are the same (decreased body weight and body weight gains), and therefore exposures from these pathways are aggregated. In accordance with the FQPA, the combined exposure from these pathways is added to the background dietary exposure from the chronic dietary exposure assessment.

The Agency selected only the most conservative, or worst case, scenarios for each lifestage. For both adults and children, worst-case long-term scenarios reflect post-application exposure to pets treated with spot-on products. As the LOCs are identical for all routes of exposure, and since the POD for all routes of exposure is derived from an oral study, the long-term aggregate MOEs were calculated by adding the exposures and dividing the POD (7.1 mg/kg) by the sum of the exposures.

EPA has concluded the combined long-term food, water, and residential exposures result in aggregate MOEs of 110 for children 1 to less than 2 years old and 360 for adults. Because EPA's level of concern for acetamiprid is a MOE of 100 or below, these MOEs are not of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Acetamiprid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acetamiprid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 180 for adults, 460 for children 6 to less than 12 years old, 340 for children 3 to less than 6 years old, and 130 for children 1 to less than 2 years old. Because EPA's level of concern for acetamiprid is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified, and intermediate-term exposure is expected; however, since the same endpoint and POD were selected for short- and intermediate-term durations, short-term exposure and risk estimates are considered protective of potential intermediate-term exposure and risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, acetamiprid is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Approved tolerance enforcement methods for acetamiprid residues in crops are available, including methods using gas chromatography with electron capture detection (GC/ECD) analysis for vegetables and non-citrus fruits, high-performance liquid chromatography with ultraviolet detection (HPLC/UV) analysis for citrus fruits only, and HPLC with tandem mass spectrometric detection (LC/MS/MS) analysis for vegetables and non-citrus fruits. An approved HPLC/UV tolerance enforcement method for livestock matrices is available.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The following table summarizes the tolerances being established by this document and the corresponding Codex tolerances. The U.S. tolerance in Cottonseed subgroup 20C is harmonized with the Codex MRL in cotton seed. The U.S. tolerance in Fruit, stone, group 12–12 is harmonized with the Codex MRL in cherry, which has the highest MRL of the individual group 12–12 commodities with Codex MRLs. EPA is not able to harmonize the other tolerances with Codex MRLs because the U.S. tolerances are higher. Establishing a U.S. tolerance at a lower level to harmonize with Codex would put U.S. growers at risk of having violative residues despite legal use of the pesticide according to the label.

U.S. tolerances established in this rulemaking (40 CFR § 180.578)		Codex	
Commodity	Tolerance (ppm)	Commodity	MRL (mg/kg)
Brassica, leafy greens, subgroup 4–16B	15	Chinese broccoli	0.4
Celtuce	3		
Cottonseed subgroup 20C	0.7	Cotton seed	0.7
Florence, fennel, fresh leaves and stalk	3		
Fruit, stone, group 12–12	1.5	Cherry	1.5
		Nectarine, peach	0.7
		Dried prune	0.6
		Plum	0.2
Kohlrabi	1.2		
Leaf petiole vegetable subgroup 22B	3	Celery	1.5
Leafy greens subgroup 4–16A	3		
Nut, tree, group 14–12	0.1	Tree nuts	0.06
Rapeseed subgroup 20A	0.01		
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B.	0.5		
Vegetable, *brassica,* head and stem, group 5–16	1.2	Broccoli, cauliflower	0.4
		Cabbage	0.7

C. Response to Comments

One commenter stated that ''EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions.'' The commenter does not indicate what additional data might be necessary, why the commenter questions the sufficiency of the available data, or what about the Agency's findings is unsupported. Contrary to the commenter's position, the Agency has in fact fully evaluated all the data submitted on acetamiprid and determined that the toxicological and exposure databases on acetamiprid are complete, *i.e.,* they do not contain any data gaps at this time, and dietary and residential exposure and risk have not been underestimated. Taking all that information into consideration, EPA has concluded that the tolerances for acetamiprid are safe.

The other comments submitted raised more general concerns about the use of pesticides and questioned a separate tolerance exemption. Neither raise issues relevant to this tolerance rulemaking.

D. Revisions to Petitioned-For Tolerances

EPA is establishing some of the tolerances at different levels than petitioned for in order to be consistent with the Agency's rounding class practice, which is based on the rounding procedures of the Organisation for Economic Co-operation and Development. EPA corrected the commodity definition for Fennel, Florence, fresh leaves and stalk. Finally, EPA is removing the existing tolerance in Plum, prune, dried, because it is no longer needed with the establishment of the tolerance in Fruit, stone, group 12–12; although not requested in the original petition, the need to remove this tolerance was confirmed in subsequent correspondence with the petitioner.

V. Conclusion

Therefore, tolerances are established for residues of acetamiprid in or on *Brassica,* leafy greens, subgroup 4–16B at 15 ppm; Celtuce at 3 ppm; Cottonseed subgroup 20C at 0.7 ppm; Fennel, Florence, fresh leaves and stalk at 3 ppm; Fruit, stone, group 12–12 at 1.5 ppm; Kohlrabi at 1.2 ppm; Leaf petiole vegetable subgroup 22B at 3 ppm; Leafy greens subgroup 4–16A at 3 ppm; Nut, tree, group 14–12 at 0.1 ppm; Rapeseed subgroup 20A at 0.01 ppm; Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.5 ppm; and Vegetable, *brassica,* head and stem, group 5–16 at 1.2 ppm.

Additionally, the following existing tolerances are removed as unnecessary due to the establishment of the above tolerances: *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; Canola, seed; Cotton, undelinted seed; Fruit, stone, group 12, except plum, prune; Mustard, seed; Nut, tree, group 14; Pistachio; Plum, prune, dried; Plum, prune, fresh; Turnip greens; and Vegetable, leafy, except *brassica,* group 4.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not

have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.578, amend the table in paragraph (a)(1) as follows:
■ a. Remove the entries for ''*Brassica,* head and stem, subgroup 5A'' and ''Brassica, leafy greens, subgroup 5B'';
■ b. Add alphabetically the entry ''*Brassica,* leafy greens, subgroup 4–16B'';
■ c. Remove the entry for ''Canola, seed'';
■ d. Add alphabetically the entries ''Celtuce'' and ''Cottonseed subgroup 20C'';
■ e. Remove the entry for ''Cotton, undelinted seed'';
■ f. Add alphabetically the entries ''Fennel, florence, fresh leaves and stalk'' and ''Fruit, stone, group 12–12'';
■ g. Remove the entry for ''Fruit, stone, group 12, except plum, prune'';
■ h. Add alphabetically the entries ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; and ''Leafy greens subgroup 4–16A'';
■ i. Remove the entries for ''Mustard, seed'' and ''Nut, tree, group 14'';
■ j. Add alphabetically the entry ''Nut, tree, group 14–12'';
■ k. Remove the entries for ''Pistachio''; ''Plum, prune, dried''; and ''Plum, prune, fresh'';
■ l. Add alphabetically the entries ''Rapeseed subgroup 20A'' and ''Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B'';
■ m. Remove the entry for ''Turnip greens'';
■ n. Add alphabetically the entry ''Vegetable, *brassica,* head and stem, group 5–16''; and
■ o. Remove the entry for ''Vegetable, leafy, except brassica, group 4''.

The revisions and additions read as follows:

§ 180.578 Acetamiprid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Brassica, leafy greens, subgroup 4–16B	15
* * * * *	
Celtuce	3
* * * * *	
Cottonseed subgroup 20C	0.7
Fennel, florence, fresh leaves and stalk	3
* * * * *	
Fruit, stone, group 12–12	1.5
* * * * *	
Kohlrabi	1.2
Leaf petiole vegetable subgroup 22B	3
Leafy greens subgroup 4–16A	3
Nut, tree, group 14–12	0.1
* * * * *	
Rapeseed subgroup 20A	0.01
* * * * *	
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B	0.5
Vegetable, *brassica,* head and stem, group 5–16	1.2
* * * * *	

* * * * *

[FR Doc. 2020–02038 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0129; FRL–10002–96]

Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate]; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] when used as an inert ingredient (stabilizer) limited to 1% (by weight) in pesticide formulations applied to growing crops, and raw agricultural commodities after harvest. Syngenta Crop Protection, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] when used in accordance with the terms of this exemption.

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0129, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0129 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0129, 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 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.*

II. Petition for Exemption

In the **Federal Register** of June 7, 2019 (84 FR 26630) (FRL–9993–93), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11245) by Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested the establishment of an exemption from the requirement of a tolerance for residues of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] (CAS Reg. No. 36443–68–2) when used as an inert ingredient (stabilizer) at no more than 1% by weight in pesticide formulations applied to or on raw agricultural commodities and growing crops under 40 CFR 180.910. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the petitioner, which is available in the docket at *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that

occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by ethylenebis(oxyethylene) bi[3-(5-tert-butyl-4-hydroxy-m-tolyl)propionate] as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Acute toxicity is low for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate]. In rats, the lethal dose (LD_{50}) for acute oral and dermal toxicity is greater than 7,000 and 2,000 milligrams/kilogram/day (mg/kg/day), respectively. It is not a dermal or eye irritant, or a sensitizer.

Subchronic exposure to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] in rats resulted in increased liver weights and alanine aminotransferase (ALAT) activity at 112 mg/kg/day and minimal thyroid follicular hypertrophy at doses greater than 250 mg/kg/day. The NOAELs were 37.4 and 50 mg/kg/day, respectively. In dogs, no toxicity is seen at doses up to 300 mg/kg/day, the highest dose tested.

No fetal susceptibility was observed in the developmental studies. Maternal toxicity (reduced bodyweight gain and food consumption) occurs at 100 mg/kg/day while developmental toxicity (reduced bodyweight and delayed skeletal maturation) occurs at 300 mg/kg/day. The maternal NOAEL was not established, and the developmental NOAEL is 100 mg/kg/day.

Qualitative fetal susceptibility was observed in the 2-generation reproduction toxicity study. Pup mortality and reduced body weight were observed in offsprings at 900 parts per million (ppm) (~54 to 62 mg/kg/day). In parents, decreased bodyweight gain and food consumption occurred at the same dose. However, the established chronic reference dose (cRfD) of 0.15 mg/kg/day will be protective of offspring effects. The parental and offspring NOAELs are 300 ppm (~21 to 26 mg/kg/day). Reproduction toxicity was not observed up to 1,800 ppm (~108 to 124 mg/kg/day), the highest dose tested.

The combined chronic/carcinogenicity study showed focal cystic dilatation of the liver sinusoids and thyroid follicle hyperplasia at doses greater than 50 mg/kg/day. The NOAEL is 15 mg/kg/day. There was a treatment-related increase in thyroid tumor incidence at 100 mg/kg/day in both sexes. However, it is well established that alterations in rat thyroid hormones can alter the thyroid gland resulting in tumor formation. Based on the mechanistic studies, the postulated mode of action is that ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] disrupts the rat thyroid-pituitary axis primarily through interference of peripheral T4 metabolism. The relevancy of thyroid tumors to man is limited, as rats are very sensitive to small changes in plasma T4 levels while humans are insensitive due to a number of physiological differences including the amount of thyroxin-binding globulin present, half-life of T4 between different species, and difference in responsiveness to thyrotropin releasing hormone. Therefore, the thyroid gland tumors observed in this study are not considered relevant to humans.

The Ames test, mammalian cell gene mutation and micronucleus assays were conducted with ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate]. These studies were negative; therefore, it is not expected to be mutagenic.

Neurotoxicity and immunotoxicity studies are not available for review. However, evidence of neurotoxicity and immunotoxicity is not observed in the submitted studies.

In a metabolism study in rats, ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] administered orally is rapidly absorbed and metabolized. It is primarily excreted in the urine and feces. Metabolites were not identified in this study; however, it is a phenolic antioxidant and based on the classical metabolic pathway for this class of chemicals, it would be subject to glucuronide or sulphate conjugation, hydroxylation of the phenyl ring, and side chain oxidation. The resulting metabolites are expected to be 3-(3-tert-butyl-4-hydroxy-5-methyl-phenyl)propanoic acid and 2-[2-(2-hydroxyethoxy)ethoxy]ethanol (triethylene glycol).

Dermal absorption rate was calculated to be 0.53% in a dermal absorption study in miniature pigs.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The chronic/carcinogenicity toxicity study in rats was selected for all exposure scenarios. The NOAEL is 15 mg/kg/day, and the LOAEL is 50 mg/kg/day based on focal cystic dilatation of the liver sinusoids and thyroid follicle hyperplasia. This represents the lowest NOAEL in the database in the most sensitive species. However, in the developmental study, the maternal

NOAEL is not established and the maternal LOAEL is 100 mg/kg/day based on decreased bodyweight gain and food consumption. Also, decreased bodyweight gain and food consumption are observed in parental animals at 900 ppm (~ 54 to 62 mg/kg/day) in the two-generation reproduction toxicity study, the NOAEL is 300 ppm (~ 21 to 26 mg/kg/day). Since, maternal and parental effects are the same in both studies, a parental NOAEL is established and treatment duration is longer in the two-generation reproduction toxicity study, it is considered adequate to address the lack of a maternal NOAEL in the developmental study. The standard inter- and intra-species uncertainty factors of 10x are applied; as discussed below in Unit IV.D., the Agency applied a 1X Food Quality Protection Act Safety Factor (FQPA) SF. The dermal absorption factor of 0.53% is applied based on a dermal absorption study in miniature pigs. The default factor of 100% is applied for the inhalation absorption rate.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate], EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] in food as follows:

No adverse effects attributable to a single exposure of endpoint was identified for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate]; therefore, an acute dietary exposure assessment was not conducted.

In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM–FCIDTM, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate]. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient.

Although EPA is assessing ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate at 1.75% (to account for the requested 1% (by weight) limitation in pesticide formulations and up to 0.75% limitation for the FDA approved uses as an antioxidant and/or stabilizer for polymers used for food contact applications, the Agency believes the assumptions used to estimate dietary exposures lead to an very conservative assessment of dietary risk due to other conservative assumptions.

First, EPA assumes that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Also, EPA's assumes that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate], a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl)propionate] is registered for use as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, specifically lawn, turf, and garden use, and in indoor cleaning products. A conservative residential exposure and risk assessment was completed for pesticide products containing ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] as inert ingredients. The Agency assessed ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] in pesticide formulations (outdoor scenarios) and in disinfectant-type uses (indoor scenarios) at no more than 1% in the final formulation. The Agency's assessment of adult residential exposure combines high end dermal and inhalation handler exposure from indoor hard surface, aerosol spray with a high-end post application dermal exposure from contact with treated lawns. The Agency's assessment of children's residential exposure includes total post-application exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] to share a common mechanism of toxicity with any other substances, and ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X for all exposure scenarios for the following reasons. The toxicity database for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] contains subchronic, developmental, reproduction, chronic/carcinogenicity, and mutagenicity studies. There is no indication of immunotoxicity or neurotoxicity in the available studies; therefore, there is no need to require an immunotoxicity or neurotoxicity study. Fetal susceptibility is not observed in developmental toxicity studies in the rat. Developmental toxicity (reduced fetal body weight and delayed skeletal maturation) occurred at a higher dose, 300 mg/kg/day, than maternal toxicity (reduced body weight gain), which occurred at 100 mg/kg/day. Qualitative fetal susceptibility toxicity is observed 2-generation reproduction toxicity study. Pup mortality and reduced pup body weight is observed at 900 ppm (~54–62 mg/kg/day), while parental toxicity is manifested as decreased bodyweight gain and food consumption at the same dose. However, the established cRfD of 0.15 mg/kg/day will be protective of any offspring effects seen at 900 ppm (~54–62 mg/kg/day). Therefore, there is no concern for fetal susceptibility. Reproduction toxicity is not observed up to 1,800 ppm (87–221 mg/kg/day), the highest dose tested. Based on the adequacy of the toxicity database, the conservative nature of the exposure assessment, and the lack of concern for prenatal and postnatal sensitivity, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] from food and water will utilize 18.4% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate].

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,235 for adult males and females. Adult residential exposure combines high-end dermal and inhalation handler exposure from indoor hard surface, aerosol spray with a high-end post-application dermal exposure from contact with treated lawns. The combined short-term aggregated food, water, and residential pesticide exposures result in an aggregate MOE of 511 for children. Children's residential exposure includes total exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures). Because EPA's level of concern for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate].

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 1,729 for adult males and females. Adult residential exposure includes high-end post-

application dermal exposure from contact with treated lawns. The combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 413 for children. Children's residential exposure includes total exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures). Because EPA's level of concern for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is a MOE of 100 or below, these MOEs are not of concern.]

5. *Aggregate cancer risk for U.S. population.* In a chronic/carcinogenicity study, thyroid gland tumors are observed at 100 mg/kg/day in rats. However, based on the postulated mode of action for these tumors, they are not considered relevant to humans. Also, ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is not mutagenic. Therefore, ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] residues.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] in or on any food commodities. EPA is establishing limitations on the amount of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] that may be used in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for use on growing crops and raw agricultural commodities after harvest for sale or distribution that exceeds 1% by weight of ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] unless additional data are submitted.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] (CAS Reg No. 36443–68–2) when used as an inert ingredient (stabilizer), limited to 1% (by weight) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2020.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, add alphabetically the inert ingredient ''Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] (CAS Reg. No. 36443–68–2)'' to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients					Limits	Uses
*	*	*	*	*	*	*
Ethylenebis(oxyethylene) bis[3-(5-tert-butyl-4-hydroxy-m-tolyl) propionate] (CAS Reg. No. 36443–68–2).					1% by weight	Stabilizer.
*	*	*	*	*	*	*

[FR Doc. 2020–02043 Filed 2–13–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0718 and EPA–HQ–OPP–2019–0076; FRL–10002–06]

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole in or on vegetable, root, subgroup 1A, except ginseng; vegetable, leaves of root and tuber, group 2; and tea, dried. In addition, this regulation amends the tolerances for residues of difenoconazole in or ginseng; cattle, liver; goat, liver; horse, liver; and sheep, liver. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0718 and EPA–HQ–OPP–2019–0076, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0718 and EPA–HQ–OPP–2019–0076 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0718 and EPA–HQ–OPP–2019–0076, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 7, 2019 (84 FR 26630) (FRL–9993–93) and in the **Federal Register** of May 9, 2019 (84 FR 20320) (FRL–9992–36), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 8F8695 and 8E8728, respectively) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. Pesticide

petition 8F8695 requested that 40 CFR 180.475 be amended by establishing tolerances for residues of the fungicide difenoconazole in or on root vegetable crop subgroup 1A at 0.60 parts per million (ppm) and leaves of root and tuber vegetables crop group 2 at 8.0 ppm; PP 8E8728 requested the establishment of a tolerance for residues of difenoconazole in or on tea at 30 ppm. Those documents referenced summaries of the petitions prepared by Syngenta Crop Protection, LLC, the registrant, which are available in their respective dockets, *http://www.regulations.gov.* One comment was received on EPA's May 9, 2019 notice of filing in docket number EPA–HQ–OPP–2019–0076. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what the petitioner requested as permitted by FFDCA section 408(d)(4)(A)(i). These differences are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for difenoconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with difenoconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Subchronic and chronic toxicity studies with difenoconazole in mice and rats showed decreased body weights and effects on the liver (*e.g.,* hepatocellular hypertrophy, liver necrosis, fatty changes in the liver). No systemic toxicity was observed at the limit dose in a rat dermal toxicity study. Difenoconazole exhibits low acute toxicity by the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant and is not a sensitizer.

Acute and subchronic neurotoxicity studies showed evidence of mild neurotoxic effects. However, the selected endpoints of toxicity for risk assessment are protective of any potential neurotoxicity.

The available toxicity studies indicated no increased susceptibility of rats or rabbits from in utero or postnatal exposure to difenoconazole. In prenatal developmental toxicity studies in rats and rabbits and in the 2-generation reproduction study in rats, fetal and offspring toxicity, when observed, occurred at equivalent or higher doses than in the maternal and parental animals. In a rat developmental toxicity study, developmental effects were observed at doses higher than those which caused maternal toxicity. Developmental effects in the rat included increased incidence of ossification of the thoracic vertebrae and thyroid, decreased number of sternal centers of ossification, increased number of ribs and thoracic vertebrae, and decreased number of lumbar vertebrae. In the rabbit study, developmental effects (increases in post-implantation loss and resorptions and decreases in fetal body weight) were also seen at maternally toxic (decreased body weight gain and food consumption) doses. Since the developmental effects are more severe than the maternal effects, qualitative susceptibility is indicated in the rabbit developmental study; however, the selected POD is protective of this effect. In the 2-generation reproduction study in rats, toxicity to the fetuses and offspring, when observed, occurred at equivalent or higher doses than in the maternal and parental animals.

Although there is some evidence that difenoconazole affects antibody levels at doses that cause systemic toxicity, there are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by difenoconazole. Difenoconazole is not mutagenic or genotoxic, and no evidence of carcinogenicity was seen in rats. Evidence for carcinogenicity was seen in mice as induction of liver tumors at doses which were considered to be excessively high for carcinogenicity testing. Difenoconazole has been classified as ''Suggestive Evidence of Carcinogenic Potential'' based on liver tumors observed in mice. EPA has concluded that the chronic point of departure (POD) for assessing chronic risk will be protective of any cancer effects for the following reasons: (1) Tumors were seen in only one species; (2) carcinoma tumors were observed only at the two highest doses in the mouse carcinogenicity study; (3) benign tumors and necrosis were observed at the mid-dose; (4) the absence of tumors at the study's lower doses; (5) the absence of genotoxic or mutagenic effects. The cRfD is well below the no-observed- adverse-effect-level (NOAEL) of the mouse carcinogenicity study, at which no effects on the biological endpoints relevant to tumor development (*i.e.,* hepatocellular hypertrophy, liver necrosis, fatty changes in the liver and bile stasis) were seen. As a result, EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to difenoconazole and a separate quantitative cancer exposure assessment is unnecessary.

Specific information on the studies received and the nature of the adverse effects caused by difenoconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Difenoconazole. Human Health Risk Assessment for Proposed New Foliar Uses on All Members of Vegetable, Root, Subgroup 1A and Vegetable, Leaves of Root and Tuber, Group 2 and Establishment of a Tolerance with No U.S. Registration in/on Imported Tea'' in docket ID number EPA–HQ–OPP–2018–0718.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For

hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the NOAEL and the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for difenoconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIFENOCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	NOAEL = 25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25 mg/kg/day	Acute Neurotoxicity Study in Rats. LOAEL = 200 mg/kg/day in males based on reduced fore-limb grip strength in males on Day 1 and increased motor activity on Day 1.
Chronic dietary (All populations)	NOAEL= 0.96 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.01 mg/kg/day. cPAD = 0.01 mg/kg/day.	Combined Chronic Toxicity/Carcinogenicity (rat, dietary). LOAEL = 24.1/32.8 mg/kg/day (male/female) based on cumulative decreases in body-weight gains.
Oral short-term (1 to 30 days) ..	NOAEL= 1.25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = <100.	Reproduction and Fertility Study (rat dietary). Parental/Offspring LOAEL = 12.5 mg/kg/day based on decreased pup weight in in males on Day 21 and reduction in body weight gain of F_0 females prior to mating, gestation and lactation.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 1.25 mg/kg/day (dermal absorption factor = 6%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Reproduction and Fertility Study (rat, dietary). Parental/Offspring LOAEL = 12.5 mg/kg/day based on decreased pup weight in males on Day 21 and reduction in body weight gain of F_0 females prior to mating, gestation and lactation.
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months). * Inhalation and oral absorption assumed equivalent.	NOAEL= 1.25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Reproduction and Fertility Study (rat, dietary). Parental/Offspring LOAEL = 12.5 mg/kg/day based on decreased pup weight in males on Day 21 and reduction in body weight gain of F_0 females prior to mating, gestation and lactation.
Cancer (Oral, dermal, inhalation).	Difenoconazole is classified ''Suggestive Evidence of Carcinogenic Potential''. Quantification of cancer risk is not required. The RfD would address the concern for chronic toxicity, including carcinogenicity, likely to result from exposure to difenoconazole.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to difenoconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing difenoconazole tolerances in 40 CFR 180.475. EPA assessed dietary exposures from difenoconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for difenoconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA) 2003 to 2008. As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT), and available empirical or default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA 2003 to 2008. As to residue levels in food, EPA used tolerance-level residues for some commodities, average field trial residues and USDA Pesticide Data Program monitoring samples for the remaining commodities, available

empirical or default processing factors, and average PCT assumptions for some commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk due to difenoconazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: Almond 15%, apples 25%, apricot 10%, artichoke 15%, blueberry 10%, broccoli 2.5%, cabbage 10%, cantaloupe 2.5%, carrot 2.5%, cauliflower 2.5%, cherry 2.5%, cucumbers 5%, garlic 10%, grapefruit 10%, grape (raisin) 10%, grape (table) 25%, grape (wine) 15%, hazelnut 2.5%, lemon 5%, onions 10%, orange 5%, peach 10%, pear 10%, pecan 5%, peppers 15%, pistachio 10%, plum/prune 10%, potato 20%, pumpkin 5%, soybean 2.5%, squash 10%, strawberry 2.5%, sugar beets 20%, sweet corn 5%, tangerine 5%, tomato 35%, walnut 5%, watermelon 15%, and wheat 15%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figures for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which difenoconazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The drinking water assessment was performed using a total toxic residue method, which considers both parent difenoconazole and its major metabolite, CGA 205375, or total toxic residues (TTR) from difenoconazole uses, in surface and groundwater. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for difenoconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of difenoconazole plus CGA 205375. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier II Pesticide in Water Calculator (PWC v1.52) model and Tier 1 Rice Model, the estimated drinking water concentrations (EDWCs) of TTR of difenoconazole for acute exposures are estimated to be 33.4 parts per billion (ppb) for surface water and 2.0 ppb for ground water. Chronic exposure EDWCs for non-cancer assessments are estimated to be 27.4 ppb for surface water and 0.60 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 33.4 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 27.4 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Difenoconazole is currently registered for the following uses that could result in residential exposures: Treatment of ornamental plants in commercial and residential landscapes and interior plantscapes as well as turf applications to golf courses. EPA assessed residential exposure using the following assumptions: For residential handlers, adult short-term dermal and inhalation exposure is expected from mixing, loading, and applying difenoconazole on ornamentals (gardens and trees). For residential post-application exposures, short-term dermal exposure is expected for both adults and children (6 < 11 years old and 11 < 16 years old) from post-application activities in treated residential landscapes and on golf courses. There are no residential uses

for difenoconazole that would result in incidental oral exposure to children.

The scenarios used in the aggregate assessment were those that resulted in the highest exposures. The highest exposures consist of the short-term dermal exposure to adults from post-application activities in treated gardens and short-term dermal exposure to children 6 to 11 years old from post-application activities in treated gardens. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to difenoconazole and any other substances, although EPA has previously concluded that there are no conclusive data that difenoconazole shares a common mechanism of toxicity with other conazole pesticides. Although the conazole fungicides (triazoles) produce 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid), 1,2,4 triazole and its acid-conjugated metabolites do not contribute to the toxicity of the parent conazole fungicides (triazoles). A separate aggregate risk assessment was conducted for triazole and the conjugated triazole metabolites (*Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address New Section 3 Registrations For Use of Difenoconazole and Mefentrifluconazole;* DP451447, dated May 15, 2019) and it can be found at *https://www.regulations.gov* at docket ID number EPA–HQ–OPP–2018–0002. These new uses of difenoconazole considered with existing uses of triazole compounds do not result in a risk of concern for 1,2,4-trizaole and its metabolites. Difenoconazole does not appear to produce any other toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that difenoconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The available toxicity studies indicated no increased quantitative susceptibility of rats or rabbits from *in utero* or postnatal exposure to difenoconazole. In prenatal developmental toxicity studies in rats and rabbits and in the 2-generation reproduction study in rats, fetal/offspring toxicity, when observed, occurred at equivalent or higher doses than in the maternal/parental animals. In rabbits there was qualitative susceptibility since the developmental effects were more severe than the maternal effects seen at the same dose; however, the selected POD is protective of this effect. In a rat developmental toxicity study, developmental effects were observed at doses higher than those which caused maternal toxicity. Developmental effects in the rat included increased incidence of ossification of the thoracic vertebrae and hyoid, decreased number of sternal centers of ossification, increased number of ribs and thoracic vertebrae, and decreased number of lumbar vertebrae. In the rabbit study, developmental effects (increases in post-implantation loss and resorptions and decreases in fetal body weight) were also seen at maternally toxic (decreased body weight gain and food consumption) doses. In the two-generation reproduction study in rats, toxicity to the fetuses/offspring (reduction in the body weight of F1 male pups), when observed, occurred at equivalent or higher doses than in the maternal/parental animals (reductions in body weight gain).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for difenoconazole is sufficient for a full hazard evaluation and is considered adequate to evaluate risks to infants and children.

ii. There are no clear signs indication that difenoconazole is a neurotoxic chemical following acute, subchronic, or chronic dosing in multiple species in the difenoconazole database. The effects observed in acute and subchronic neurotoxicity studies are considered non-adverse as they were transient in nature and were only observed in one sex (males as reduced fore-limb grip strength with no histologic findings) and the selected endpoints of toxicity for risk assessment are protective of any potential neurotoxicity. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that difenoconazole results in increased quantitative susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. However, in the developmental toxicity study in rabbits, developmental effects (increases in post-implantation loss and resorptions and decreases in fetal body weight) were also seen at maternally toxic doses (decreased body weight gain and food consumption). Because these effects are more severe, qualitative susceptibility is evident in the rabbit. The PODs selected to assess dietary exposures are protective of these effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance-level residues and 100% CT for the acute assessment while the chronic assessment used USDA Pesticide Data Program (PDP) monitoring data, average field trial residues for some commodities, tolerance level residues for remaining commodities, and average percent crop treated for some commodities. These assumptions will not underestimate dietary exposure to difenoconazole. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to difenoconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These

assessments will not underestimate the exposure and risks posed by difenoconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 52% of the aPAD for all infants <1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 53% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of difenoconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus average exposure levels to food and water (considered to be a background exposure level). Difenoconazole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to difenoconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 180 for adults and 240 for children 6 to <11 years old. Because EPA's level of concern for difenoconazole is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, difenoconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for difenoconazole.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has determined that use of the chronic reference dose will be protective of the potential for cancer risk. Because the chronic exposure does not exceed the Agency's level of concern, EPA concludes that exposure to difenoconazole would not pose an unacceptable cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate tolerance enforcement method, gas chromatography with nitrogen-phosphorus detection (GC/NPD) method AG–575B, is available for the determination of residues of difenoconazole in/on plant commodities. An adequate enforcement method, gas chromatography with mass spectrometry detection (GC/MSD) method AG–676A, is also available for the determination of residues of difenoconazole *per se* in/on canola and barley commodities. A confirmatory method, GC/MSD method AG–676, is also available.

An adequate tolerance enforcement method, Method REM 147.07b, is available for livestock commodities. The method determines residues of difenoconazole and CGA–205375 in livestock commodities by liquid chromatography with tandem mass spectrometry detection (LC–MS/MS). Adequate confirmatory methods, Method AG–544A and Method REM 147.06, are available for the determination of residues of difenoconazole and CGA–205375, respectively, in livestock commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has established MRLs for difenoconazole in or on carrot at 0.2 ppm; edible offal at 1.5 ppm; sugar beet at 0.2 ppm; ginseng at 0.08 ppm; ginseng, dried at 0.8 ppm; and ginseng, extracts at 0.6 ppm. Several of these MRLs are different than the tolerances established for difenoconazole in the United States. The U.S. tolerance in/on crop subgroup 1A, except ginseng (0.6 ppm), being established in this rulemaking, is based on radish root data and cannot be harmonized with the Codex MRL for carrot, which is lower than the subgroup tolerance; doing so could result in exceedances of the tolerances even when growers followed label directions. The U.S. tolerance for ginseng has been harmonized with the Codex MRL for ginseng, dried and is inclusive of the lower tolerances for ginseng and ginseng, extracts. The tolerances for cattle, liver; goat, liver; horse, liver; and sheep, liver cannot be harmonized with Codex MRLs due to different dietary burdens.

C. Response to Comments

EPA received one comment opposing pesticide residues in food, although no substantive information was provided for EPA to take into consideration in its safety assessment. Although the commenter generally expressed concern about the potential for exposure to difenoconazole to be carcinogenic, EPA has evaluated the available data on

carcinogenicity and exposure and determined that aggregate exposure to difenoconazole will not cause a cancer risk. The FFDCA authorizes EPA to establish tolerances that permit certain levels of pesticide residues in or on food when the Agency can determine that such residues are safe. EPA has made that determination for the tolerances subject to this action; the commenter provided no information relevant to that conclusion.

D. Revisions to Petitioned-For Tolerances

The terms ''tea;'' ''root vegetable crop subgroup 1A;'' ''leaves of root and tuber vegetables crop group 2'' requested in the petition are being replaced with ''tea, dried;'' ''vegetable, root, subgroup 1A, except ginseng;'' and ''vegetable, leaves of root and tuber, group 2'', respectively, to reflect the correct commodity definitions. The EPA has modified the tolerance on tea, dried from the requested 30 ppm to 15 ppm to harmonize with Japan's draft MRL. The ginseng tolerance has been removed from the vegetable, root, subgroup 1A and set at 0.8 to harmonize with the highest Codex MRL. Tolerances for cattle, liver; goat, liver; horse, liver; and sheep, liver have been increased from 0.40 to 0.7 ppm based on the re-calculated dairy cattle dietary burden and the available feeding study data for residues of difenoconazole and its metabolite CGA–205375. Trailing zeroes have been removed from tolerances in accordance with current Agency practices.

E. International Trade Considerations

In this final rule, EPA is reducing the existing tolerance for ginseng from 1.0 ppm to 0.8 ppm in order to harmonize with the Codex MRL. Available residue data demonstrates that the new tolerance is sufficient to cover residues on ginseng.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to notify the WTO of this revision in order to satisfy its obligation. In addition, the SPS Agreement requires that Members provide a ''reasonable interval'' between the publication of a regulation subject to the Agreement and its entry into force to allow time for producers in exporting Member countries to adapt to the new requirement. At this time, EPA is establishing an expiration date for the existing ginseng tolerance to allow that tolerance to remain in effect for a period of six months after the effective date of this final rule, in order to address this requirement. After the six month period expires, residues of difenoconazole on ginseng cannot exceed the new tolerance of 0.8 ppm.

This reduction in tolerance levels is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. The new tolerance levels are supported by available residue data.

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole, difenoconazole, in or on vegetable, root, subgroup 1A, except ginseng at 0.6ppm; vegetable, leaves of root and tuber, group 2 at 8 ppm; and tea, dried at 15 ppm. Tolerances are amended for ginseng from 1.0 to 0.8 ppm; and cattle, liver; goat, liver; horse, liver; and sheep, liver from 0.40 ppm to 0.7 ppm. In addition, the Agency is removing the existing tolerances for beet, sugar; and carrot as they are unnecessary upon the establishment of the tolerance for vegetable, root, subgroup 1A, except ginseng. Finally, the Agency is amending the existing tolerance for ginseng by adding an expiration date.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 19, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.475:

■ a. In the table in paragraph (a)(1):

■ i. Remove the entries ''Beet, sugar'' and ''Carrot''.

■ ii. Revise the entry for ''Ginseng''.

■ iii. Add a second entry for ''Ginseng'' after the existing entry for ''Ginseng'' and add alphabetically the entries ''Tea, dried''; ''Vegetable, leaves of root and tuber, group 2''; and ''Vegetable, root, subgroup 1A, except ginseng''.

■ iv. Add footnotes 1 and 2 to the end of the table.

■ b. Revise the entries ''Cattle, liver''; ''Goat, liver''; ''Horse, liver''; and ''Sheep, liver'' in the table in paragraph (a)(2).

The additions and revisions read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Ginseng[2]	1.0
Ginseng	0.8
* * * * *	
Tea, dried[1]	15
* * * * *	
Vegetable, leaves of root and tuber, group 2	8
Vegetable, root, subgroup 1A, except ginseng	0.6
* * * * *	

[1] There are no U.S. registrations for these commodities.

[2] This tolerance expires on August 14, 2020.

(2) * * *

Commodity	Parts per million
* * * * *	
Cattle, liver	0.7
* * * * *	
Goat, liver	0.7
* * * * *	
Horse, liver	0.7
* * * * *	
Sheep, liver	0.7
* * * * *	

* * * * *

[FR Doc. 2020–02241 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0694; FRL–10004–23]

Cyantraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of cyantraniliprole in or on strawberry. The Interregional Research Project No. 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0694, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0694 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be

disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0694, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be 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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8739) by The Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.672 be amended by establishing a tolerance for residues of the insecticide, cyantraniliprole, 3-bromo-1-(3-chloro-2-pyridinyl)-N-[4-cyano-2-methyl-6-[(methylamino)carbonyl]phenyl]-1H-pyrazole-5-carboxamide, in or on strawberry at 1.5 parts per million (ppm). Upon the establishment of the above tolerance, IR–4 proposed to remove the existing tolerance in 40 CFR 180.672 in or on strawberry at 1.0 ppm. That document referenced a summary of the petition prepared by DuPont Crop Protection, the registrant, which is available in the docket, *https://www.regulations.gov.* No comments were received on the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyantraniliprole including exposure resulting from the tolerance established by this action. EPA's assessment of exposures and risks associated with cyantraniliprole follows.

A. Toxicological Profile and Points of Departure/Levels of Concern

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A summary of the toxicological profile for cyantraniliprole is discussed in Unit III.A. of the final rule published in the **Federal Register** of November 13, 2018 (84 FR 56262) (FRL–9985–32). A summary of the toxicological endpoints for cyantraniliprole used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of February 5, 2014 (79 FR 6826) (FRL–9388–7).

Specific information on the studies received and the nature of the adverse effects caused by cyantraniliprole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Cyantraniliprole. Human Health Risk Assessment for Proposed Uses and Tolerance Requests on Coffee; Caneberry Subgroup 13–07A; Low Growing Berry Subgroup 13–07H, Except Strawberry, Lowbush Blueberry and Lingonberry; *Brassica* Leafy Greens Subgroup 4–16A; Leafy Greens Subgroup 4–16B; *Brassica* Head and Stem Vegetable Group 5–16; Leaf Petiole Vegetable Subgroup 22B; Celtuce; Florence Fennel; Kohlrabi; Rice; Soybean; and Aspirated Grain Fractions'' on pages 36–45 in docket ID number EPA–HQ–OPP–2017–0694.

B. Exposure Assessment

A summary of EPA's consideration of dietary exposure under the petitioned-for tolerance as well as existing cyantraniliprole tolerances, as well as non-dietary exposure and exposure to substances with a common mechanism of toxicity is discussed in Unit III.C. of the November 13, 2018 final rule published in the **Federal Register**.

C. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the findings summarized in Unit III.D. of the November 13, 2018 final rule.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking

water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, cyantraniliprole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions cited in this unit for chronic exposure, EPA has concluded that chronic exposure to cyantraniliprole from food and water will utilize 99% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation cited in Unit III.B., regarding residential use patterns, chronic residential exposure to residues of cyantraniliprole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyantraniliprole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyantraniliprole.

Using the exposure assumptions cited in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 149 for children 1 to 2 years old. For adults, the oral and inhalation routes of exposure are not appropriate to be aggregated since the endpoints of concern are not common. Because EPA's level of concern for cyantraniliprole is an MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyantraniliprole is currently registered for uses that could result in intermediate-term residential exposure, however, the short-term aggregate risk estimate described above is protective of potential intermediate-term exposures and risks in children.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, cyantraniliprole is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyantraniliprole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectroscopy (LC/MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established an MRL for cyantraniliprole residues in or on strawberry.

V. Conclusion

Therefore, the existing tolerance for residues of cyantraniliprole, 3-bromo-1-(3-chloro-2-pyridinyl)-N-[4-cyano-2-methyl-6-[((methylamino) carbonyl]phenyl]-1H-pyrazole-5-carboxamide, in or on strawberry is modified from 1.0 ppm to 1.5 ppm.

VI. Statutory and Executive Order Reviews

This action modifies a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.672, revise the entry for ''Strawberry'' in the table in paragraph (a) to read as follows:

§ 180.672 Cyantraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Strawberry	1.5
* * * * *	

* * * * *

[FR Doc. 2020–02238 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0785; FRL–10003–04]

Prohexadione Calcium; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances with a regional registration for residues of prohexadione calcium in or on alfalfa forage, alfalfa hay, and field corn forage, grain, and stover. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0785, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0785 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0785, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 19, 2019 (84 FR 16430) (FRL–9991–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 8E8716) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.547 be amended by establishing tolerances with regional registrations in Wisconsin and Pennsylvania for residues of prohexadione calcium (calcium 3-oxido-5-oxo-4-propionylcyclohex-3-enecarboxylate) in or on the raw agricultural commodities corn, field, forage at 0.10 parts per million (ppm); corn, field, grain at 0.10 ppm; corn, field, stover at 0.10 ppm; alfalfa, forage at 0.10 ppm; and alfalfa, hay at 0.10 ppm. That document referenced a summary of the petition prepared by Fine Agrochemicals, Ltd., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA is establishing the requested tolerances, although the tolerance values have been adjusted to be consistent with Organization for Economic Cooperation and Development (OECD) Rounding Class Practice.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for prohexadione calcium including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with prohexadione calcium follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

By the oral route, the most sensitive effect in the prohexadione calcium hazard database is kidney toxicity in dogs for both the subchronic and chronic durations. Minor hematological changes (decreased white blood cell counts in males), and fore-stomach hyperplasia were seen only at very high doses in rodents. No dermal toxicity was observed up to the limit dose of 1000 mg/kg/day.

In rats and rabbits, no increased quantitative or qualitative pre- or postnatal susceptibility was observed. In rats, no maternal or developmental toxicity was observed up to the limit dose (1000 mg/kg/day). Three developmental studies in rabbits are available in the toxicological database for prohexadione calcium. In one study, late abortions occurred during gestational days (GD) 24–29 at 200 mg/kg/day, with increased mortality in maternal animals (GD 15–24) also noted at this dose. In another rabbit developmental study, two premature deliveries (on GD 24 and 26) were noted at the highest-dose tested (350 mg/kg/day) with no developmental effects observed. No maternal or developmental effects were seen in a third rabbit developmental study up to 150 mg/kg/day. In the 2-generation reproductive toxicity study with rats, parental toxicity (minimal mortality) occurred at a dose well below the dose that caused decreases in offspring body weight.

There is no evidence of neurotoxicity in the toxicological database for prohexadione calcium, which includes acute and subchronic neurotoxicity studies.

Prohexadione calcium is classified as not likely to be carcinogenic to humans based on lack of evidence of carcinogenicity in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by prohexadione calcium as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Prohexadione Calcium. Section 3 Registration for Use on Strawberry and Watercress. Human Health Risk Assessment'' on pages 26–28 in docket ID number EPA–HQ–OPP–2018–0785.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for prohexadione calcium used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 8, 2015 (80 FR 38976) (FRL–9927–25).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to prohexadione calcium, EPA considered exposure under the petitioned-for tolerances as well as all existing prohexadione calcium tolerances in 40 CFR 180.547. EPA assessed dietary exposures from prohexadione calcium in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide,

if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for prohexadione calcium; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In estimating chronic dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the chronic assessment was based on tolerance-level residues and 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that prohexadione calcium does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for prohexadione calcium. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for prohexadione calcium in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of prohexadione calcium. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide in Water Calculator (PWC), the estimated drinking water concentrations (EDWCs) of prohexadione calcium for chronic exposures are estimated to be 29 ppb for surface water and 5.1×10^{-7} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 29 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Prohexadione calcium is currently registered for the following uses that could result in residential exposures: Residential lawns, ornamentals, athletic fields, parks, and golf courses. EPA assessed residential exposure using the following assumptions: Residential handler exposure is not expected because all registered labels require the use of personal protective equipment (PPE) and are not intended for application by homeowners. Short-term exposure was assessed for post-application incidental oral exposures of children 1 to less than 2 years old. The Agency assessed hand-to-mouth exposures and incidental soil ingestion from applications to turf for children. Intermediate- and long-term exposures are not expected since there are no registered or proposed uses of prohexadione calcium that result in intermediate- or long-term residential exposures.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found prohexadione calcium to share a common mechanism of toxicity with any other substances, and prohexadione calcium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that prohexadione calcium does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In rats and rabbits, no increased quantitative or qualitative pre- or postnatal susceptibility was observed. In the 2-generation reproductive toxicity study with rats, parental toxicity (minimal mortality) occurred at a dose well below the dose that caused decreases in offspring body weight.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for prohexadione calcium is complete.

ii. There is no indication that prohexadione calcium is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that prohexadione calcium results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to prohexadione calcium in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by prohexadione calcium.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the

estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, prohexadione calcium is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prohexadione calcium from food and water will utilize 17% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of prohexadione calcium is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Prohexadione calcium is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to prohexadione calcium.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 2,300 for children 1 to less than 2 years old. Because EPA's level of concern for prohexadione calcium is an MOE below 100, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, prohexadione calcium is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for prohexadione calcium.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, prohexadione calcium is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to prohexadione calcium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass-selective detector (GC/MSD) and liquid chromatography with tandem mass spectroscopy (LC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs on alfalfa or corn for prohexadione calcium.

V. Conclusion

Therefore, tolerances with regional registration are established for residues of prohexadione calcium in or on alfalfa, forage at 0.1 ppm; alfalfa, hay at 0.1 ppm; corn, field, forage at 0.1 ppm; corn, field, grain at 0.1 ppm; and corn, field, stover at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of

power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 30, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.547, revise paragraph (c) to read as follows:

§ 180.547 Prohexadione calcium; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the plant growth regulator, prohexadione calcium, including its metabolites and degradates, in or on the commodities in table 2 in this paragraph (c). Compliance with the tolerance levels specified in table 2 in this paragraph (c) is to be determined by measuring only prohexadione calcium (calcium 3-oxido-5-oxo-4-propionylcyclohex-3-enecarboxylate) in or on the following commodities.

TABLE 2 TO PARAGRAPH (c)

Commodity	Parts per million
Alfalfa, forage	0.1
Alfalfa, hay	0.1
Corn, field, forage	0.1
Corn, field, grain	0.1
Corn, field, stover	0.1

* * * * *

[FR Doc. 2020–02036 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0297; FRL–10004–03]

Flutriafol; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flutriafol in or on multiple commodities which are identified and discussed later in this document. Cheminova A/S on behalf of FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0297, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0297 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding

any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0297, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8661) by Cheminova A/S, on behalf of FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104. The petition requested that 40 CFR 180.629 be amended by establishing tolerances for residues of the fungicide flutriafol, ((±)-α-(2-fluorophenyl-α-(4-fluorophenyl)-1H-1,2,4-triazole-1-ethanol), in or on alfalfa, forage at 15.0 parts per million (ppm); alfalfa, hay at 50 ppm; barley, grain at 1.5 ppm; barley, hay at 7.0 ppm; barley, straw at 8.0 ppm; corn, sweet, forage at 9.0 ppm; corn, sweet kernels plus cobs with husks removed at 0.03 ppm; corn, sweet, stover at 8 ppm; rice, bran at 0.4 ppm; rice, grain at 0.5 ppm; rice, hulls at 1.5 ppm; rice, straw at 0.9 ppm. Although the Agency's document did not expressly include the following, the petition also requested the removal of the following tolerances upon establishment of the petitioned-for tolerances: Existing tolerances for inadvertent or indirect residues of flutriafol in corn, sweet, forage at 0.09 ppm; corn, sweet, kernels plus cobs with husks removed at 0.01 ppm; and corn, sweet, stover at 0.07 ppm. That document referenced a summary of the petition prepared by Cheminova A/S on behalf of FMC Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is issuing some tolerances that vary from what the petitioner requested. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . . ''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flutriafol including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flutriafol follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Consistent with the mammalian toxicity profiles of the other triazole fungicides, the prevalent adverse effects following oral exposure to flutriafol were in the liver. Effects consisted of increases in liver enzyme release (alkaline phosphatase), liver weights, and histopathology findings (hepatocyte vacuolization to centrilobular hypertrophy and slight increases in hemosiderin-laden Kupffer cells, minimal to severe fatty changes, and bile duct proliferation/cholangiolar fibrosis). Progression of toxicity occurred with time as some effects were only observed at chronic durations.

Slight indications of effects in the hematopoietic system were sporadically seen in all species consisting of slight anemia, increased platelets, white blood cells, neutrophils, and lymphocytes. The effects in the neurotoxicity screening batteries were observed only at higher doses and were considered secondary effects (decreased motor activity and hindlimb grip strength, ptosis, lost righting reflex, hunched posture, and ataxia). Flutriafol showed no evidence of dermal toxicity, or immunotoxicity. Flutriafol showed no evidence of carcinogenicity in rodents or *in vitro.*

There is evidence of increased quantitative and qualitative prenatal and postnatal susceptibility for flutriafol in rats and rabbits. In the first of two rat developmental toxicity studies, developmental effects (delayed ossification or non-ossification of the skeleton in the fetuses) were observed at a lower dose than that where maternal effects were observed. In the second rat developmental study, developmental effects (external, visceral, and skeletal malformations; embryo lethality; skeletal variations; a generalized delay in fetal development; and fewer live fetuses) were more severe than the decreased food consumption and body-weight gains observed in the dams at the same dose. For rabbits, intrauterine deaths occurred at a dose level that also caused adverse effects in maternal animals. In the 2-generation reproduction studies, effects in the offspring [decreased litter size and percentage of live births (increased pup mortality) and liver toxicity] can be attributed to the systemic toxicity of the parental animals (decreased body weight and food consumption and liver toxicity) observed at the same dose.

Flutriafol is categorized as having high oral acute toxicity in the mouse. It is categorized as having low acute toxicity via the oral, dermal and inhalation routes in rats. Flutriafol is minimally irritating to the eyes and is not a dermal irritant. Flutriafol was not shown to be a skin sensitizer when tested in guinea pigs.

Specific information on the studies received and the nature of the adverse

effects caused by flutriafol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Human Health Risk Assessment in Support of a Section 3 Registration for Application to Alfalfa, Barley, Sweet Corn, Rice (as a Rotated Crop), Turf, and Ornamentals at 18'' in docket ID number EPA–HQ–OPP–2018–0297.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for flutriafol used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUTRIAFOL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13 to 49 years of age).	NOAEL = 7.5 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 0.075 mg/kg/day aPAD = 0.075 mg/kg/day	Developmental study—rabbit. LOAEL = 15 mg/kg/day based on decreased number of live fetuses, complete litter resorptions and increased post-implantation loss.
Acute dietary (General population including infants and children).	NOAEL = 250 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 2,5 mg/kg/day aPAD = 2.5 mg/kg/day	Neurotoxicity screening battery—rat. LOAEL = 750 mg/kg/day based on decreased body weight, body-weight gain, absolute and relative food consumption, and clinical signs of toxicity in both sexes: Dehydration, urine-stained abdominal fur, ungroomed coat, ptosis, decreased motor activity, prostration, limp muscle tone, muscle flaccidity, hypothermia, hunched posture, impaired or lost righting reflex, scant feces; in males: Red or tan perioral substance, chromodacryorrhea, chromorhinorrhea and labored breathing, and in females: Piloerection and bradypnea.
Chronic dietary (All populations)	NOAEL = 5 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.05 mg/kg/day cPAD = 0.05 mg/kg/day	Chronic toxicity—dog. LOAEL = 20 mg/kg/day based on adverse liver findings (increased liver weights, increased centrilobular hepatocyte lipid in the liver, and increases in alkaline phosphatase, albumin, and triglycerides), increased adrenal cortical vacuolation of the zona fasciculata, and marked hemosiderin pigmentation in the liver and spleen in both sexes; mild anemia (characterized by decreased hemoglobin, hematocrit, and red blood cell count) in the males; and initial body weight losses, decreased cumulative body-weight gains, and increased adrenal weights in the females.
Dermal short-term (1 to 30 days).	Dermal (or oral) study NOAEL = 7.5 mg/kg/day (dermal absorption factor = 15% UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = <100	Developmental toxicity—rabbit. LOAEL = 15 mg/kg/day based on decreased number of live fetuses, complete litter resorptions and increased post-implantation loss.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be Carcinogenic to Humans'' based on the carcinogenicity studies in rats and mice.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flutriafol, EPA considered exposure under the petitioned-for tolerances as well as all existing flutriafol tolerances in 40 CFR 180.629. EPA assessed dietary exposures from flutriafol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for flutriafol. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, EPA made the following assumptions for the acute exposure assessment: Tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern (ROC) for risk assessment, and 100 percent crop treated (PCT). Since adequate processing studies have been submitted that indicate that residues do not concentrate as a result of processing at levels which would require a tolerance in or on apple juice (translated to pear juice), grape juice, dried prunes, and tomato puree, the Agency's 2018 default processing factors for these commodities were reduced to 1. In addition, the Agency used a processing factor of 1 for raisin and tomato paste since those existing tolerances already account for the concentration of residues during the processing of the RACs, *i.e.,* grape and tomato, into those processed commodities. The default processing factors were retained for the remaining relevant commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA conducted from 2003–2008. As to residue levels in food, for the chronic analysis EPA assumed the same residue estimates as that used in the acute assessment excluding wheat, apple, and grape, where average field-trial residues were assumed and apple and grape where screening-level usage analysis (SLUA) percent crop treated estimates were assumed (100 PCT assumed for the remaining crops). The chronic analysis also incorporated refinements to the livestock residue estimates through incorporation of median residues for selected commodities in calculation of the dietary burden estimates (100 PCT assumed) and through the incorporation of average residues from the feeding study. The Agency used the same processing factors for the chronic dietary assessment as it used for the acute assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flutriafol does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408 (b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The acute analysis assumed 100 PCT for all commodities. For the chronic analysis, the Agency used PCT for the following uses: Apple 15%; grape 5%; and raisin 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which flutriafol may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flutriafol in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flutriafol.

Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM5–VVWM) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of flutriafol for acute exposures are estimated to be 29.5 parts per billion (ppb) for surface water and 630 ppb for ground water. For chronic exposure assessments, the EDWCs are estimated to be 5.8 ppb for surface water and 540 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 630 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 540 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flutriafol is currently registered for the following uses that could result in residential exposures: Golf course turf. EPA assessed residential exposure using the following assumptions: Residential handler exposure is not expected as result of the golf course use. There is the potential for post-application exposure for individuals exposed as a result of being in an environment that has been previously treated with flutriafol (*i.e.* golf courses). The quantitative exposure/risk assessment for residential post-application exposures is based on the following scenario:

- Dermal exposures for children (6 to <11 years old), children (11 to <16 years old), and adults contacting residues deposited on turf resulting from broadcast golf course applications.

These lifestages are not the only lifestages that could be potentially exposed for these post-application scenarios; however, the assessment of these lifestages are considered health protective for the exposures and risks for any other potentially exposed lifestages.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flutriafol and any other substances. Although the conazole fungicides (triazoles) produce 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid), 1,2,4 triazole and its acid-conjugated metabolites do not contribute to the toxicity of the parent conazole fungicides (triazoles). The Agency has assessed the aggregate risks from the 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid) separately. The new uses of flutriafol are not expected to quantitatively alter the dietary exposure estimates used in the most recent aggregate risk assessment for the common triazole metabolites. The most recent triazole aggregate risk assessment (*Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address New Section 3 Registrations For Use of Difenoconazole and Mefentrifluconazole;* DP451447, dated May 15, 2019) can be found at *https://www.regulations.gov* at docket ID number EPA–HQ–OPP–2018–0002. Flutriafol does not appear to produce any other toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that flutriafol has a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is evidence of increased quantitative and qualitative prenatal and postnatal susceptibility for flutriafol in rats. In the first of two rat developmental toxicity studies, developmental effects (delayed ossification or non-ossification of the skeleton in the fetuses) were observed at a lower dose than that where maternal effects were observed. In the second rat developmental study, developmental effects (external, visceral, and skeletal malformations; embryo lethality; skeletal variations; a generalized delay in fetal development; and fewer live fetuses) were more severe than the decreased food consumption and body-weight gains observed in the dams at the same dose. For rabbits, decreased number of live fetuses, complete litter resorptions and increased post-implantation loss were observed. Under current practices, these effects are considered both maternal and developmental effects, and it is unknown whether the effects occurred from toxicity to maternal animals or the fetuses. In the two-generation reproduction studies, effects in the offspring [decreased litter size and percentage of live births (increased pup mortality) and liver toxicity] was observed at the same dose as systemic toxicity in the parental animals (decreased body weight and food consumption and liver toxicity).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for flutriafol is complete.

ii. There is no indication that flutriafol is a neurotoxic chemical, and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity. Signs of neurotoxicity were reported in the acute and subchronic neurotoxicity studies at the highest dose tested only. In the acute neurotoxicity study, these effects were primarily seen in animals that were agonal (at the point of death) and, thus, are not indicative of neurotoxicity. In addition, there was no evidence of neurotoxicity in any additional short-term or long-term toxicity studies in rats, mice, and dogs.

iii. There are no concerns or residual uncertainties for prenatal and/or

postnatal toxicity. There is evidence of increased quantitative and qualitative susceptibility in developmental and reproduction toxicity studies; however, there concern is low based on the following:

- Clear NOAELs and LOAELs were established for effects in the fetuses/offspring.
- The dose-response for these effects are well defined and characterized.
- Developmental endpoints are used for assessing acute dietary risks to the most sensitive population (females 13 to 49) as well as all other short-term and intermediate-term exposure scenarios.
- The acute reference dose for females 13 to 49 is 1,000-fold lower than the dose at which quantitative susceptibility in the first developmental rat study was observed.
- The chronic reference dose is greater than 300-fold lower than the doses at which the offspring effects were observed in the 2-generation reproduction studies.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were somewhat refined in that the chronic analysis used some average field trial residue data as well as some percent crop treated information. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flutriafol in drinking water. These assessments will not underestimate the exposure and risks posed by flutriafol.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flutriafol will occupy 69% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flutriafol from food and water will utilize 75% of the cPAD for all infants <1 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flutriafol is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flutriafol is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to flutriafol.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 380 for adults, 500 for youth ages 11 to <16 years old, and 160 for children ages 6 to <11 years old. Because EPA's level of concern for flutriafol is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, flutriafol is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for flutriafol.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flutriafol is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flutriafol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology based on validation data were provided as part of the magnitude residues studies. In addition, the QuECHERS method has been shown to support and enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs established for residues of flutriafol in/on the proposed commodities.

C. Revisions to Petitioned-For Tolerances

Based on the analysis of available field trial data and the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedure, EPA is establishing higher tolerance levels for residues in/on alfalfa forage and hay than what the petitioner proposed as it appears the petitioner averaged the residues from the two cuttings for both commodities. EPA used the higher residues of the two cuttings as this represents a worst-case scenario. Based on the increased dietary burden from new additional feed commodities (*i.e.,* alfalfa forage and hay), EPA calculates that the established tolerances for residues of flutriafol in/on fat, liver, and meat byproducts, except liver of cattle,

goat, horse, and sheep; eggs; and fat and meat byproducts of poultry need to be increased to avoid adulteration of those commodities. In accordance with 40 CFR 180.6, EPA is increasing those tolerances in this rulemaking.

EPA is not recommending tolerances for rice hulls or rice straw as these commodities are no longer considered to be significant feed items or for rice bran as it is lower than the rice, grain (RAC) tolerance. Finally, EPA is expressing tolerance values to be consistent with OECD's rounding class practice.

V. Conclusion

Therefore, tolerances are established for residues of flutriafol, (±)-α-(2-fluorophenyl-α-(4-fluorophenyl) -1*H*-1,2,4-triazole-1-ethanol), in or on alfalfa, forage at 20 parts per million (ppm); alfalfa, hay at 70 ppm; barley, grain at 1.5 ppm; barley, hay at 7 ppm; barley, straw at 8 ppm; corn, sweet, forage at 9 ppm; corn, sweet kernels plus cobs with husks removed at 0.03 ppm; corn, sweet, stover at 8 ppm; rice, grain at 0.5 ppm. Based on the increased dietary burden from the new additional feed commodities, that agency is revising the following established tolerances of flutriafol in or on cattle, fat at 0.2 parts per million (ppm); cattle, liver at 1.5 ppm; cattle, meat byproducts, except liver at 0.08 ppm; egg at 0.02 ppm; goat, fat at 0.2 ppm; goat, liver at 1.5 ppm; goat, meat byproducts, except liver at 0.08 ppm; horse, fat at 0.2 ppm; horse, liver at 1.5 ppm; horse, meat byproducts, except liver at 0.08 ppm; poultry, fat at 0.02 ppm; poultry, meat byproducts at 0.02 ppm; sheep, fat at 0.2 ppm; sheep, liver at 1.5 ppm; sheep, meat byproducts, except liver at 0.08 ppm. Also, this regulation removes established tolerances for inadvertent or indirect residues of flutriafol in corn, sweet, forage at 0.09 ppm; corn, sweet, kernels plus cobs with husks removed at 0.01 ppm; and corn, sweet, stover at 0.07 ppm the entries for the tolerances contained in paragraph (d) of § 180.629. These tolerances are superseded and no longer necessary with the establishment of the new tolerances for sweet corn commodities.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 23, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.629:

■ a. In the table in paragraph (a):

■ i. Add alphabetically the entries for ''Alfalfa, forage''; ''Alfalfa, hay''; ''Barley, grain''; ''Barley, hay''; and ''Barley, straw'';

■ ii. Revise the entries for ''Cattle, fat''; ''Cattle, liver''; and ''Cattle, meat byproducts, except liver'';

■ iii. Add alphabetically the entries for ''Corn, sweet, forage''; ''Corn, sweet, kernel plus cob with husk removed''; and ''Corn, sweet, stover''; and

■ iv. Revise the entries for ''Egg''; ''Goat, fat''; ''Goat, liver''; ''Goat, meat byproducts, except liver''; ''Horse, fat''; ''Horse, liver''; ''Horse, meat byproducts, except liver''; ''Poultry, fat''; ''Poultry, meat byproducts''; ''Sheep, fat''; ''Sheep, liver''; and ''Sheep, meat byproducts, except liver''; and

■ b. In paragraph (d):

■ i. In the introductory text, remove ''table below'' and ''specified below'' and add in their places ''table 2 to this paragraph (d)'' and ''specified in table 2 to this paragraph (d),'' respectively; and

■ ii. Revise the table.

The revisions and additions read as follows:

§ 180.629 Flutriafol; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Alfalfa, forage	20
Alfalfa, hay	70
* * * * *	
Barley, grain	1.5
Barley, hay	7
Barley, straw	8
* * * * *	
Cattle, fat	0.2
Cattle, liver	1.5
Cattle, meat byproducts, except liver	0.08
* * * * *	
Corn, sweet, forage	9
Corn, sweet, kernel plus cob with husk removed	0.03
Corn, sweet, stover	8
* * * * *	
Egg	0.02
* * * * *	
Goat, fat	0.2
Goat, liver	1.5
Goat, meat byproducts, except liver	0.08
* * * * *	
Horse, fat	0.2
Horse, liver	1.5
Horse, meat byproducts, except liver	0.08
* * * * *	
Poultry, fat	0.02
Poultry, meat byproducts	0.02
* * * * *	
Sheep, fat	0.2
Sheep, liver	1.5
Sheep, meat byproducts, except liver	0.08
* * * * *	

* * * * *

(d) * * *

TABLE 2 TO PARAGRAPH (d)

Commodity	Parts per million
Rice, grain	0.5

[FR Doc. 2020–02035 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0783; FRL–10004–05]

Chlorfenapyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorfenapyr in or on basil, fresh leaves; chive, fresh leaves; and cucumber and increases the established tolerance on vegetable, fruiting, group 8–10. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 14, 2020. Objections and requests for hearings must be received on or before April 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0783, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0783 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0783, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 18, 2019 (84 FR 9737) (FRL–9989–71), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8717) by IR–4 Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.513 be amended by establishing tolerances for residues of the insecticide chlorfenapyr, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile, in or on Basil, fresh leaves at 80 parts per million (ppm); Chive, fresh leaves at 20 ppm; Cucumber at 0.5 ppm; and Vegetable, fruiting, group 8–10 at 2.0 ppm. Upon establishment of the above tolerance, the petitioner requested removal of the existing tolerance on Vegetable, fruiting, group 8–10 at 1.0 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and pursuant to its authority in section 408(d)(4)(A)(i), EPA is establishing the requested tolerances and one tolerance at a different level than requested. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for chlorfenapyr including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with chlorfenapyr follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Chlorfenapyr has moderate acute toxicity via the oral route of exposure and low acute toxicity via the dermal and inhalation routes of exposure. It is a mild eye irritant, but it is not a dermal irritant or sensitizer. Chlorfenapyr targets the central nervous system (CNS), inducing neurohistological changes (spongiform myelinopathy of the brain and spinal cord and vacuolization of the brain, spinal cord, and optic nerve) from subchronic and chronic dietary administration in mice and rats. In addition to neuropathology, rats also exhibited neurobehavioral changes on the day of dosing in the acute neurotoxicity study. Decreased motor activity was observed in the acute neurotoxicity study as well as in offspring in the developmental neurotoxicity (DNT) study. Several rat studies also noted effects in the liver (increased organ weights and tumors) at similar doses or above those where CNS effects were seen. The liver was identified in metabolism studies as the single organ to have the highest recovery of administered dose.

There was evidence of increased quantitative susceptibility to offspring in the database as a result of chlorfenapyr exposure. In the 2-generation reproduction study, decreased pup weights were seen at a lower dose than parental toxicity (decreased body-weight). In the DNT study, offspring toxicity (decreased motor activity and increased pup deaths on postnatal days 1–4) was seen in the absence of maternal toxicity. Additional effects on the CNS (vacuolation of white matter in the brain and decreased hippocampus size) were also observed in offspring at a higher dose in this study. There was no evidence of increased susceptibility to offspring in the developmental toxicity studies. In both the rat and rabbit developmental toxicity studies, although no maternal or developmental effects were noted up to the highest doses tested (HDT), maternal observations are limited in these developmental studies. Consequently, the data from the DNT are considered more robust for assessing the effects of chlorfenapyr on the nervous system.

Chlorfenapyr has a relatively high octanol-water partition coefficient and due to its lipophilic nature has been shown to accumulate in milk in a dietary cow study. Additionally, in the rat metabolism study, chlorfenapyr was found to accumulate in the fat tissue, such that females exhibited greater accumulation than males. This observation suggests chlorfenapyr is capable of accumulating in breast milk and leading to the early pup deaths seen in the reproduction toxicity and DNT studies through lactation.

Furthermore, the lack of toxicity in the rat and rabbit developmental studies suggests that the early pup deaths in the reproduction toxicity and DNT studies is the result of postnatal exposure through lactation.

EPA has concluded that a nonlinear approach using the chronic RfD for assessing cancer risk is appropriate for chlorfenapyr. For more information about this conclusion, see section 4.5.3 in the document entitled ''SUBJECT: Chlorfenapyr. Human Health Risk Assessment for the Proposed New Uses on Greenhouse-Grown Basil, Chive, Cucumber, and Small Tomatoes,'' in docket ID number EPA–HQ–OPP–2018–0783.

Specific information on the studies received and the nature of the adverse effects caused by chlorfenapyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled ''SUBJECT: Chlorfenapyr. Human Health Risk Assessment for the Proposed New Uses on Greenhouse-Grown Basil, Chive, Cucumber, and Small Tomatoes,'' at pages 24–28 in

docket ID number EPA–HQ–OPP–2018–0783.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for chlorfenapyr used for human risk assessment is discussed in Unit III of the final rule published in the **Federal Register** of January 26, 2018 (83 FR 3605) (FRL–9970–88).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to chlorfenapyr, EPA considered exposure under the petitioned-for tolerances as well as all existing chlorfenapyr tolerances in 40 CFR 180.513. EPA assessed dietary exposures from chlorfenapyr in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for chlorfenapyr. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model—Food Consumption Intake Database (DEEM–FCID), Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) from 2003–2008. As to residue levels in food, EPA's acute unrefined analysis used tolerance-level residues and 100% crop-treated (PCT). DEEM processing factors were set to 1 for all commodities except tomato and peppers. EPA 2018 default processing factors were used in the acute dietary analyses for tomato and pepper processed raw agricultural commodities (RACs) to account for potential imports of foreign agricultural use of chlorfenapyr.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the DEEM–FCID, Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) from 2003–2008. As to residue levels in food, EPA's chronic analysis was unrefined and used tolerance-level residues and 100 PCT. DEEM processing factors were set to 1 for all commodities except tomato and peppers. EPA 2018 default processing factors were used in the chronic dietary analyses for tomato and pepper processed RACs to account for potential imports of foreign agricultural use of chlorfenapyr.

iii. *Cancer.* As indicated in Unit III.A., EPA has concluded that a nonlinear approach using the chronic RfD for assessing cancer risk is appropriate for chlorfenapyr; therefore, a separate quantitative cancer risk assessment is not required.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for chlorfenapyr. Tolerance level residues for proposed and established uses and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Contamination of drinking water from chlorfenapyr is not expected to occur since none of the registered uses (which are all indoor uses) would result in residues in drinking water. Therefore, a dietary exposure assessment for chlorfenapyr in drinking water is unnecessary.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorfenapyr is currently registered for the following uses that could result in residential exposures: Crack/crevice/spot treatment on indoor and outdoor residential sites (including as a bed bug treatment). There are no residential uses associated with the petitioned-for new uses; therefore, an updated residential exposure assessment was not necessary for the proposed uses. The most conservative residential exposure scenarios were selected for use in the aggregate risk assessment. EPA combined post-application dermal and inhalation exposure from indoor applications (surfaces and mattresses) to control bed bugs to assess risks to adults and post-application dermal, inhalation, and hand-to-mouth exposures from indoor applications (surfaces and mattresses) to control bed bugs to assess risks to children 1 to <2 years old. The residential exposures are short- and intermediate-term for incidental oral, dermal and inhalation. No long-term exposures is expected.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found chlorfenapyr to share a common mechanism of toxicity with any other substances, and chlorfenapyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that chlorfenapyr does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the

case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Although DNT studies show evidence of neurotoxicity/neuropathology and reproduction studies show susceptibility/sensitivity to offspring, the effects are well-characterized with clearly established NOAEL/LOAEL values and selected endpoints are protective for the observed effects.

3. *Conclusion.* EPA determined that the FQPA SF should be reduced to 1X for all exposure scenarios. That decision is based on the following findings:

i. The toxicity database for chlorfenapyr is complete.

ii. Although the central nervous system is the primary target for chlorfenapyr and neurotoxic effects were observed across studies, concern is low since the selected PODs are protective of observed neurotoxic effects.

iii. Although there is evidence of increased quantitative susceptibility in available DNT and reproduction studies, concern is low since the offspring effects are well-characterized with clearly established NOAEL/LOAEL values and the endpoints selected for risk assessment are protective of observed offspring effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary analysis assumed tolerance-level residues, EPA's 2018 default processing factors (except for tomatoes and peppers), and 100 PCT. The dietary analysis did not include exposure from drinking water as contamination of drinking water with chlorfenapyr as the result of all registered uses, including greenhouses or food/feed handling uses, is not expected to occur. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by chlorfenapyr.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to chlorfenapyr will occupy 75% of the aPAD (at the 95th percentile of exposure) for children 3 to 5 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorfenapyr from food and water will utilize 19% of the cPAD for children 3 to 5 years old, the population group receiving the greatest exposure. There are no chronic drinking water or residential exposure scenarios, therefore, the chronic aggregate risk is equivalent to the chronic dietary risk which is below the Agency's LOC.

3. *Short- and intermediate-term risks.* Short- and intermediate-term aggregate risk assessments were conducted since there is potential for short- and intermediate-term post-application exposures from previously registered uses of chlorfenapyr in residential settings. Short-term residential exposure estimates were aggregated with the average dietary exposure to provide a worst-case estimate of short-term aggregate risk for adults and children 1 to 2 years old (considered protective for children of all ages). Short-term aggregate MOEs are protective of intermediate-term exposure durations since the same endpoints and PODs were selected for both durations. Resulting short-term aggregate MOEs for adults at 660 and 120 for children (1 to 2 years old) are not of concern.

4. *Aggregate cancer risk for U.S. population.* As discussed in Unit III, the Agency has determined that quantification of risk using a non-linear approach (*i.e.,* using a cRfD) adequately accounts for all chronic toxicity, including carcinogenicity that could result from exposure to chlorfenapyr. Since there are no chronic risks of concern, the Agency concludes that aggregate exposure to chlorfenapyr will not pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorfenapyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The plant analytical enforcement method is designated as M2427, a gas chromatography/electron-capture detection (GC/ECD) method with a limit of quantitation (LOQ) of 0.05 ppm. The method has been subjected to a successful independent laboratory validation (ILV) as well as an acceptable radio validation using samples obtained from lettuce and tomato metabolism studies. EPA has concluded that method M2427 is adequate for data collection and tolerance enforcement purposes.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex maximum residue limits (MRLs) for residues of chlorfenapyr in/on the proposed commodities.

C. Revisions to Petitioned-For Tolerances

EPA revised the proposed tolerances for residues of chlorfenapyr on vegetable, fruiting, group 8–10 based on current OECD rounding classes. There is no need to remove the existing tolerance for vegetable, fruiting, group 8–10 at 1.0 ppm; rather EPA is simply amending the existing tolerance as requested.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide chlorfenapyr, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile, in or on Basil, fresh leaves at 80 ppm; Chive, fresh leaves at 20 ppm; and Cucumber at 0.5 ppm; and Vegetable, fruiting, group 8–10 at 2 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.513, amend the table in paragraph (a)(1) as follows:

■ a. Add alphabetically the entries for ''Basil, fresh leaves''; ''Chive, fresh leaves''; and ''Cucumber''; and

■ b. Revise the entry for ''Vegetable, fruiting, group 8–10''.

The additions and revision read as follows:

§ 180.513 Chlorfenapyr; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Basil, fresh leaves	80
Chive, fresh leaves	20
Cucumber	0.5
* * * * *	
Vegetable, fruiting, group 8–10	2

* * * * *

[FR Doc. 2020–02037 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R04–UST–2019–0310; FRL–10004–27–Region 4]

Georgia: Final Approval and Incorporation by Reference of State Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the State of Georgia (Georgia or State) final approval of revisions to its underground storage tank (UST) program pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the EPA is codifying EPA's approval of Georgia's revised UST program and incorporating by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval. EPA published a proposed rule on September 16, 2019 and provided for public comment. No comments were received on the EPA's proposed approval of Georgia's UST program revisions. No further opportunity for comment will be provided.

DATES: This final rule is effective February 14, 2020. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of February 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–UST–2019–0310. All documents in the docket are listed on the *http://www.regulations.gov* website. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Aaryn Jones, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–8969; email address: *jones.aaryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Georgia's UST Program

A. What changes to Georgia's UST program is EPA approving with this action?

On August 8, 2018, in accordance with 40 CFR 281.51(a), Georgia submitted a complete program revision application (State Application) seeking approval of changes to its UST program. EPA now makes a final decision that Georgia's UST program revisions are no less stringent than the corresponding Federal program. Therefore, the EPA grants Georgia final approval to operate its UST program with the changes described in the State Application and as outlined in the proposed rule published in the September 16, 2019 **Federal Register** at 84 FR 48573. Although no comments were received on the EPA's proposed approval of Georgia's UST program revisions, the EPA noticed an error in the date of the Georgia statutory and regulatory materials listed in the proposed regulatory text at 40 CFR 282.60(d)(1)(i). The date of these materials was improperly listed as August 2018. The EPA has corrected the date in the final regulatory text to August 2019. The State's federally-approved and codified UST program as revised pursuant to this action will remain subject to the EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the Code of Federal Regulations (CFR). The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Georgia's UST program?

In 1996, the EPA incorporated by reference and codified Georgia's approved UST program at 40 CFR 282.60 (61 FR 4224, February 5, 1996). Through this action, the EPA is amending 40 CFR 282.60 to incorporate by reference and codify Georgia's revised UST program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Georgia UST program, including the revisions described in the State Application. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Georgia's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through *https://www.regulations.gov* and at the EPA Region 4 office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Specifically, in Section 282.60(d)(1)(i), the EPA is incorporating by reference the Georgia-approved UST program. Section 282.60(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State program, although not incorporated by reference for enforcement purposes. Section 282.60(d)(2) through (d)(5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are part of the State Application and approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of the EPA's codification of the federally approved Georgia UST program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Georgia, the EPA will rely on federal sanctions, federal inspection authorities, and other federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference Georgia's procedural and enforcement authorities, although they are listed in 40 CFR 282.60(d)(1)(ii).

E. What State provisions are not part of the codification?

Some provisions of the State's UST program are not part of the federally approved State program because they are ''broader in scope'' than the federal UST program. 40 CFR 281.12(a)(3)(ii) states that, where an approved state program has provisions that are broader in scope than the federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are ''broader in scope'' than the federal program are not incorporated by reference for purposes of enforcement in part 282. In addition, provisions that are external to the State UST program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.60(d)(1)(iii) lists the Georgia statutory and regulatory provisions which are ''broader in scope'' than the federal program and external to state UST program approval requirements. These provisions are, therefore, not part of the approved program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (E.O.) Reviews

This final action merely approves and codifies Georgia's revised UST program requirements pursuant to RCRA section 9004 and does not impose additional requirements other than those imposed by State law. For further information on how this action complies with applicable executive orders and statutory provisions, please see the proposed rule published in the September 16, 2019 **Federal Register** at 84 FR 48573. 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 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). This final action will be effective February 14, 2020.

List of Subjects

40 CFR Part 281

Environmental protection, Administrative practice and procedure, Petroleum, Hazardous substances, State program approval, Underground storage tanks, and Reporting and recordkeeping requirements.

40 CFR Part 282

Environmental protection, Administrative practice and procedure, Petroleum, Hazardous substances, Incorporation by reference, State program approval, Underground storage tanks, and Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Mary S. Walker,

Regional Administrator, Region 4.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.60 to read as follows:

§ 282.60 Georgia State-Administered Program.

(a) *History of the approval of Georgia's Program.* The State of Georgia is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Georgia Department of Natural Resources, Environmental Protection Division, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Georgia program on May 10, 1991 and it was effective on July 9, 1991. A subsequent program revision was approved by EPA and became effective on February 14, 2020.

(b) *Enforcement authority.* Georgia has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Georgia must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Georgia obtains approval for revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval.* Georgia has final approval for the following elements of its underground storage tank program originally submitted to EPA and approved effective July 9, 1991, and the program revisions approved by EPA effective on February 14, 2020.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The Georgia materials cited in this paragraph, and listed in appendix A to part 282, are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *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 Georgia statutes that are incorporated by reference in this paragraph from LexisNexis, Attn: Official Code of Georgia Annotated, 701 East Water Street, Charlottesville, VA 22902–5389; Phone number: 1–800–833–9844; website: *http://sos.ga.gov/index.php/elections/georgia_code_-_lexisnexis.* You may obtain copies of the Georgia regulations that are incorporated by reference in this paragraph from the Administrative Procedures Division, Office of the Georgia Secretary of State, 5800 Jonesboro Road, Morrow, Georgia 30260; Phone number: (678) 364–3785; website: *http://rules.sos.ga.gov/gac/391-3-15.* You may inspect all approved material at the EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562–9900; or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) ''Georgia Statutory Requirements Applicable to the UST Program'', dated August 2019.

(B) ''Georgia Regulatory Requirements Applicable to the UST Program'', dated August 2019.

(ii) *Legal basis.* The EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace federal authorities:

(A) *Official Code of Georgia Annotated (2017), Title 12.* ''Conservation and Natural Resources,'' Chapter 13, ''Georgia Underground Storage Tank Act'': Sections 12–13–5; 12–13–6; 12–13–8; 12–13–11(a) and (f); 12–13–14 through 12–13–17; and 12–13–19 through 12–3–22.

(B) *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391.* ''Rules of the Georgia Department of Natural Resources,'' Chapter 3, ''Environmental Protection,'' Subject 15, ''Underground Storage Tank Management'': Sections 391–3–15–.01(2) and 391–3–15–.14.

(iii) *Other Provisions not incorporated by reference.* The following specifically identified sections and rules applicable to the Georgia underground storage tank program that are broader in scope than the federal program or external to the state UST program approval requirements are not part of the approved program, and are not incorporated by reference herein:

(A) *Official Code of Georgia Annotated (2017), Title 12:* ''Conservation and Natural Resources,'' Chapter 13, ''Georgia Underground Storage Tank Act'': Sections 12–13–3(8) and (16); 12–13–7; 12–13–9(d) through (i); 12–13–10; 12–13–11(b) through (e); 12–13–12; 12–13–13(e), and 12–13–18.

(B) *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391:* ''Rules of the Georgia Department of Natural Resources,'' Chapter 3, ''Environmental Protection,'' Subject 15, ''Underground Storage Tank Management'': Sections 391–3–15–.01(1); 391–3–15–.03(1)(a), (g), (i), and (p) through (r); 391–3–15–.04; 391–3–15–.05(4); 391–3–15–.09(5) and (7); 391–15–3–.12(3); 391–3–15–.13; and 391–3–15–.15.

(2) *Statement of legal authority.* The Attorney General's Statement, signed by

the Attorney General on June 12, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of Georgia's application on August 8, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The Program Description submitted as part of Georgia's application on August 8, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the Georgia Environmental Protection Division, signed by EPA Regional Administrator on October 12, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for Georgia to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Georgia

(a) The statutory provisions include: *Official Code of Georgia Annotated (2017), Title 12:* ''Conservation and Natural Resources,'' Chapter 13, ''Georgia Underground Storage Tank Act'':

Section 12–13–1 Short title.

Section 12–13–2 Public policy.

Section 12–13–3 Definitions, except (8) and (16).

Section 12–13–4 Exceptions to chapter.

Section 12–13–9 Establishing financial responsibility; claims against the guarantor; Underground Storage Tank Trust Fund, except (d) through (i).

Section 12–13–13 Notification by owner of underground storage tank, except (e).

(b) The regulatory provisions include: *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391:* ''Rules of the Georgia Department of Natural Resources,'' Chapter 3, ''Environmental Protection,'' Subject 15, ''Underground Storage Tank Management'':

Section 391–3–15–.01(3) General Provisions

Section 391–3–15–.02 UST Exclusions.

Section 391–3–15–.03 Definitions, except (1)(a), (1)(g), (1)(i), and (1)(p) through (r).

Section 391–3–15–.05 UST Systems: Design, Construction, Installation, and Notification, except (4).

Section 391–3–15–.06 General Operating Requirements.

Section 391–3–15–.07 Release Detection.

Section 391–3–15–.08 Release Reporting, Investigation, and Confirmation.

Section 391–3–15–.09 Release Response and Corrective Action for UST Systems Containing Petroleum, except (5) and (7).

Section 391–3–15–.10 Release Response and Corrective Action for UST Systems Containing Hazardous Substances.

Section 391–3–15–.11 Out-of-Service UST Systems and Closure.

Section 391–3–15–.12 Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements, except (3).

Section 391–3–15–.16 Operator Training.

Section 391–3–15–.17 Airport Hydrant Systems and Field Constructed Tanks.

(c) Copies of the Georgia statutes that are incorporated by reference are available from LexisNexis, Attn: Official Code of Georgia Annotated, 701 East Water Street, Charlottesville, VA 22902–5389; Phone number: 1–800–833–9844; website: *http://sos.ga.gov/index.php/elections/georgia_code_-_lexisnexis.* Copies of the Georgia regulations that are incorporated by reference are available from the Administrative Procedures Division, Office of the Georgia Secretary of State, 5800 Jonesboro Road, Morrow, Georgia 30260; Phone number: (678) 364–3785; website: *http://rules.sos.ga.gov/gac/391-3-15.*

* * * * *

[FR Doc. 2020–02254 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 410

[CMS–1717–F3]

RIN–0938–AT74

Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Revisions of Organ Procurement Organizations Conditions of Coverage; Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Changes to Grandfathered Children's Hospitals-Within-Hospitals; Notice of Closure of Two Teaching Hospitals and Opportunity To Apply for Available Slots; Correcting Amendment

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

ACTION: Correcting amendment.

SUMMARY: In the November 12, 2019 issue of the **Federal Register**, we published a final rule with comment period that made changes to the conditions for therapeutic outpatient hospital or CAH services and supplies incident to a physician's or nonphysician practitioner's service. This correcting amendment corrects a technical error in the regulations resulting from an error in that final rule with comment period.

DATES: This correcting amendment is effective February 14, 2020 and is applicable beginning January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Supervision of Outpatient Therapeutic Services in Hospitals and CAHs, contact Josh McFeeters via email at *Joshua.McFeeters@cms.hhs.gov* or at (410) 786–9732.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2019–24138 of November 12, 2019 (84 FR 61142), ''Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Revisions of Organ Procurement Organizations Conditions of Coverage; Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date

of Service Policy; Changes to Grandfathered Children's Hospitals-Within-Hospitals; Notice of Closure of Two Teaching Hospitals and Opportunity to Apply for Available Slots'' (hereinafter referred to as the CY 2020 OPPS/ASC final rule with comment period), there was a technical error in the regulations text that is identified and corrected in this correcting amendment. The provisions of this correcting amendment are treated as if the technical error in the regulations text at § 410.27 that resulted from the error in the document published November 12, 2019 had not occurred. Accordingly, the corrections are applicable beginning January 1, 2020.

II. Summary of Error in the Regulations Text

On page 61490 of the CY 2020 OPPS/ASC final rule with comment period, we made a technical error in an amendatory instruction which resulted in the unintended removal of paragraphs (a)(1)(iv)(C), (D), and (E) from § 410.27 of the CFR. Accordingly, we are amending § 410.27 to accurately reflect the intent as described in the preamble language included in the CY 2020 OPPS/ASC final rule with comment period (84 FR 61359 through 61363), but which was not properly reflected in the regulatory text portion of the rule. In the amendatory instruction, we stated that ''§ 410.27 is amended by revising paragraph (a)(1)(iv).'' The amendatory instruction should have read ''§ 410.27 is amended by revising paragraphs (a)(1)(iv) introductory text, (a)(1)(iv)(A), and (B). This error in the amendatory instruction resulted in § 410.27(a)(1)(iv)(C) through (E) being erroneously removed. Therefore, this correcting amendment corrects this error by adding paragraphs (a)(1)(iv)(C), (D), and (E).

III. Waiver of Proposed Rulemaking and Delay in Effective Date

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

We believe that this correcting amendment does not constitute a rulemaking that would be subject to these requirements. This correcting amendment corrects a technical error in the regulations text included in the CY 2020 OPPS/ASC final rule with comment period but does not make substantive changes to the policies that were adopted in the final rule with comment period. As a result, the corrections made through this correcting amendment are intended to ensure that the information in the CY 2020 OPPS/ASC final rule with comment period accurately reflects the policies adopted.

In addition, even if this were a rulemaking to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public's interest to ensure that the CY 2020 OPPS/ASC final rule with comment period accurately reflects our policies as of the date they take effect and are applicable.

Furthermore, such procedures would be unnecessary, as we are not altering our policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting amendment is intended solely to ensure that the CY 2020 OPPS/ASC final rule with comment period accurately reflects these policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

List of Subjects in 42 CFR Part 410

Diseases, Health facilities, Health professions, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 1. The authority citation for part 410 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

■ 2. Section 410.27 is amended by adding paragraphs (a)(1)(iv)(C), (D), and (E) to read as follows:

§ 410.27 Therapeutic outpatient hospital or CAH services and supplies incident to a physician's or nonphysician practitioner's service: Conditions.

* * * * *

(a) * * *

(1) * * *

(iv) * * *

(C) Nonphysician practitioners may provide the required supervision of services that they may personally furnish in accordance with State law and all additional requirements, including those specified in §§ 410.71, 410.73, 410.74, 410.75, 410.76, and 410.77;

(D) For pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services, direct supervision must be furnished by a doctor of medicine or a doctor of osteopathy, as specified in §§ 410.47 and 410.49, respectively; and

(E) For nonsurgical extended duration therapeutic services (extended duration services), which are hospital or CAH outpatient therapeutic services that can last a significant period of time, have a substantial monitoring component that is typically performed by auxiliary personnel, have a low risk of requiring the physician's or appropriate nonphysician practitioner's immediate availability after the initiation of the service, and are not primarily surgical in nature, Medicare requires a minimum of direct supervision during the initiation of the service which may be followed by general supervision at the discretion of the supervising physician or the appropriate nonphysician practitioner. Initiation means the beginning portion of the nonsurgical extended duration therapeutic service which ends when the patient is stable and the supervising physician or the appropriate nonphysician practitioner determines

that the remainder of the service can be delivered safely under general supervision; and

* * * * *

Dated: February 6, 2020.

Ann C. Agnew,

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

[FR Doc. 2020–02847 Filed 2–13–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 200206–0048]

RIN 0648–BJ07

Fisheries of the Exclusive Economic Zone Off Alaska; IFQ Program; Modify Medical and Beneficiary Transfer Provisions

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify the medical and beneficiary transfer provisions of the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries. This final rule is intended to simplify administration of the medical and beneficiary transfer provisions while promoting the long-standing objective of maintaining an owner-operated IFQ fishery. This final rule makes minor technical corrections to regulations for improved accuracy and clarity. This final rule is intended to promote the goals and objectives of the IFQ Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable laws.

DATES: This final rule is effective on March 16, 2020.

ADDRESSES: Electronic copies of the Regulatory Impact Review (referred to as the ''Analysis'') and the Categorical Exclusion prepared for this final rule may be obtained from *https://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published the proposed rule in the **Federal Register** on October 24, 2019 (84 FR 56998) with public comments invited through November 25, 2019.

The North Pacific Fishery Management Council (Council) recommended this final rule, which clarifies the administration of the IFQ Program medical transfer and beneficiary transfer provisions. These changes benefit IFQ Program participants, their beneficiaries, and NMFS by providing clear standards, reducing potential inconsistencies with other definitions used for other state or Federal programs, and reducing administrative costs and burdens associated with existing regulatory provisions.

The following background sections describe (1) the IFQ Program, (2) the IFQ medical transfer provision, (3) the IFQ beneficiary transfer provision, and (4) the appeals process. Additional detail is provided in the preamble to the proposed rule (84 FR 56998, October 24, 2019).

Background

The IFQ Program

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS developed the IFQ Program to resolve the conservation and management problems commonly associated with open access fisheries. The preamble to the proposed rule published on December 3, 1992 (57 FR 57130), describes the background issues leading to the Council's initial action recommending the adoption of the IFQ Program. Section 2.2 of the Analysis and the preamble of the proposed rule (see **ADDRESSES**) provide additional information on the sablefish and halibut IFQ Program.

The Council and NMFS created the provisions of the IFQ Program to support the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the ''owner-operator'' character of the fishing fleets as much as possible.

Medical Transfer Provision

The IFQ Program includes a medical transfer provision that allows quota share (QS) holders of catcher vessel QS (referred to as class B, C, and D QS shares) who are not otherwise eligible to use a hired master to temporarily transfer (lease) their annual IFQ to another individual if the QS holder or an immediate family member has a temporary medical condition that precludes the QS holder from fishing (72 FR 44795, August 9, 2007). This provision allows QS holders with a temporary medical condition, or caring for an immediate family member with a medical condition, that would preclude the QS holder from fishing during a season, to transfer their annual IFQ to another qualified individual. In recommending this medical transfer provision, the Council and NMFS balanced the objective to limit long-term leasing of QS to promote an owner-onboard fishery with its recognition that a medical transfer provision would provide a mechanism for QS holders to retain their QS during bona fide medical hardships.

Prior to implementation of this provision in 2007, a QS holder with a medical condition was required to divest his or her QS or allow the IFQ to go unfished during years he or she could not be on board the vessel. Medical transfers were not intended to be a mechanism for persons unable or unwilling to participate in the fishery as an owner onboard to continue to receive economic benefits from their QS holdings, but were intended to address legitimate medical conditions that precluded participation (72 FR 44795, August 9, 2007).

To limit potential for repeated, long-term, or illegitimate use of the medical transfer provision, the current provisions: (1) Apply only to individuals who are not otherwise eligible to use hired masters; (2) apply only to IFQ derived from catcher vessel QS held by the applicant; (3) require certification by specific types of medical providers who must describe the condition (and the care required if caring for an immediate family member); (4) require verification of the inability of the QS holder to participate in IFQ fisheries; and (5) contain a use cap of two years in a five-year period.

Beneficiary Transfer Provision

In 1996, NMFS amended the IFQ Program regulations to allow for a temporary transfer of QS to surviving spouses of deceased QS holders (61 FR 41523, August 9, 1996). In 2000, a final rule (65 FR 78126, December 14, 2000) expanded the existing survivorship transfer provisions in 50 CFR 679.41(k) to include an immediate family member designated as a beneficiary to whom the survivorship transfer privileges would extend in the absence of a surviving spouse. This transfer is intended to benefit the surviving spouse, or an immediate family member designated by the QS holder, for a limited period of time.

To transfer QS under this beneficiary provision, the surviving spouse, or the designated beneficiary named on the QS/IFQ Beneficiary Designation Form by the QS holder, submits an Application for Transfer of QS/IFQ. These forms are processed by NMFS Restricted Access Management (RAM) Program.

NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the death of the individual. Legally, for purposes of transferring QS, a beneficiary identified in a will overrides any beneficiary designated on the form submitted to NMFS. NMFS allows the transfer of IFQ resulting from the QS transferred to the beneficiary by right of survivorship for a period of three years following the death of the QS holder. After the three-year period expires, the spouse or designated beneficiary must qualify to either hold the QS through eligibility criteria found at 50 CFR 679.41(d) or transfer the QS. Currently, the program allows the QS holder to designate a beneficiary that can either be the surviving spouse, or in the absence of a surviving spouse, an immediate family member.

Section 2.5.1 of the Analysis states that NMFS has received beneficiary transfer applications from persons who do not meet a commonly used definition of an immediate family member, which currently includes a person's parents, spouse, siblings, and children. This traditional definition for making determinations regarding transfer eligibility under the designated beneficiary transfer provision is narrower than many State and Federal beneficiary definitions currently applied in a variety of government programs. Since the current surviving regulations were implemented, the definition of immediate family has changed in many State and Federal jurisdictions and now includes other persons connected to a QS holder by birth, adoption, marriage, civil partnership, or cohabitation. NMFS and IFQ Program participants would benefit from clarifying this provision's applicability to those family members.

Appeals Process

If NMFS denies a transfer under the existing medical and beneficiary transfer provisions, a QS holder may appeal this denial through the National Appeals Office (NAO). If a claim is submitted that is inconsistent with the information required in regulations or if the transfer requested is beyond the number of years allowed, the QS holder would have the burden of proving that the submitted claim is correct. NMFS would not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation.

Prior to 2014, the procedure for appealing an initial administrative determination (IAD) was to submit the appeal directly to the NMFS's Alaska Office of Administrative Appeals. That process was described at § 679.43. However in 2014, NMFS centralized the appeals process to be located in the NAO, which operates out of NMFS's headquarters in Silver Spring, Maryland. That process is described at 15 CFR part 906 (79 FR 7056, February 6, 2014). The appeals process described at § 679.43 is no longer applicable given the regulatory changes made in 2014.

Final Rule

This section describes this rule, its effects on fishery participants and the environment, and the changes to current regulations at 50 CFR part 679. The Council recommended and NMFS approves the following changes to the medical and beneficiary transfer provisions of the IFQ Program.

Medical Transfer Provision

This final rule makes several changes to the medical transfer provision that include changes to: (1) Remove the definitions at § 679.2 for ''Advanced nurse practitioner,'' ''Licensed medical doctor,'' and ''Primary community health aide;'' and add a definition at § 679.2 for ''Health care provider,'' and (2) modify § 679.42(d)(2) to allow medical transfers for any medical condition and to allow the transfers to be used for three of the seven most recent years.

The first change removes definitions of specific types of medical professionals and includes a definition of a ''Health care provider'' at § 679.2. This change broadens the definition of who may attest to a medical condition of the QS holder, or his or her immediate family member, that precludes a QS holder from participating in the IFQ fisheries. This increases flexibility for a QS holder when selecting a health care provider for treatment and verifying the condition on the medical transfer application. Defining a certified medical professional is important because it sets the boundaries for who is allowed to attest that a QS holder is not physically able to fish his or her IFQ. This final rule broadens the current definition while limiting the persons to those who are licensed or certified by the state or country in which they practice. This final rule also allows health care providers outside the United States to sign the medical transfer form. NMFS expects that any expansion of the definition over the status quo would be beneficial to QS holders, or their immediate family member, who need medical care and would lead to less rejections of applications based solely on the specialty of the health care provider.

The second change to § 679.42(d)(2) applies to the medical transfer limits. This final rule extends the number of years a medical transfer could be used from two of the five most recent years to three of the seven most recent years, which increases flexibility for those who need it. A year is defined as a calendar year, which is how IFQ permits are currently issued. NMFS will begin to measure a seven-year period during the first calendar year that a medical transfer of IFQ is approved. After the third year a medical transfer is approved under the medical transfer provision, QS holders will not be able to transfer their IFQ for any medical condition for the remainder of the seven-year period that began the first calendar year the medical transfer of IFQ was approved. Section 2.4.4 of the Analysis and the preamble of the proposed rule provide additional detail on the range of years during which a medical transfer could apply and additional rationale for the provisions selected in this final rule.

This final rule also makes several minor revisions to § 679.42(d)(2) to implement these changes to the medical transfer provisions. This final rule removes the current regulatory requirements at § 679.42(d)(2)(iii)(F) that require that the application describe the medical condition affecting the applicant or applicant's immediate family member. This change reduces the requirement that medical information would need to be reviewed by NMFS staff. This final rule removes requirements at § 679.42(d)(2)(iii) that an applicant provide his or her social security number because such information is no longer required to process transfer applications. This final rule replaces references to ''advanced nurse practitioner,'' ''licensed medical doctor,'' and ''primary community health aide'' with ''health care provider'' at § 679.42.

These revisions apply only to medical transfers that are approved after the effective date of these regulations.

Beneficiary Transfer Provision

This final rule makes two changes to the beneficiary transfer provision to: (1) Define ''immediate family member'' at

§ 679.2; and (2) modify § 679.41 to add estate representative to the list of people who can receive IFQ held by the decedent for up to three years. These changes improve and simplify the process of approving beneficiary transfers without causing undue negative impacts on a QS holder's estate planning.

This final rule defines ''immediate family member'' in § 679.2 using a current definition established by the U.S. Office of Personnel Management (OPM) that is broader, providing greater flexibility to QS holders and their beneficiaries. The OPM definition is commonly used in Federal programs that provide benefits to immediate family members and includes persons connected to the QS holder by birth, adoption, marriage, civil partnership, or cohabitation, such as grandparents, great-grandparents, grandchildren, great-grandchildren, aunts, uncles, siblings-in-law, half-siblings, cousins, adopted children, step-parents/step-children, and cohabiting partners. Section 2.5.4 of the Analysis describes the range of definitions considered by the Council and NMFS and additional information on the rationale for the specific definition described in this rule.

This final rule modifies all references in § 679.41 to surviving spouse and immediate family member in regulation by adding the term ''estate.'' Without this change, the QS holder's estate would not be eligible to hold QS under the beneficiary transfer provision.

This final rule clarifies that an estate could receive QS, and the court-appointed estate representative for the QS holder's estate are authorized to use (if they are eligible to hold QS) or transfer the IFQ derived from the estate's QS for the benefit of the estate for a period of three years following the QS holder's death. NMFS will allow the estate representative to manage the use of the decedent's QS holdings by allowing the representative to transfer IFQ annually on behalf of the estate. If after three years the estate is not settled, the estate representative could determine whether the QS held by the estate should be sold and the proceeds retained by the estate, or the estate should continue to hold the QS. However, the estate would no longer be eligible to use the beneficiary transfer provisions to lease the annual IFQ. An estate representative is required to submit court-issued documents to demonstrate his or her eligibility to NMFS that they are legally representing the estate before they could use, permanently transfer, or temporarily transfer (lease) the IFQ. This addition provides clear and consistent eligibility criteria for NMFS to determine if a person is eligible to transfer QS held by the estate of the deceased QS holder as well as use or lease the IFQ derived from those QS holdings. For more information on the beneficiary transfer provisions, please see the preamble of the proposed rule.

Appeals Process and Other Additional Regulatory Changes

In addition to modifications to the medical and beneficiary transfer provisions and the revisions to the appeals process regulations, this final rule makes two minor regulatory clarifications. First, this final rule modifies regulations at § 679.42 to update the NOAA website URL and make minor technical corrections to remove unnecessary information collected such as Social Security numbers, number of IFQ units, and notary requirements. Second, this final rule modifies regulations at § 679.42(d)(2)(iii)(D) to add an additional way to describe ''other method of compensation'' to provide flexibility to industry who may use a percentage of the total revenue as compensation instead of price per pound when they conduct transfers under this provision.

Comments and Responses

NMFS received one comment letter and has summarized and responded to the comment below.

Comment 1: I do not support fishermen receiving any medical benefits. They are depleting fish stocks and destroying the marine ecosystem.

Response: This comment raises management issues that are beyond the scope of this regulatory action. This final rule does not modify the annual process for establishing annual catch limits, or other regulations that limit harvest to prevent overfishing. This final rule does not modify regulations that limit the amount or type of gear, or the location of fisheries in ways that would adversely affect marine ecosystems.

The IFQ Program does not provide medical benefits, such as health insurance, to participants. This provision was intended to provide a mechanism for QS holders with a temporary medical condition, or caring for an immediate family member with a medical condition, that would preclude the QS holder from fishing during a season to transfer their annual IFQ to another qualified individual. In recommending this medical transfer provision, the Council and NMFS balanced the objective to limit long-term leasing of QS to promote an owner-onboard fishery with its recognition that a medical transfer provision would provide a mechanism for QS holders to retain their QS during medical hardships.

Changes From Proposed to Final Rule

There were no changes from the proposed to final rule.

Classification

The NMFS Alaska Region Administrator determined that this final rule is necessary for the conservation and management of the IFQ sablefish and halibut fishery off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5(c) of the Halibut Act 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 (16 U.S.C. 773c(c)). This final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska. The Halibut Act provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(a) and (b)). This final rule is consistent with the Halibut Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule is considered an Executive Order 13771 deregulatory action. NMFS estimates that this rulemaking may result in cost savings to the industry and NMFS through an increase in flexibility and streamlined reporting requirements for participants who voluntarily chose to use these provisions. However, these cost savings cannot be quantified because NMFS does not know how many participants would benefit from the revised transfer provisions included in this rule and cannot associate a dollar amount with these benefits. This rule streamlines the NMFS administrative process to review and approve IFQ transfer applications.

Any annual cost savings are expected to be small, however, because the time it will take to process each application is still expected to vary but will be overall less complicated.

Small Entity Compliance Guide

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 final regulatory flexibility analysis, 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, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide. Additionally, NMFS will engage in outreach with regulated entities regarding the compliance requirements. Copies of this final rule are available from NMFS at the following website: *https://www.fisheries.noaa.gov/region/alaska.*

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of any significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (84 FR 56998, October 24, 2019), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments relating to the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

QS holders that fish catcher vessel QS (B, C, and D class QS) are assumed to be directly regulated by this action. Section 2.9 of the Analysis assumes that all halibut and sablefish QS operations are small for RFA purposes. In 2018, there were 2,418 QS holders that held class B, C, or D QS in the halibut and sablefish IFQ fisheries who could be impacted by this action. All of those QS holders are considered to be small entities using the SBA small entity criteria for harvest on catcher vessels.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule modifies the recordkeeping, reporting, and other compliance requirements for QS holders who use the medical transfer provision and beneficiary designation form. NMFS does not anticipate that these requirements would increase.

This final rule would not require NMFS to interpret the medical condition that prevents a QS holder from harvesting their IFQ. Instead, NMFS would apply a hard limit to the number of times the provision can be used.

Currently, NMFS provides QS holders an optional Beneficiary Designation form to designate a beneficiary to transfer IFQ under this provision. NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the death of the individual.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

Both the medical transfer provision and the beneficiary transfer provision are voluntary and are expected to be used by QS holders only if they or their beneficiaries find them beneficial. The Council and NMFS considered requirements that would have imposed larger costs on directly regulated small entities through increased administrative costs. Ultimately, the Council and NMFS rejected options that would have led to an increase in costs that exceeded the marginal potential benefits that the option could have had. Several options that were rejected would have increased the cost to program and monitor for minimal benefit to participants. Therefore, this final rule meets the objectives of the final rule while minimizing adverse impacts on IFQ Program participants.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0272.

The public reporting burden per response is estimated to average 1.5 hours for the Application for Medical Transfer of IFQ and 30 minutes for the QS/IFQ Beneficiary Designation Form. The response time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a

currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *https://www.reginfo.gov/public/do/PRASearch#.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 6, 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 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.2 by:
■ a. Removing the definition for ''Advanced nurse practitioner;''
■ b. Adding definitions in alphabetical order for ''Health care provider'' and ''Immediate family member;'' and
■ c. Removing the definitions for ''Licensed medical doctor'' and ''Primary community health aide.''

The additions read as follows:

§ 679.2 Definitions.

* * * * *

Health care provider means an individual licensed to provide health care services by the state where he or she practices and performs within the scope of his or her specialty to diagnose and treat medical conditions as defined by applicable Federal, state, or local laws and regulations. A health care provider located outside of the United States and its territories who is licensed to practice medicine by the applicable medical authorities is included in this definition.

* * * * *

Immediate family member includes an individual with any of the following relationships to the QS holder:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (1) through (5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the QS holder is the equivalent of a family relationship.

* * * * *

■ 3. In § 679.41, revise paragraphs (k)(1) and (3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(k) * * * (1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section or the estate representative, receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse, designated beneficiary, or estate representative when sufficient evidence has been provided to verify the death of the individual.

* * * * *

(3) The Regional Administrator will approve an Application for Transfer of IFQ for a period of 3 calendar years following the date of death of an individual to a designated beneficiary. NMFS will allow the transfer of IFQ only resulting from the QS transferred to the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section or from an estate representative to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

* * * * *

■ 4. Amend § 679.42 by:
■ a. Removing in paragraph (d)(2)(iii) introductory text, the website *http://alaskafisheries.noaa.gov* and adding in its place *https://alaskafisheries.noaa.gov/region/alaska;*
■ b. Revising paragraphs (d)(2)(iii)(A) through (D), (F), and (G);
■ c. Removing paragraph (d)(2)(iii)(H);
■ d. Adding ''and'' at the end of paragraph (d)(2)(iv)(B); and
■ e. Revising paragraph (d)(2)(iv)(C).

The revisions read as follows:

§ 679.42 Limitations on Use of QS and IFQ.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases), or other method of compensation, and total amount paid for the IFQ in the requested transaction, including all fees;

* * * * *

(F) A written declaration from a health care provider as defined in § 679.2. The declaration must include:

(*1*) The identity of the health care provider including his or her full name, business telephone, and permanent business mailing address (number and street, city and state, zip code);

(*2*) A statement of the condition affecting the applicant or the applicant's immediate family member, that the applicant is unable to participate; and

(*3*) The dated signature of the health care provider who conducted the medical examination; and

(G) The signatures and printed names of the transferor and transferee, and date.

(iv) * * *

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 3 of the previous 7 calendar years for any medical condition.

* * * * *

■ 4. In § 679.43, revise paragraph (c) to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of appeals.* An appeal to an initial administrative determination must be submitted under the appeals procedure set out at 15 CFR part 906.

* * * * *

[FR Doc. 2020–02878 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 31
Friday, February 14, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Hardship Withdrawals for Expenses Related to Natural Disasters

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (''FRTIB'') proposes to allow participants to take hardship withdrawals for expenses related to natural disasters.

DATES: Comments must be received on or before March 16, 2020.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Jessica Bradford, (202) 864–8699.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

FERSA regulations permit in-service withdrawals from TSP accounts based upon four different types, or conditions, of financial hardship experienced by participants: (1) Negative monthly cash flow; (2) certain medical expenses of participant and his or her spouse or dependents; (3) payments for repairs or replacement of property resulting from personal casualty losses; and (4) attorney's fees and court costs associated with a participant's separation or divorce.

In the past, expenses and lost income resulting from natural disasters were not one of the four authorized hardship expenses. Instead, in order to allow participants to take hardship withdrawals based on natural disaster expenses and losses, the TSP relied on relief and guidance issued by the Internal Revenue Service (IRS), which made disaster relief announcements to allow participants in private sector 401(k) plans to take hardship withdrawals for natural disaster expenses and losses. However, the IRS recently announced that it will discontinue its practice of issuing disaster relief announcements. Rather than issuing such an announcement after a natural disaster to permit plans to authorize such hardship withdrawals, it amended its regulation to add to its safe harbor list of financial hardship expenses a new type of expense incurred as a result of certain disasters.

Specifically, on September 23, 2019, the IRS amended Treasury Regulation § 1.401(k)–1(d)(3), adding to the safe harbor financial hardship expenses, losses (including loss of income) and expenses incurred by a participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) if the participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by the FEMA for individual assistance with respect to the disaster.

Because the TSP has relied on the IRS' disaster relief announcements to authorize hardship withdrawals for expenses and lost income relating to natural disasters, and because those announcements will no longer be made by the IRS in light of its amended regulation, the FRTIB proposes to add to its list of authorized hardship expenses, the expenses and losses (including loss of income) resulting from a natural disaster as declared by the FEMA in order to allow TSP participants to make financial hardship withdrawals for such natural disaster expenses. The FRTIB intends for this proposed regulation to mirror Treasury Regulation § 1.401(k)–1(d)(3)(ii)(B)(7) to the extent it is applicable.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the Thrift Savings Plan, and their beneficiaries. The TSP is a Federal defined contribution retirement savings plan created FERSA and is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 1532 is not required.

List of Subjects in 5 CFR Part 1650

Taxes, Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB proposes to amend 5 CFR chapter VI as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 2. Amend § 1650.32 by revising paragraph (b) introductory text and

adding paragraph (b)(5) to read as follows:

§ 1650.32 Financial hardship withdrawals.

* * * * *

(b) To be eligible for a financial hardship withdrawal, a participant must have a financial need that results from at least one of the following five conditions:

* * * * *

(5) The participant has incurred expenses and losses (including loss of income) on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707, provided that the participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by the FEMA for individual assistance with respect to the disaster.

* * * * *

[FR Doc. 2020–03041 Filed 2–13–20; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0062]

RIN 1904–AE84

Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing amendments to its decision-making process for selecting energy conservation standards. More specifically, DOE is proposing changes that would require DOE to conduct a comparative analysis of the relative costs and benefits of all of the proposed alternative levels for potentially establishing or amending an energy conservation standard in order to make a reliable determination that the chosen alternative is economically justified.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking on or before March 16, 2020.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0062.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7432. Email: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Supplemental Notice of Proposed Rulemaking

On February 13, 2019, the United States Department of Energy (''DOE'' or ''the Department'') published a Notice of Proposed Rulemaking (''NOPR'') to update and modernize its ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (*i.e.,* ''Process Rule'') found in 10 CFR part 430, subpart C, appendix A. 84 FR 3910. Among other changes, DOE proposed a process to determine whether a trial standard level (''TSL'') would be economically justified when compared to the set of other feasible TSLs. Further, in the NOPR DOE explained that in making that determination it would consider whether an economically rational consumer would choose a product meeting the TSL over products meeting the other feasible TSLs after considering relevant *statutory* factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. DOE received numerous comments asking for clarification on how this concept would be implemented and what effect it would have on DOE's ''walk-down'' process for selecting standard levels. In response, DOE did not finalize that proposal when it issued a final rule in the proceeding to update the Process Rule. Rather, in this document, DOE proposes to revise Section 7 of the Process Rule, Policies on Selection of Standards, to clarify its earlier proposal and explain how this approach would be incorporated into DOE's decisionmaking process for selecting energy conservation standards. More specifically, DOE clarifies that its revisions to Section 7 would require the agency to conduct a comparative analysis of the relative costs and benefits of all of the proposed TSLs in order to make a reliable determination that the chosen TSL is economically justified. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

II. Authority and Background

A. Authority

Title III, Parts B [1] and C [2] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for consumer products and certain industrial equipment.[3] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) certification and

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293 and 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c), 42 U.S.C. 6295(s), 42 U.S.C. 6314(a), and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s) and 42 U.S.C. 6316(a)) In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, after consultation with the Department of Justice; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B), 42 U.S.C. 6313(a)(6), and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions, such as that DOE may not prescribe an amended or new standard if that standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4)) Finally, the Federal Trade Commission (''FTC''), in consultation with DOE, is generally responsible for issuing labeling rules. (42 U.S.C. 6294(a)(1), 42 U.S.C. 6294(a)(5) and 42 U.S.C. 6294(f))

B. Background

DOE conducted a formal effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, state agencies, utilities, and other interested parties. The result was the publication of a final rule on July 15, 1996, titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.'' 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and became known colloquially as the ''Process Rule.''

On December 18, 2017, DOE issued an RFI to address potential improvements to the Process Rule so as to achieve meaningful burden reduction while continuing to discharge the Department's statutory obligations in the development of energy conservation standards and test procedures. 82 FR 59992. On February 13, 2019, DOE issued a NOPR (''February 2019 NOPR'') to update and improve the Process Rule. 84 FR 3910. Among other revisions, DOE proposed to refine its current walk-down approach for selecting standard levels. Under the proposed approach, DOE would require determinations of economic justification to consider comparisons of economically relevant factors across trial standard levels, consistent with the relative economics of the choices and rational purchasing behavior of the average consumer. 84 FR 3938. As noted previously, elsewhere in this issue of the **Federal Register**, DOE has published a final rule to amend the Process Rule. In that final rule, DOE stated that it is initiating another rulemaking to further consider potential amendments to the walk-down approach.

III. Discussion of Revisions to DOE's Policies on Selecting Standard Levels

DOE received a substantial amount of comment on its proposal that determinations of economic justification be based on choices made by an economically rational consumer. A significant number of commenters stated that DOE's proposal, specifically the use of a rational consumer to determine economic justification, lacked sufficient detail to provide for a meaningful opportunity to comment. For instance, the Natural Resources Defense Council (''NRDC'') argued that without a definition of an economically rational consumer, it was impossible to provide feedback on the methodology by which standard levels would be evaluated. (NRDC, EERE–2017–BT–STD–0062, No. 131, at pp. 16–17) [4] Furthermore, even if the term ''economically rational consumer'' were to be defined, some of the commenters expressed doubt about the utility of such a construct. For example, the Connecticut Department of Energy & Environmental Protection (''CT–DEEP'') opposed DOE's proposal based on what it characterized as a hypothetical and arbitrary economically rational consumer, arguing that modern economic theory suggests that such a consumer does not truly exist. (CT–DEEP, EERE–2017–BT–STD–0062, No. 93 at p. 4) Several commenters also questioned whether the proposal is permissible under EPCA. For example, the Attorneys General (''AG'') Joint Commenters [5] argued that DOE's focus on what TSL an economically rational consumer would choose ''ignores the EPCA-defined factors that DOE must consider and thus violates the statute.'' (AG Joint Commenters, EERE–2017–BT–STD–0062, No. 111, at p. 16) The Alliance to Save Energy (''ASE'') expressed concern that the proposal would result in DOE choosing the most economically justified TSL as opposed to the TSL that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified. (ASE, EERE–2017–BT–STD–0062, No. 108, at pp. 6–7)

A number of other commenters expressed varying degrees of theoretical support for potential modifications to DOE's walk-down but requested more

[4] This type of notation identifies the commenter, the docket document number of the comment, and the relevant pages of that document, pp. 16–17.

[5] Comments of Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, New York, North Carolina, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and the city of New York.

detail or explanation concerning the DOE proposal. Among this group, the Association of Home Appliance Manufacturers (''AHAM'') stated that because DOE's walk-down proposal was not sufficiently clear and fully articulated, it was not in a position to comment, but it added that the concept should not be discarded. (AHAM, April 11, 2019 Public Meeting Transcript, EERE–2017–BT–STD–0062, No. 92, at p. 169) Similarly, the National Electrical Manufacturers Association (''NEMA'') stated that while it is not opposed to considering the behavior of consumers as part of the walk-down to determine the economic justification of potential standards, it would need to know more about how such approach would work in regulatory practice. NEMA expressed concern that different perspectives about the ''rational consumer'' are capable of being variably applied, and consequently, it recommended that DOE approach this issue on a case-by-case basis in rulemakings where there is an opportunity for notice and comment. Thus, NEMA suggested that these principles would need to evolve before being incorporated into the Process Rule. (NEMA, EERE–2017–BT–STD–0062, No. 107 at pp. 7–8). Many commenters favored further examination of the subject matter of the proposal (perhaps as part of a peer review) but stated that the lack of clarity and sufficient detail rendered them unable to express an opinion or comment further.

As noted earlier, EPCA requires that in prescribing new or amended standards, DOE shall design a standard such that it achieves the maximum improvement in energy efficiency, or in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). In determining whether a standard is economically justified, EPCA further requires that DOE determine whether the benefits of the standard exceed its burdens based on the previously noted seven statutory factors. 42 U.S.C. 6295(o)(2)(B) More specifically, in response to the concerns and requests for further explanation, DOE is: (1) Clarifying its proposal on how impacts are considered in determining economic justification through the seven factors specified in EPCA; and (2) explaining that the requirement to determine economic justification is based on comparisons across the full range of TSLs and is consistent with EPCA. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B). DOE has determined that the ''walk-down'' approach may not allow for a full consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard. In only comparing the costs and benefits of the TSL under consideration against the baseline case (no new or amended standards) and generally ceasing consideration at the highest TSL for which benefits exceed burdens, DOE may select a TSL that has significant, adverse economic impacts when compared to another TSL. DOE is concerned that this approach may make it more likely that DOE would inadvertently select a TSL that has significant, adverse economic impacts that exceed the benefits of the standard. DOE also believes that its consideration of whether the benefits of any particular standard exceed its burdens should be informed by a holistic understanding of the relative costs and benefits of other standards. Relatedly, DOE believes that its weighing of benefits and burdens of particular standards should be informed by consideration of alternate scenarios, *i.e.,* other TSLs, against which benefits and burdens are to be assessed, and not simply by consideration of a scenario in which no new or amended standard is issued.

A. Consumer Impacts on Economic Justification

In the February 2019 NOPR, DOE proposed that a determination of economic justification for a particular trial standard level (TSL) should consider whether an economically rational consumer would choose a product meeting the TSL over products meeting other feasible TSLs after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. 84 FR 3938. DOE went on to state that if an economically rational consumer would not choose the candidate trial standard level after considering these factors, the TSL would be rejected as economically unjustified. *Id.* As discussed previously, commenters either did not understand this construct or expressed concerns regarding the use of an economically rational consumer construct to determine whether a standard level is economically justified.

After further consideration, DOE is of the view that it is not necessary to utilize the construct of an ''economically rational consumer'' to determine economic justification. The factors DOE stated that the economically rational consumer would consider in the previous proposed rule, (energy savings, efficacy, product features, and life-cycle costs), arise out of EPCA's seven factors for determining economic justification. (See 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII).)[6] Because the seven factors are familiar to DOE stakeholders and can effectively provide a means to account for the decisions of an economically rational consumer discussed in the prior proposal, DOE believes it is unnecessary to refer to a theoretical concept of an ''economically rational consumer'' to determine economic justification. Instead, DOE clarifies that because the current walk-down approach generally ceases analysis at the highest TSL for which benefits exceeded burdens, precluding a fuller consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard, DOE proposes to amend the prior process to require the agency to determine economic justification based on comparisons across the full range of TSLs and is consistent with EPCA. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

This proposed approach is consistent with EPCA, which provides a list of factors that DOE may consider, and to weigh in DOE's discretion, in considering whether the benefits of a particular standard outweigh its burdens. EPCA authorizes DOE to consider seven factors including factors that the Secretary considers relevant. The authorization of these broad factors gives DOE wide discretion. Collectively,

[6] The seven factors specified in 42 U.S.C. 6295(o)(2)(B)(i) are as follows:

(I) The economic impact of the standard on the manufacturers and on the consumers of the product subject to the standard;

(II) the savings in operating costs throughout the estimated average lifetime of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

this list of factors allows DOE to consider the relative costs and benefits of alternative standards and to take into account disparities in cost-benefit profiles between standards that would result in significant costs to consumers or other stakeholders if a particular standard is chosen to the exclusion of another standard when considered after a determination of technological feasibility. Relatedly, DOE believes that its weighing of benefits and burdens of particular standards should be informed by consideration of alternate scenarios, *i.e.,* other TSLs, against which benefits and burdens are to be assessed, and not simply by consideration of a scenario in which no new or amended standard is issued. The text of EPCA, which does not foreclose such consideration or use of alternate scenarios, provides DOE with ample discretion in identifying and applying methods for determining whether the benefits of a standard outweigh the burdens.

B. The ''Walk-Down'' Process

To ensure that any new or amended standard meets these statutory criteria, DOE historically has implemented an approach referred to as the ''walk-down'' in selecting standard levels.

As a first step in undertaking that approach, DOE puts possible technologies for improving energy efficiency through a design options screening process. In this process, as part of assessing technological feasibility, DOE reviews a number of design factors that overlap significantly with technical considerations, as well as some market considerations. DOE will not consider a technology for inclusion in a TSL if: (1) It is not incorporated in a commercial product or in a commercially-viable, existing prototype; [7] (2) it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard; (3) it is determined to have a significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S.; (4) it is determined to have significant adverse impacts on health or safety; or (5) it has proprietary protection and represents a unique pathway to achieving a given efficiency level.[8] *See* section 7(b) of 10 CFR part 430, subpart C, appendix A.

Following the technological feasibility assessment, DOE then uses the remaining technologies to create a range of TSLs. These TSLs will typically include: (1) The most-stringent TSL that is technologically feasible, *i.e.,* the ''max-tech'' standard; (2) the TSL with the highest life-cycle cost; (3) a TSL with a payback period of not more than three years; and (4) any TSLs that incorporate noteworthy feasible technologies or fill in large gaps between efficiency levels of other TSLs.

After determining technological feasibility and developing the TSLs, DOE then conducts a cost-benefit assessment of the TSLs starting with the max-tech standard. Under the current walk-down approach, if the cost-benefit assessment demonstrates that the benefits of max-tech TSL exceed its costs, the analysis ends, and DOE adopts the max-tech TSL as the new or amended standard. However, if DOE determines that the benefits of the max-tech TSL do not exceed its costs, DOE ''walks down'' to consider the next most-stringent TSL, again by application of a simple cost-benefit comparison. This ''walk-down'' process continues until DOE determines that the benefits of a TSL exceed its costs, and, thus, is economically justified, or that none of the TSLs are economically justified.

C. Proposed Changes

While the current ''walk-down'' approach ensures that DOE considers adopting TSLs that represent the maximum improvement in energy efficiency that is technologically feasible, it may not allow for a full consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard. In only comparing the costs and benefits of the TSL under consideration against a baseline case and generally ceasing consideration at the highest TSL for which benefits exceed burdens, DOE may select a TSL that has significant, adverse economic impacts when compared to another TSL. For example, if two TSLs have similar energy savings (one is slightly higher than the other) and would both have monetized benefits that exceed monetized burdens when compared to the case, typically DOE has selected the TSL with the slightly higher energy savings under this approach. However, if, for example, the TSL with the slightly higher energy savings also has a significant, adverse impact on small business manufacturers as compared to the other TSL, it could be difficult to argue that it is economically justified. To generalize further, in considering whether the benefits exceed the burdens for a particular standard, the relative impacts on lessening market competition in moving from one TSL to another may prove material to the choice of TSL, all other factors considered. As a result, in order to make a determination of economic justification, it is necessary to compare the TSLs to each other to determine the relative benefits in light of the costs to achieve those benefits. As such, DOE must conduct a comparative analysis of the relative costs and benefits of all of the proposed TSLs to make a reliable determination that a specific TSL is economically justified. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

To implement this comparative analysis, DOE is proposing to modify the ''Policies on Selection of Standards'' section of the Process Rule to clarify that a determination of economic justification for a specific TSL must be based on a comparison of the benefits and burdens of that standard, determined by considering the seven factors listed in EPCA, against the benefits and burdens of the baseline case (no new standards case) and all other TSLs as an incremental comparison. In addition, this approach is intended to incorporate the potential consumer welfare impacts that would arise out of the factors contemplated in EPCA, and specifically 42 U.S.C. 6295(o)(2)(B). As a result, while DOE will continue to start the TSL evaluation process with the max-tech TSL and ''walk down'' to less-stringent TSLs, economic justification would be expanded to be determined through a comparative analysis of the benefits and burdens of all of the proposed TSLs, including relative comparisons of each TSL's benefits and burdens as part of an holistic analysis among all TSLs as outlined in 42 U.S.C. 6295(o)(2)(B). To be clear, this new comparative analysis will inform the policy choice, based on the statutory factors, and DOE will no longer simply adopt the max-tech TSL without clear consideration of the results of the comparative analysis.

[7] For example, for purposes of technological feasibility, DOE would not consider as a dishwasher a box within which water is sprayed on dishware without actually cleaning that dishware.

[8] That is, for purposes of technological feasibility, DOE would not consider setting a standard that could only be met by using a particular patented technology.

DOE has done such comparisons in the past. For example, in the most recent energy conservation standards rulemaking for dehumidifiers, DOE stated that one TSL would minimize disproportionate impacts to small, domestic dehumidifier manufacturers relative to two other TSLs under consideration. 81 FR 38338, 38388 (June 13, 2016). DOE's current proposal would ensure that such comparisons are consistently conducted across rulemakings with respect to the factors and considerations for determining economic justification listed in 42 U.S.C. 6295(o)(2)(B)(i) and section 7(e)(2) of the proposed Process Rule, respectively.

Furthermore, concerns that this proposal will result in DOE selecting standards that are the most economically justified, instead of standards that result in the maximum improvement in energy efficiency that is technologically feasible and economically justified, are misplaced. If DOE determines more than one trial standard level is economically justified, DOE will select the standard that results in the maximum improvement in energy efficiency with the greatest beneficial impact given burdens. 42 U.S.C. 6295(o)(2)(B). That could be the standard level that maximizes net benefits. It may, in some cases, be the TSL that optimizes consumer life cycle cost savings (*i.e.,* the comparison of upfront increases in installed cost against long-term energy savings and operating and maintenance costs), which would indicate the standard level that is best tailored to a specific product. It could also be the standard that minimizes negative impacts to either consumers or manufacturers even if a different TSL would maximize energy savings or net benefits. For example, in the 2015 final rule amending the standards for general service fluorescent lamps, TSL 5 would have resulted in maximum energy savings and positive net benefits; however, DOE did not select TSL 5 because the Secretary determined that doing so would decrease industry net present value by 24 percent and pose net costs for 22 percent of consumers.[9] In the dehumidifier example discussed above, TSL 2 was selected, at least in part, because it minimized the impact to small business manufacturers compared to other TSLs. Additionally, DOE may consider a range of potential consumer effects in this calculation, potentially including effects on product functionality or consumer utility, following the conclusion of its ongoing peer review on analytical methods. For example, to the extent that a revised standard could extend cycle times or other convenience factors that consumers' value, DOE would seek to quantify this impact and assess that value in its comparison of potential standard levels.

When considered as part of the amendments to DOE's Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment finalized elsewhere in this issue of the **Federal Register**, this proposal will enable DOE to more readily and consistently satisfy its continuing obligation to review its standards, as well as its separate ongoing obligations to review all of its test procedures, on a cyclical basis, by helping DOE to quickly identify those areas that will yield the most beneficial information from DOE's efforts to amend or establish standards producing significant energy conservation for a given regulated product or equipment. By helping DOE to prioritize its efforts, the revised procedures will allow DOE to better focus on standards that effectively provide for improved energy efficiency of major appliances and certain other consumer products. *See* 42 U.S.C. 6201(5).) The proposed changes in this document (and the final rule published elsewhere in this issue of the **Federal Register**) as a whole are anticipated to help enable manufacturers to focus more on innovation and to make more investment in research and development for their products. DOE seeks comment on the clarifications provided in this document and its proposed approach for determining economic justification.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339 (Jan. 30, 2017). More specifically, the Order provides that it is essential to manage the costs associated with the governmental imposition of requirements necessitating private expenditures of funds required to comply with Federal regulations. In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). The Order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

To implement these Executive Orders, the Department, among other actions, issued a request for information (RFI) seeking public comment on how best to achieve meaningful burden reduction while continuing to achieve the Department's regulatory objectives. 82 FR 24582 (May, 30, 2017). In response to this RFI, the Department received numerous and extensive comments pertaining to DOE's Process Rule.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies

[9] 80 FR 4142.

available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

Because this proposed rule does not directly regulate small entities but instead only imposes procedural requirements on DOE itself, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this proposed rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

E. Review Under the National Environmental Policy Act of 1969

In this document, DOE proposes to revise its Process Rule, which outlines the procedures DOE will follow in conducting rulemakings for new or amended energy conservation standards and test procedures for covered consumer products and commercial/industrial equipment. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

G. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each Executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely

affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this proposed rule.

M. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged in a new peer review of its analytical methodologies.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signed in Washington, DC, on December 31, 2019.

Daniel R Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. In appendix A to subpart C of part 430, revise section 7(e) to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

* * * * *

7. Policies on Selection of Standards

* * * * *

(e)(1) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be both technologically feasible and economically justified.

(2) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A candidate/trial standard level will not be proposed or promulgated if the Department determines that it is not both technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. (o)(3)(B)) For a standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the factors listed in 42 U.S.C. 6295(o)(2)(B)(i). In making such a determination, the Secretary shall compare the benefits and burdens of the standard against the benefits and burdens of the baseline case (no new standards case) and all other candidate/trial standard levels. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B). A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

* * * * *

[FR Doc. 2020–00022 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is requesting public comment on its Trade Regulation Rule entitled ''Funeral Industry Practices Rule'' (''Funeral Rule'' or ''Rule''). The Rule defines unfair and deceptive practices in the sale of funeral goods and services and prescribes preventive requirements to protect against these practices. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule as part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before April 14, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Funeral Rule Regulatory Review, 16 CFR part 453, Project No. P034410,'' on your comment, and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Patti Poss (202–326–2413), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, *pposs@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Funeral Rule pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.[1] The Funeral Rule's goal is to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice.[2] The Rule helps to achieve these goals by ensuring that: (1) Consumers have access to sufficient information to permit them to make informed decisions; (2) consumers are not required to purchase goods and services that they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions.[3]

When it promulgated the Funeral Rule, the Commission recognized that the arrangement of a funeral is an important financial transaction for consumers, with unique characteristics that reduce the ability of consumers to make careful, informed purchase decisions. The Commission noted that funeral arrangement decisions must often be made while under the emotional strain of bereavement, and that consumers often lack familiarity with the funeral transaction. Further, ''consumers are called upon to make several important and potentially costly decisions under tight time constraints.'' [4]

The Commission issued the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.[5] The original Rule included a provision requiring a regulatory review of the Rule no later than four years after its effective date to determine whether it should be amended or terminated.[6] The Rule was amended effective July 19, 1994,[7] and the United States Court of Appeals for the Third Circuit upheld the amended Rule following a challenge by funeral industry groups.[8]

The Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) Fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods or services used in connection with the disposition of deceased human remains; (2) require

[1] Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Section 18 of the FTC Act, 15 U.S.C. 57a, permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5.

[2] Original Funeral Rule Statement of Basis and Purpose, 47 FR 42260 (Sept. 24, 1982).

[3] *Id.*

[4] *Id.*

[5] Certain portions of the Rule became effective on January 1, 1984 and others on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co.* v. *FTC,* 726 F.2d 993 (4th Cir.), *cert. denied,* 469 U.S. 820 (1984).

[6] 16 CFR 453.10 (1982).

[7] Amended Funeral Rule Statement of Basis and Purpose, 59 FR 1592 (Jan. 11, 1994).

[8] *Pennsylvania Funeral Directors Ass'n, Inc.* v. *FTC,* 41 F.3d 81, 83 (3d Cir. 1994).

consumers to purchase a casket for direct cremation; (3) condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service or charge a fee as a condition to furnishing any goods or services, such as a ''casket handling'' fee to consumers who provide their own casket; or (4) embalm the deceased for a fee without authorization when embalming is not required by law.

The Rule also specifies that it is a deceptive act or practice for a funeral provider to misrepresent the legal or local cemetery requirements for: (1) Embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) the purchase of any other funeral good or service. Further, the Rule prohibits misrepresentations that so-called ''cash advance'' items are provided to the consumer at the same price as that paid by the funeral provider, when that is not the case, or that any funeral goods or services will delay the natural decomposition of human remains for a long-term or indefinite time.

The Rule sets forth preventive requirements in the form of itemized price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described above. First, the Rule requires funeral providers give persons inquiring about funeral goods or services a General Price List (''GPL'') to keep, which lists the goods and services they offer and their itemized prices, along with specific disclosures. Second, the Rule requires funeral providers show consumers a Casket Price List (''CPL'') identifying the caskets and alternative containers they carry, and an ''Outer Burial Container Price List'' (''OBCPL'') listing the vaults and grave liners they offer, along with specific disclosures.

On March 14, 2008, the Commission completed a second regulatory review (''2008 Review''), and concluded that the Rule was still needed and should be retained.[9] The Commission also considered whether the Rule should be expanded to cover cemeteries, crematories and third-party sellers of caskets, monuments, and other funeral goods. However, the evidence amassed in the regulatory review record was not indicative of a sufficiently widespread pattern of unfair or deceptive acts or practices to suggest that, even if the record were to be developed further, it would justify an amendment proceeding to expand the Rule to cover those additional death care businesses.[10] The Commission likewise determined that an amendment proceeding was not warranted for other changes advocated by some of the public comments.[11]

[9] 73 FR 13740 (Mar. 14, 2008).

[10] 73 FR at 13742.

[11] *Id.* In particular, the Commission found insufficient evidence that: (1) Widespread unfair or deceptive practices occur in the sale of pre-need funeral arrangements; (2) discount funeral packages offered in addition to itemized services cause consumer injury; and (3) adding additional disclosure requirements is necessary to remedy any widespread pattern of unfair practices. The Commission also determined that casket-handling fees should continue to be disallowed and that the provision allowing funeral providers to charge a single non-declinable fee for their basic services and overhead should be retained.

II. Regulatory Review of the Funeral Rule

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry to avoid deceptive or unfair practices. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission.

With this document, the Commission initiates a new review. The Commission solicits comments on, among other things: (1) The economic impact of, and the continuing need for, the Funeral Rule; (2) the Rule's benefits to consumers; (3) and the burden it places on industry members subject to the requirements, including small businesses.

III. Issues for Comment

To aid commenters in submitting information, the Commission has prepared the following questions related to the Funeral Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence, including empirical analyses, that supports their position.

A. General Regulatory Review Questions

1. *Need:* Is there a continuing need for the Rule? Why or why not?

2. *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers? Does the Rule impose any significant costs on consumers? Please quantify these benefits and costs wherever possible.

3. *Benefits and Costs to Industry Members:* What benefits has the Rule provided to businesses? Does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses? Please quantify these benefits and costs wherever possible.

4. *Impact on Information:* What impact has the Rule had on the flow of truthful information to consumers and on the flow of misleading information to consumers?

5. *Compliance:* Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

6. *Possible Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

7. *Unnecessary Provisions:* Provide any evidence, including empirical analyses, concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

8. *Additional Unfair or Deceptive Practices:* What potentially unfair or deceptive practices, not covered by the Rule, related to funeral goods and services, are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible. With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

9. *Product and Service Coverage:* Should the Commission broaden the Rule to include products or services not currently covered? Provide any evidence that supports your position. What potentially unfair or deceptive practices related to products or services not covered by the Rule are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible.

10. *Technological or Economic Changes:* What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

11. *Conflicts with Other Requirements:* Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat deceptive practices in the funeral services market?

12. *Other State or Local Laws or Regulations:* Are there state or local laws or regulations that lessen competition or impede consumer protection in the funeral-services market? Provide any evidence that supports your position. Should the Commission, through its advocacy work, encourage changes to these state or local laws or regulations? If so, what changes?

B. Specific Questions Related to the Funeral Rule

13. *Online and Electronic Price List Information:*

a. Should all funeral providers be required to post their itemized GPLs, CPLs or OBCPLs online? Why or why not?

b. Should funeral providers that have websites be required to post their itemized GPL, CPLs or OBCPLs online? Alternatively, should they be required to provide an email address or other online mechanism for a website visitor to request the itemized price list information electronically and be subject to a time limit for replying to such requests? Why or why not?

c. If a funeral provider makes funeral arrangements without an in-person meeting (such as through a phone call, website, email, or text), should the funeral provider be required to provide an electronic copy of its itemized GPL, CPL, or OBCPL prior to a consumer making any selections? Why or why not?

d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses? Please quantify or estimate these costs and benefits wherever possible.

14. *Casket and Outer Burial Container Information:*

a. Should funeral providers be required to provide the CPL and OBCPL at the same time as the GPL? Why or why not?

b. Should funeral providers be required to combine the casket and outer burial container price information and disclosures into the GPL? Why or why not?

c. Should funeral providers be required to give consumers copies of their CPL and their OBCPL to keep, as they are required to do for the GPL? Why or why not?

d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

15. *Price List Format:*

a. Should funeral providers be required to provide their itemized price list information and disclosures in a standardized format? Why or why not? If so, how should a standardized format be developed and updated as the marketplace changes?

b. Would a standardized format make it easier for consumers to review and compare itemized price list information from multiple providers? Why or why not?

c. Would a uniform standardized format make it easier for funeral providers to prepare compliant itemized price lists, particularly small businesses? Why or why not?

d. How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

e. If the Rule was modified to include a standardized format for some or all of the itemized price list information and disclosures, should use of such a form be a safe harbor for the Rule's price list requirements for a funeral provider? Why or why not?

16. *Cremation and Cremation-Only Funeral Providers:*

a. What percentage of consumers are choosing cremation each year? What is the annual dollar volume of sales for cremation services? How has that changed in the last five years, in the last ten years, and since the Rule was enacted?

b. Should funeral providers be required to include the cost, or the range of costs, of any crematory fees that will be charged by outside providers for cremation on their itemized price list? Why or why not?

c. What percentage of funeral providers offer only cremation services without any burial options as a final disposition? What percentage of funeral arrangements do these providers account for?

d. What, if any, modifications should be made in the Rule's itemized price list and disclosure requirements for funeral providers offering only cremation services as a final disposition? Why? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

17. *New Forms of Cremation and Other Processes for Disposition:*

a. What new forms of cremation and other processes for the disposition of human remains (such as chemical and organic reduction processes) are available in the U.S. market? What percentage of consumers are choosing these newer options? How has that changed in the last five years? How many providers offer these new types of disposition services and what is the annual dollar volume of sales?

b. What, if any, modifications should be made to the Rule in light of new and developing processes for human remains disposition? Why? Should the definition of ''cremation'' in the Rule be amended to reflect these new processes? Why or why not? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

c. What types of alternative containers, if any, are needed or required for cremation and non-burial types of dispositions?

d. Does the Rule's required disclosure regarding alternative containers need to be modified in light of new disposition options and the containers required? Why or why not?

18. *Non-Declinable Basic Services Fee:* Should the Rule permit a non-declinable basic services fee? Why or why not? Provide any evidence that supports your position.

19. *Reduced Basic Services Fee for Direct Cremation and Immediate Burial:*

a. The Rule defines direct cremation as ''a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.'' Should the Rule be modified to expressly permit the addition of other goods or services for consumers choosing direct cremation or other newer forms of human remains disposition without requiring payment of the full basic services fee? For example, should the Rule permit a funeral provider to charge a reduced basic services fee for a family choosing to have a loved one cremated but also wishing to have a limited viewing or visitation prior to or after the cremation?

b. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation

or newer forms of human remains disposition arrangements without requiring the funeral provider charge the full basic services fee, what additional goods or services should be included? Why?

c. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation or newer forms of human remains disposition arrangements without requiring the funeral provider to charge the full basic services fee, should such a change also be made to permit limited additional goods or services to immediate burial arrangements? Why or why not?

d. How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

20. *Mandatory Disclosures:*

a. Do the existing mandatory disclosures in the Rule convey to consumers an accurate understanding of their choices? Should any of the mandatory disclosures be modified to improve clarity? Why or why not?

b. The current embalming disclosure begins with a caveat: ''*Except in certain special cases,* embalming is not required by law.'' The Rule provides that this italicized language ''need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.'' Should the Rule be changed to prohibit the inclusion of the ''certain special cases'' caveat in locations where the state or local law does not require embalming? Why or why not?

21. *Funeral Rule Offender Program:* What impact, if any, has the FTC's policy of referring first-time violators to the National Funeral Directors Association's Funeral Rule Offenders Program (FROP) for compliance review and training had on compliance with the Rule? Would publication of some or all of the names of those funeral providers participating in the FROP program increase compliance with the Rule? Would such publication benefit in other ways consumers shopping for funeral services? Why or why not?

22. *Cemeteries:*

a. Should the Commission broaden the Rule to apply to cemeteries? Why or why not? Identify any specific practices by cemeteries, such as failing to provide itemized price information or making any misrepresentations to consumers, that an extension of the Rule could address to protect consumers. Provide any evidence that demonstrates whether such practices cause consumer injury and quantify or estimate that injury if possible. Are any such practices prevalent? If so, provide any evidence, such as empirical data, studies, or reports, which demonstrates the extent of such practices.

b. What percentage of cemeteries are for-profit and therefore would fall within the FTC's jurisdiction? What, if any, concerns would arise if the Commission extended the Rule to for-profit cemeteries, but not non-profit cemeteries? What would the costs and benefits be to consumers and cemetery providers if the Commission extended the Rule to cemeteries? Provide evidence to support your conclusions.

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 14, 2020. Write ''Funeral Rule Regulatory Review, 16 CFR part 310, Project No. P034410'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through *https://www.regulations.gov,* by following the instructions on the web-based form provided.

If you file your comment on paper, write ''Funeral Rule Regulatory Review, 16 CFR part 310, Project No. P034410'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 14, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–02803 Filed 2–13–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–171–FOR; Docket ID: OSM–2019–0009; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment would make changes to Pennsylvania's Coal Refuse Disposal Control Act. Those changes would include establishing the terms and conditions under which a system that prevents precipitation from contacting coal refuse must be installed, requiring that the regulations regarding temporary cessation at coal refuse disposal areas conform with Federal SMCRA regulations, and providing for future regulations addressing the connection with source mines that are in temporary cessation in determining temporary cessation for the coal refuse disposal permit.

This document provides the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 16, 2020. If requested, we may hold a public hearing or meeting on the amendment on March 10, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 2, 2020.

ADDRESSES: You may submit comments, identified by SATS No. PA–171–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2019–0009. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Ben Owens, Pittsburgh Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center Drive South, 2nd Floor, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Pennsylvania Department of Environmental Protection, Bureau of Mining Programs, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, PA 17105–8461.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Pittsburgh Field Office Director Telephone: (412) 937–2827. Email: *bowens@gmail.com.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated October 16, 2019, (Administrative Record No. PA 905.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

The proposed amendment would make changes to section 6.1 of Pennsylvania's Coal Refuse Disposal Control Act (52 P.S. § 30.56a). Subsection (i) of that section requires that for all new coal refuse disposal areas, operators must include a system to prevent adverse impacts to surface and ground water, to prevent precipitation from contacting coal refuse, and to allow for revegetation and prevention of erosion. Subsection (i) also requires that operators must install this system when the operator temporarily ceases operation of the coal refuse disposal area for 90 days or more, unless the Department approves a longer period of one year or less because of a labor strike or business necessity. The proposed amendment would remove the specific requirements for a labor strike or business necessity, and allow the Department to approve a period of temporary cessation for coal refuse disposal areas of more than 90 days without installation of the protective system at the operator's request. The proposed amendment would also remove the one year limit on temporary cessations without installing the protective system.

The proposed amendment would also add subsection (j) to section 6.1 of the Pennsylvania Coal Refuse Disposal Control Act. Subsection (j) would allow the Department to promulgate new regulations that connect the time limits on temporary cessation of a coal refuse disposal area without installation of a protective system to cessations occurring at the underground mine or coal preparation plant that produces the source coal refuse or related material. Subsection (j) also requires any such regulations, and any related policies, rules, and standards, to conform to

SMCRA and its implementing regulations.

Pennsylvania proposed this amendment to address situations where the underground mines or coal preparation plants that produce coal refuse cease operations for longer than a year. In such situations, the sources of the coal refuse has no time limit on the cessation of operations, but the coal refuse disposal area has a time limit of one year or less. This has created operational problems for the coal refuse disposal sites.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment- including your personal identifying information- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 2, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Oder Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 2019.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2020–02885 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–169–FOR; Docket ID: OSM–2018–0006; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania is requesting to adopt changes to its regulations related to blaster's licenses and storage, handling and use of explosives. The proposed changes would update the regulations based on current industry best practices and include blasting requirements related to seismic exploration.

This document gives the times and locations that the Pennsylvania program and this proposed amendment to that

program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 16, 2020. If requested, we may hold a public hearing or meeting on the amendment on March 10, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 2, 2020.

ADDRESSES: You may submit comments, identified by SATS No. PA–169–FOR, Docket ID: OSM–2018–0006, by any of the following methods:

- *Mail/Hand Delivery:* Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2018–0006. If you would like to submit comments go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To access the docket to review copies of the Pennsylvania regulatory program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *https://www.regulations.gov.*

Ben Owens, Pittsburgh Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center Drive South, 2nd Floor, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Pennsylvania Department of Environmental Protection, Bureau of Mining Programs, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, PA 17105–8461.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center Drive South, 2nd Floor, Pittsburgh, PA 15220, Telephone: (412) 937–2827. Email: *bowens@gmail.com.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated July 5, 2018, (Administrative Record No. PA 902.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

The proposed amendment includes changes to the Pennsylvania regulatory program regulations that were adopted by the Commonwealth on February 20, 2018, and became effective on June 23, 2018. Chapters 210 and 211, relating to blasters' licenses; and storage, handling and use of explosives, were revised. The proposed amendments update the regulations based on current industry best practices and include blasting requirements related to seismic exploration, which is fundamentally different than most other uses of explosives. This proposed rule also updates explosives use requirements to reflect current practices and eliminates outdated requirements. The updated requirements may result in more consistency between the requirements for construction blasting and blasting for mining operations.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 2, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2019.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2020–02884 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–126–FOR; Docket ID: OSM–2019–0012; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the West Virginia regulatory program (hereinafter the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The statutory provisions involve the method in which permit applications are advertised. The regulatory provisions involve non-substantive revisions to definitions, reclamation, environmental security account for water quality, water quality enhancement, and modifying sections on incremental bonding, requirement to release bonds, forfeiture of bonds, and effluent limitations. This document gives the times and locations that the West Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.) on March 16, 2020. If requested, we may hold a public hearing or meeting on the amendment on March 10, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 2, 2020.

ADDRESSES: You may submit comments, identified by SATS No. WV–126–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220.
- *Fax: (412) 937–2177.*
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID; OSM–2019–0012. If you would like to submit comments go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To access the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearing or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Charleston Field Office or the full text of the program amendment is available for you to read at *https://www.regulations.gov.*

Mr. Ben Owens, Pittsburgh Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220, *Telephone:* (412) 937–2827, *Email: chfo@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following locations:

West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, WV 25304, *Telephone:* (304) 926–0490

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, WV 26508, *Telephone:* (304) 291–4004 (By Appointment only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, WV 25801, *Telephone:* (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Pittsburgh Field Office Director, Telephone: (412) 937–2827. Email: *chfo@osmre.gov*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

West Virginia submitted two letters, dated May 2, 2018, (Administrative Record Nos. 1613A and 1613B), amending its program under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment involves revisions to statutory provisions at W. Va. Code Chapter 22–3 and regulatory provisions at W. Va. CSR Section 38–2. The revised statutory provisions were enacted through West Virginia Senate Bill 163, which was signed by the Governor on February 27, 2018. The statutory provisions involve the method in which permit applications are advertised. The regulatory provisions involve non-substantive revisions to definitions, reclamation, environmental security account for water quality, water quality enhancement, and modifying sections on incremental bonding, requirement to release bonds, forfeiture of bonds, and effluent limitations.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *https://www.regulations.gov*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 2, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory Orders and Executive Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2019.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2020–02886 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0038]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations, Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes amending and updating its special local regulations for recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). Through this notice the current list of recurring special local regulations is updated with revisions, additions, and removals of events that no longer take place in the Sector Ohio Valley AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0038 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Ohio Valley (COTP) proposes to update the current list of recurring special local regulations found in Table 1 of 33 CFR 100.801 for events occurring within the Sector Ohio Valley area of responsibility within the Coast Guard's Eighth District region.

This rule updates the list of annually recurring special local regulations under 33 CFR 100.801, Table 1 for annual special local regulations in the COTP zone. The Coast Guard will address all comments through response via the rulemaking process, including additional revisions to this regulatory section. Additionally, these recurring events are provided to the public through local means and planned by the local communities.

The current list of annual and recurring special local regulations occurring in Sector Ohio Valley's AOR is published under 33 CFR part 100.801, Table 1. The most recent list was created May 2, 2019 via 84 FR 18727.

The Coast Guard's authority for establishing a special local regulation is contained at 46 U.S.C. 70041(a). The Coast Guard is amending and updating the special local regulations under 33 CFR part 100.801, Table 1 to include the most up to date list of recurring special local regulations for events held on or around navigable waters within Sector Ohio Valley's AOR. These events include marine parades, boat races, swim events, and other marine related events. The current list under 33 CFR 100.801, Table 1 requires amendment to provide new information on existing special local regulations, add new special local regulations expected to recur annually or biannually, and remove special local regulations that are no longer required. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of recurring special local regulations.

III. Discussion of Proposed Rule

Part 100 of 33 CFR contains regulations to provide effective control over regattas and marine parades conducted on U.S. navigable waters in order to ensure the safety of life in the regatta or marine parade area. Section 100.801 provides the regulations applicable to events taking place in the Eighth Coast Guard District and also provides a table listing each event and special local regulation. This section requires amendment from time to time to properly reflect the recurring special local regulations. This proposed rule updates § 100.801, Table 1 for Sector Ohio Valley.

This proposed rule adds 8 new recurring special local regulation, and amends the dates and or regulated areas for 29 recurring special local regulations already listed.

This proposed rule would add 8 new recurring special local regulation in Table 1 of § 100.801 for Sector Ohio Valley, as follows:

Date	Event/sponsor	Ohio Valley location	Regulated area
2 days—First or second week of October.	Head of the Ohio Rowing Race	Pittsburgh, PA	Allegheny River, Mile 0.0–3.0 (Pennsylvania).
3 days—The weekend of Labor Day.	Portsmouth Boat Race/Breakwater Powerboat Association.	Portsmouth, OH	Ohio River, Mile 355.5–356.8 (Ohio).
3 days—One weekend in April ...	Big 10 Invitational Regatta	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
1 day—One day in June	Guntersville Lake Hydrofest	Guntersville, AL	Tennessee River south of mile 357.0 in Browns Creek, starting at the AL–69 Bridge, 34°21′38″ N, 86°20′36″ W, to 34°21′14″ N, 86°19′4″ W, to the TVA power lines, 34°20′9″ N, 86°21′7″ W, to 34°19′37″ N, 86°20′13″ W, extending from bank to bank within the creek. (Alabama).

Date	Event/sponsor	Ohio Valley location	Regulated area
1 day—Last weekend in July	Maysville Paddlefest	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
1 day—One weekend in September.	Shoals Dragon Boat Festival	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
2 days—Two days in October	Secret City Head Race Regatta	Oak Ridge, TN	Clinch River, Mile 49.0–54.0 (Tennessee).
1 day—The last week in May	Chickamauga Dam Swim	Chattanooga, TN	Tennessee River, Mile 470.0–473.0 (Tennessee).

This proposed rule would revise 29 existing special local regulations in Table 1 of § 100.801, as follows:

Line	Date	Sponsor/name	Sector Ohio Valley location	Regulated area	Revision (date/area)
1	3 days—One Weekend in March	Oak Ridge Rowing Association/Cardinal Invitational.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
2	1 day—One weekend in March	Vanderbilt Rowing/Vanderbilt Invite	Nashville, TN	Cumberland River, Mile 188.0–192.7 (Tennessee).	Date.
3	2 days—One weekend in March	Oak Ridge Rowing Association/ Atomic City Turn and Burn.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
5	3 days—One weekend in April	Oak Ridge Rowing Association/SIRA Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
6	3 days—One weekend in April	Thunder Over Louisville	Louisville, KY	Ohio River, Miles 597.0–607.0 (Kentucky).	Date/Area.
8	3 days—One weekend in April	Oak Ridge Rowing Association/Dogwood Junior Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
9	3 days—One weekend in May	Vanderbilt Rowing/ACRA Henley	Nashville, TN	Cumberland River, Mile 188.0–194.0 (Tennessee).	Date.
10	3 days—One weekend in May	Oak Ridge Rowing Association/Big 12 Championships.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
11	3 days—One weekend in May	Oak Ridge Rowing Association/Dogwood Masters.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
14	2 days—One weekend in May or One weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).	Date.
15	2 days—Last weekend in May or one weekend in June.	Outdoor Chattanooga/Chattanooga Swim Festival.	Chattanooga, TN	Tennessee River, Mile 454.0–468.0 (Tennessee).	Date.
17	1 day—One weekend in June	Visit Knoxville/Knoxville Powerboat Classic.	Knoxville, TN	Tennessee River, Mile 646.4–649.0 (Tennessee).	Date.
22	3 days—One weekend in June	TM Thunder LLC/Thunder on the Cumberland.	Nashville, TN	Cumberland River, Mile 189.6–192.3 (Tennessee).	Date.
24	1 day—One weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 462.7–466.0 (Tennessee).	Date.
29	1 day—One weekend in May	Bradley Dean/Renaissance City Triathlon.	Florence, AL	Tennessee River, Mile 254.0–258.0 (Alabama).	Date.
33	1 day—One weekend in July	Team Magic/Music City Triathlon	Nashville, TN	Cumberland River, Mile 189.7–192.3 (Tennessee).	Date.
37	1 day—One weekend in August	Above the Fold Events/Riverbluff Triathlon.	Ashland City, TN	Cumberland River, Mile 157.0–159.5 (Tennessee).	Date.
38	3 days—First or second weekend in August.	Pittsburgh Three Rivers Regatta	Pittsburgh, PA	Allegheny River, Mile 0.0–1.0, Ohio River Mile 0.0–0.8, and Monongahela River Mile 0.0–0.5 (Pennsylvania).	Date.
40	1 day— One weekend in August	Riverbluff Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).	Date.
45	1 day—One weekend in August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 332.2–335.5 (Alabama).	Date.
46	1 day—One weekend in August	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 646.3–648.7 (Tennessee).	Date.
58	1 day—One weekend in September	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 189.7–192.1 (Tennessee).	Date.
61	1 day—One weekend in September	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).	Date.
65	1 day—One Sunday in September	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0 (Alabama).	Date.
66	1 day—One weekend in September	Knoxville Open Water Swimmers/ Bridges to Bluffs.	Knoxville, TN	Tennessee River, Mile 641.0–648.0 (Tennessee).	Date.
71	1 day—One weekend in September	World Triathlon Corporation/ IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).	Date.
74	1 day—One weekend in October	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).	Date.
75	3 days—One weekend in October	Vanderbilt Rowing/Music City Head Race.	Nashville, TN	Cumberland River, Mile 189.5–196.0 (Tennessee).	Date.
77	3 days—One weekend in November	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).	Date.

The effect of this proposed rule would be to restrict general navigation during these events. Vessels intending to transit the designated waterway through the special local regulations will only be allowed to transit the area when the

COTP Ohio Valley, or designated representative, has deemed it safe to do so or at the completion of the event.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this proposed rule to be minimal, therefore a full regulatory evaluation is unnecessary. This proposed rule establishes special local regulations limiting access to certain areas under 33 CFR 100 within Sector Ohio Valley's AOR. The effect of this proposed rulemaking will not be significant because these special local regulations are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and, thus, will be able to plan operations around the special local regulations accordingly. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these special local regulations. Vessel traffic may request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on any owner or operator because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the special local regulations established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. of the Instruction because it involves establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. In § 100.801, revise Table 1 to read as follows:

* * * * *

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS

Date	Event/sponsor	Ohio Valley location	Regulated area
1. 3 days—Second or third weekend in March.	Oak Ridge Rowing Association/Cardinal Invitational.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
2. 1 day—Third weekend in March	Vanderbilt Rowing/Vanderbilt Invite	Nashville, TN	Cumberland River, Mile 188.0–192.7 (Tennessee).
3. 2 days—Fourth weekend in March	Oak Ridge Rowing Association/Atomic City Turn and Burn.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
4. 3 days—One weekend in April	Big 10 Invitational Regatta	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
5. 1 day—One weekend in April	Lindamood Cup	Marietta, OH	Muskingum River, Mile 0.5–1.5 (Ohio).
6. 3 days—Third weekend in April	Oak Ridge Rowing Association/SIRA Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
7. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 597.0–604.0 (Kentucky).
8. 1 day—During the last week of April or first week of May.	Great Steamboat Race	Louisville, KY	Ohio River, Mile 595.0–605.3 (Kentucky).
9. 3 days—Fourth weekend in April	Oak Ridge Rowing Association/Dogwood Junior Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
10. 3 days—Second weekend in May	Vanderbilt Rowing/ACRA Henley	Nashville, TN	Cumberland River, Mile 188.0–194.0 (Tennessee).
11. 3 days—Second weekend in May	Oak Ridge Rowing Association/Big 12 Championships.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
12. 3 days—Third weekend in May	Oak Ridge Rowing Association/Dogwood Masters.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
13. 1 day—Third weekend in May	World Triathlon Corporation/IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
14. 1 day—During the last weekend in May or on Memorial Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–604.5 (Kentucky).
15. 1 day—The last week in May	Chickamauga Dam Swim	Chattanooga, TN	Tennessee River, Mile 470.0–473.0 (Tennessee).
16. 2 days—Last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
17. 2 days—Last weekend in May or one weekend in June.	Outdoor Chattanooga/Chattanooga Swim Festival.	Chattanooga, TN	Tennessee River, Mile 454.0–468.0 (Tennessee).
18. 2 days—First weekend of June	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
19. 1 day—First weekend in June	Visit Knoxville/Knoxville Powerboat Classic.	Knoxville, TN	Tennessee River, Mile 646.4–649.0 (Tennessee).
20. 1 day—One weekend in June	Tri-Louisville	Louisville, KY	Ohio River, Mile 600.5–604.0 (Kentucky).
21. 2 days—One weekend in June	New Martinsville Vintage Regatta	New Martinsville, WV	Ohio River Mile 127.5–128.5 (West Virginia).
22. 3 days—One of the last three weekends in June.	Lawrenceburg Regatta/Whiskey City Regatta.	Lawrenceburg, IN	Ohio River, Mile 491.0–497.0 (Indiana).
23. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Shriners Festival.	Evansville, IN	Ohio River, Mile 790.0–796.0 (Indiana).
24. 3 days—Third weekend in June	TM Thunder LLC/Thunder on the Cumberland.	Nashville, TN	Cumberland River, Mile 189.6–192.3 (Tennessee).
25. 1 day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV	Monongahela River, Mile 101.0–102.0 (West Virginia).
26. 1 day—Fourth weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 462.7–466.0 (Tennessee).
27. 1 day—One day in June	Guntersville Lake Hydrofest	Guntersville, AL	Tennessee River south of mile 357.0 in Browns Creek, starting at the AL–69 Bridge, 34°21′38″ N, 86°20′36″ W, to 34°21′14″ N, 86°19′4″ W, to the TVA power lines, 34°20′9″ N, 86°21′7″ W, to 34°19′37″ N, 86°20′13″ W, extending from bank to bank within the creek. (Alabama).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
28. 3 days—The last weekend in June or one of the first two weekends in July.	Madison Regatta	Madison, IN	Ohio River, Mile 554.0–561.0 (Indiana).
29. 1 day—During the first week of July.	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN	Ohio River, Mile 790.0–797.0 (Indiana).
30. First weekend in July	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY	Cumberland River, Mile 46.0–47.0 (Kentucky).
31. 2 days—One of the first two weekends in July.	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
32. 1 day—Second weekend in July	Bradley Dean/Renaissance Man Triathlon.	Florence, AL	Tennessee River, Mile 254.0–258.0 (Alabama).
33. 1 day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon	Cincinnati, OH	Ohio River, Mile 468.3–471.2 (Ohio).
34. 2 days—One of the last three weekends in July.	Dare to Care/KFC Mayor's Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY	Ohio River, Mile 600.0–605.0 (Kentucky).
35. 2 days—Last two weeks in July or first three weeks of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
36. 1 day—Fourth weekend in July	Team Magic/Music City Triathlon	Nashville, TN	Cumberland River, Mile 189.7–192.3 (Tennessee).
37. 1 day—Last weekend in July	Maysville Paddlefest	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
38. 2 days—One weekend in July	Huntington Classic Regatta	Huntington, WV	Ohio River, Mile 307.3–309.3 (West Virginia).
39. 2 days—One weekend in July	Marietta Riverfront Roar Regatta	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
40. 1 day—Last weekend in July or first weekend in August.	*HealthyTriState.org*/St. Marys Tri State Kayathalon.	Huntington, WV	Ohio River, Mile 305.1–308.3 (West Virginia).
41. 1 day—first Sunday in August	Above the Fold Events/Riverbluff Triathlon.	Ashland City, TN	Cumberland River, Mile 157.0–159.5 (Tennessee).
42. 3 days—First week of August	EQT Pittsburgh Three Rivers Regatta	Pittsburgh, PA	Allegheny River mile 0.0–1.0, Ohio River mile 0.0–0.8, Monongahela River mile 0.5 (Pennsylvania).
43. 2 days—First weekend of August	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
44. 1 day—First or second weekend in August.	Riverbluff Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).
45. 1 day—One of the first two weekends in August.	Green Umbrella/Ohio River Paddlefest.	Cincinnati, OH	Ohio River, Mile 458.5–476.4 (Ohio and Kentucky).
46. 2 days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).
47. 3 days—Second or Third weekend in August.	Kittanning Riverbration Boat Races	Kittanning, PA	Allegheny River mile 42.0–46.0 (Pennsylvania).
48. 3 days—One of the last two weekends in August.	Thunder on the Green	Livermore, KY	Green River, Mile 69.0–72.5 (Kentucky).
49. 1 day—Fourth weekend in August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 332.2–335.5 (Alabama).
50. 1 day—Last weekend in August	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 646.3–648.7 (Tennessee).
51. 3 days—One weekend in August	Pro Water Cross Championships	Charleston, WV	Kanawha River, Mile 56.7–57.6 (West Virginia).
52. 2 days—One weekend in August	POWERBOAT NATIONALS—Ravenswood Regatta.	Ravenswood, WV	Ohio River, Mile 220.5–221.5 (West Virginia).
53. 2 days—One weekend in August	Powerboat Nationals—Parkersburg Regatta/Parkersburg Homecoming.	Parkersburg, WV	Ohio River Mile 183.5–285.5 (West Virginia).
54. 1 day—One weekend in August	YMCA River Swim	Charleston, WV	Kanawha River, Mile 58.3–61.8 (West Virginia).
55. 3 days—One weekend in August	Grand Prix of Louisville	Louisville, KY	Ohio River, Mile 601.0–605.0 (Kentucky).
56. 3 days—One weekend in August	Evansville HydroFest	Evansville, IN	Ohio River, Mile 790.5–794.0 (Indiana).
57. 1 day—First or second weekend of September.	SUP3Rivers The Southside Outside	Pittsburgh, PA	Monongahela River mile 0.0–3.09, Allegheny River mile 0.0–0.6 (Pennsylvania).
58. 1 day—First weekend in September or on Labor Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–610.0 (Kentucky).
59. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 463.0–477.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
60. 2 days—Labor Day weekend	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV	Ohio River, Mile 90.4–91.5 (West Virginia).
61. 3 days—The weekend of Labor Day.	Portsmouth Boat Race/Breakwater Powerboat Association.	Portsmouth, OH	Ohio River, Mile 355.5–356.8 (Ohio).
62. 2 days—One of the first three weekends in September.	Louisville Dragon Boat Festival	Louisville, KY	Ohio River, Mile 602.0–604.5 (Kentucky).
63. 1 day—One of the first three weekends in September.	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 189.7–192.1 (Tennessee).
64. 2 days—One of the first three weekends in September.	State Dock/Cumberland Poker Run	Jamestown, KY	Lake Cumberland (Kentucky).
65. 3 days—One of the first three weekends in September.	Fleur de Lis Regatta	Louisville, KY	Ohio River, Mile 600.0–605.0 (Kentucky).
66. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
67. 1 day—One Sunday in September	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH	Ohio River, Mile 170.5–172.5 (Ohio).
68. 1 Day—One weekend in September.	Parkesburg Paddle Fest	Parkersburg, WV	Ohio River, Mile 184.3–188 (West Virginia).
69. 1 day—One weekend in September.	Shoals Dragon Boat Festival	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
70. 2 days—One of the last three weekends in September.	Madison Vintage Thunder	Madison, IN	Ohio River, Mile 556.5–559.5 (Indiana).
71. 1 day—Third Sunday in September.	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0 (Alabama).
72. 1 day—Fourth or fifth weekend in September.	Knoxville Open Water Swimmers/ Bridges to Bluffs.	Knoxville, TN	Tennessee River, Mile 641.0–648.0 (Tennessee).
73. 1 day—Fourth or fifth Sunday in September.	Green Umbrella/Great Ohio River Swim.	Cincinnati, OH	Ohio River, Mile 468.8–471.2 (Ohio and Kentucky).
74. 1 day—One of the last two weekends in September.	Ohio River Open Water Swim	Prospect, KY	Ohio River, Mile 587.0–591.0 (Kentucky).
75. 2 days—One of the last three weekends in September or the first weekend in October.	Captain Quarters Regatta	Louisville, KY	Ohio River, Mile 594.0–598.0 (Kentucky).
76. 3 days—One of the last three weekends in September or one of the first two weekends in October.	Owensboro Air Show	Owensboro, KY	Ohio River, Mile 754.0–760.0 (Kentucky).
77. 1 day—Last weekend in September.	World Triathlon Corporation/ IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
78. 3 days—Last weekend of September and/or first weekend in October.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV	Ohio River, Mile 128–129 (West Virginia).
79. 2 days—First weekend of October	Three Rivers Rowing Association/ Head of the Ohio Regatta.	Pittsburgh, PA	Allegheny River mile 0.0–5.0 (Pennsylvania).
80. 1 day—First or second weekend in October.	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
81. 3 days—First or Second weekend in October.	Vanderbilt Rowing/Music City Head Race.	Nashville, TN	Cumberland River, Mile 189.5–196.0 (Tennessee).
82. 2 days—First or second week of October.	Head of the Ohio Rowing Race	Pittsburgh, PA	Allegheny River, Mile 0.0–3.0 (Pennsylvania).
83. 2 days—One of the first three weekends in October.	Norton Healthcare/Ironman Triathlon	Louisville, KY	Ohio River, Mile 600.5–605.5 (Kentucky).
84. 2 days—Two days in October	Secret City Head Race Regatta	Oak Ridge, TN	Clinch River, Mile 49.0–54.0 (Tennessee).
85. 3 days—First weekend in November.	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
86. 1 day—One weekend in November or December.	Charleston Lighted Boat Parade	Charleston, WV	Kanawha River, Mile 54.3–60.3 (West Virginia).

* * * * *

Dated: February 7, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port, Sector Ohio Valley.

[FR Doc. 2020–02976 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0084]

RIN 1625–AA08

Special Local Regulation; Tred Avon River, Between Bellevue and Oxford, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary special local regulations for certain waters of the Tred Avon River. This action is necessary to provide for the safety of life on these navigable waters located between Bellevue, MD, and Oxford, MD, during a swim event on June 6, 2020. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0084 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Charcot Marie Tooth Association and Therapies for Inherited Neuropathies of Trappe, MD, notified the Coast Guard that it will be conducting the swim portion of the Oxford Funathlon from 7:45 a.m. to 9:15 a.m. on June 6, 2020. There is no alternate date scheduled for this event. The open water swim consists of approximately 40 participants competing in a designated 1200-meter course that starts at the ferry dock in Bellevue, MD, and finishes at the Tred Avon Yacht Club in Oxford, MD. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the swim would

be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the Tred Avon River.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels on before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulations that would be enforced from 6:45 a.m. to 10:15 a.m. on June 6, 2020. The regulated area would cover all navigable waters of the Tred Avon River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N, longitude 076°10′45″ W, thence south to latitude 38°41′37″ N, longitude 076°10′26″ W, and bounded on the west by a line drawn from latitude 38°41′58″ N, longitude 076°11′04″ W, thence to latitude 38°41′25″ N, longitude 076°10′49″ W, thence east to latitude 38°41′25″ N, longitude 076°10′30″ W, located at Oxford, MD. The proposed duration of the rule and size of the regulated area are to ensure the safety of life on these navigable waters before, during, and after the open water swim, scheduled to take place from 7:45 a.m. to 9:15 a.m. on June 6, 2020. The COTP and the Coast Guard Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

Except for Oxford Funathlon participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a non-participant. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels would direct non-participants while within the regulated area.

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

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, time of day and duration of the regulated area, which would impact a small designated area of the Tred Avon River for 3½ hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 3 and ½ hours. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this docket, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0084 to read as follows:

§ 100.T05–0084 Oxford Funathlon, Tred Avon River, Between Bellevue and Oxford, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Tred Avon River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N, longitude 076°10′45″ W, thence south to latitude 38°41′37″ N, longitude 076°10′26″ W, and bounded on the west by a line drawn from latitude 38°41′58″ N, longitude 076°11′04″ W, thence south to latitude 38°41′25″ N, longitude 076°10′49″ W, thence east to latitude 38°41′25″ N, longitude 076°10′30″ W, located at Oxford, MD. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the Maryland Freedom Swim or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 6:45 a.m. to 10:15 a.m. on June 6, 2020.

Dated: February 10, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–02945 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0061]

RIN 1625–AA00

Safety Zone for Fireworks Displays, Upper Potomac River, Washington Channel, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Washington Channel adjacent to The Wharf DC, Washington, DC, for recurring fireworks displays from April 4, 2020, through December 31, 2020. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0061 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 9, 2020, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting 7 fireworks displays, sponsored by The Wharf DC, from 7 p.m. to 11:59 p.m. for various events from April 4, 2020, through December 31, 2020. The fireworks are to be launched from a barge in the Washington Channel, adjacent to The Wharf DC in Washington, DC. The fireworks company has provided dates for two of the events, April 4, 2020, and December 5, 2020. However, the dates for the remaining five events have not yet been finalized. Hazards from the fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in these displays would be a safety concern for anyone within 200 feet of the fireworks barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within 200 feet of the fireworks barge on the Washington Channel before, during, and after the scheduled events. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary recurring safety zone in the Washington Channel from April 4, 2020, through December 31, 2020. The safety zone would cover all navigable waters of the Washington Channel within 200 feet of the fireworks barge. It is anticipated that the safety zone will be activated for seven separate events during 2020. For each event, the barge will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the Francis Case (I–395) Memorial Bridge, located at Washington, DC. The safety zone would be enforced from 7 p.m. until 11:59 p.m. for each fireworks display scheduled from April 4, 2020, through December 31, 2020. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. It is anticipated that the safety zone will be activated for seven separate events during 2020. Although vessel traffic will not be able to safely transit around this safety zone when being enforced, the impact would be for less than 5 hours during the evening when vessel traffic in Washington Channel is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

have a significant economic impact on a substantial number of small entities.

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that will be in effect for the entire year, however, when activated, lasting less than 5 hours that would prohibit entry within a portion of the Washington Channel. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0061 to read as follows:

§ 165.T05–0061 Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Washington Channel within 200 feet of the fireworks barge which will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the southern extent of the Francis Case (I–395) Memorial Bridge, located at Washington, DC. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced April 4, 2020, through December 31, 2020, from 7 p.m. to 11:59 p.m. each day that a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard sides is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, near the location described in paragraph (a) of this section. The enforcement times of this section are subject to change, but the duration of each enforcement of the zone is expected to be 5 hours or less. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance.

Dated: February 10, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–02967 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0037]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend and update its list of recurring safety zone regulations that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This informs the public of regularly scheduled events that require additional safety measures through establishing a safety zone. Through this, the current list of recurring safety zones is proposed to be updated with revisions, additional events, and removal of events that no longer take place. When these safety zones are enforced, vessel traffic is restricted from the specified areas. Additionally, this proposed rulemaking project reduces administrative costs involved in producing separate proposed rules for each individual recurring safety zone and serves to provide notice of the known recurring safety zones throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0037 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
AOR Area of Responsibility

II. Background, Purpose, and Legal Basis

The Captain of the Port, Sector Ohio Valley (COTP) proposes to amend 33 CFR 165.801 to update regulations for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones with respect to those in Sector Ohio Valley.

The current list of annual and recurring safety zones occurring in Sector Ohio Valley's area of responsibility (AOR) is published under 33 CFR 165.801 in Table no. 1 for annual safety zones in the COTP Ohio Valley zone. The most recent list was created May 3, 2019 through the rulemaking 84 FR 18975.

The Coast Guard proposed to amend and update the safety zone regulations under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within Sector Ohio Valley's AOR. These events include air shows, fireworks displays, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes. The current list in 33 CFR 165.801 needs to be amended to provide new information on existing safety zones, and to include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of the upcoming recurring safety zone regulations.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments accordingly, whether through response, additional revision to the regulation, or otherwise. Additionally, these recurring events are provided to the public through local avenues and planned by the local communities.

III. Discussion of the Proposed Rule

Part 165 of 33 CFR contains regulations establishing limited access areas to restrict vessel traffic for the safety of persons and property. Section 165.801 establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards presented during certain events taking place in Sector Ohio Valley's AOR. This section requires amendment from time to time to properly reflect the recurring safety zone regulations in Sector Ohio Valley's AOR. This proposed rule amends and updates § 165.801 by revising the current table for Sector Ohio Valley.

Additionally, this proposed rule adds 10 new recurring safety zones, removes 01 recurring events and amends the date, regulated area, and/or name for 20 recurring safety zones already listed in § 165.801 as follows:

This proposed rule would add the following 10 safety zones to the existing Table 1 of § 165.801 as follows:

Date	Sponsor/name	Sector Ohio valley location	Safety zone
3 days in June	CMA Festival	Nashville, TN	Cumberland River, Miles 190.7–191.1 extending 100 feet from the left descending bank (Tennessee).
1 day—The second or third weekend of August.	Green Turtle Bay Resort/Grand Rivers Marina Day.	Grand Rivers, KY	420 foot radius, from the fireworks launch site, at the entrance to Green Turtle Bay Resort, on the Cumberland River at mile marker 31.5. (Kentucky).
1 day—July 3rd	Moors Resort and Marina/Kentucky Lake Big Bang.	Gilbertsville, KY	600 foot radius, from the fireworks launch site, on the entrance jetty to Moors Resort and Marina, on the Tennessee River at mile marker 30.5. (Kentucky).
1 day—One weekend in September	Aurora Fireworks	Aurora, IN	Ohio River, Mile 496.3–497.3 (Ohio).
1 day—Last two weekends in September.	Cabana on the River	Cincinnati, OH	Ohio River, Mile 483.2–484.2 (Ohio).
1 day—Last weekend in July or first weekend in August.	Fort Armstrong Folk Music Festival	Kittanning, PA	Allegheny River, Mile 45.1–45.5 (Pennsylvania).
2 days—One of the last three weekends in October.	Monster Pumpkin Festival	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
1 day—First week of July	Toronto 4th of July Fireworks	Toronto, OH	Ohio River, Mile 58.2–58.8 (Ohio).
1 day—One Friday in May prior to memorial day.	Live on the Levee Memorial Day Fireworks/City of Charleston.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
1 day—Labor day	Portsmouth Labor Day Fireworks/Hamburg Fireworks.	Portsmouth, OH	Ohio River, Mile 355.8–356.8 (Ohio).

This proposed rule would remove the following safety zone from the existing Table 1 to § 165.801 as follows:

3 days—One weekend in April	Thunder Over Louisville	Louisville, KY	Ohio River, Miles 597.0–607.0 (Kentucky).	Date.

The Coast Guard also proposes to revise regulations at 33 CFR 165.801 by amending 20 existing safety zones listed in the current table. The amendments involve changes to marine event dates, regulated areas, and/or event names, with reference by line number to the current Table 1 of § 165.801. The 20 safety zones being amended are listed below:

Line	Date	Sponsor/name	Sector Ohio valley location	Regulated area	Revision (date/area/name)
7	3 Days in May	US Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).	Date.
9	1 day in June	Cumberland River Compact/Nashville Splash Bash.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).	Date.
13	1 day in June	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).	Date.
25	1 day in July	Town of Cumberland City/Lighting up the Cumberland.	Cumberland City, TN.	Cumberland River, Miles 103.0–105.5 (Tennessee).	Date.
26	1 day in July	Chattanooga Presents/Pops on the River.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).	Date.

Line	Date	Sponsor/name	Sector Ohio valley location	Regulated area	Revision (date/ area/name)
27	1 day in July	Randy Boyd/Independence Celebration Fireworks Display.	Knoxville, TN	Tennessee River, Miles 625.0–628.0 (Tennessee).	Date.
30	1 day in July	City of Knoxville/Knoxville Festival on the 4th.	Knoxville, TN	Tennessee River, Miles 646.3–648.7 (Tennessee).	Date.
31	1 day in July	Nashville NCVC/Independence Celebration.	Nashville, TN	Cumberland River, Miles 189.7–192.3 (Tennessee).	Date.
32	1 day in July	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Miles 254.5–257.4 (Alabama).	Date.
47	1 day—First week of July.	Pittsburgh 4th of July Celebration	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).	Date and Name.
54	1 day in July	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee).	Date.
61	1 Day in July	Three Rivers Regatta	Knoxville, TN	Tennessee River, Miles 642–653 (Tennessee).	Date.
75	1 day in September.	Nashville Symphony/Concert Fireworks.	Nashville, TN	Cumberland River, Miles 190.1–192.3 (Tennessee).	Date.
76	1 day in September.	City of Clarksville/Clarksville Riverfest.	Clarksville, TN	Cumberland River, Miles 124.5–127.0 (Tennessee).	Date.
82	1 day—First three weeks of October.	Leukemia & Lymphoma Society/ Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).	Date and Area.
83	1 day in October	Leukemia and Lymphoma Society/ Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).	Date.
85	1 day in October	Outdoor Chattanooga/Swim the Suck.	Chattanooga, TN	Tennessee River, Miles 452.0–454.5 (Tennessee).	Date.
86	1 day in October	Chattajack	Chattanooga, TN	Tennessee River, Miles 462.7–465.5 (Tennessee).	Date.
90	1 day—Friday before Thanksgiving.	Santa Spectacular/Light up Night	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).	Name and Area.
92	1 day in November.	Friends of the Festival/Cheer at the Pier.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).	Date.

The effect of this proposed rule would be to restrict general navigation in the safety zone during the events. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when COTP, or a designated representative, has deemed it safe to do so or at the completion of the event. The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters during the events.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this proposed rule to be minimal, therefore a full regulatory evaluation is unnecessary. This proposed rule establishes safety zones limiting access to certain areas under 33 CFR 165 within Sector Ohio Valley's AOR. The effect of this proposed rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register,** and/or Notices of Enforcement and, thus, will be able to plan operations around the safety zones. Also, advance Broadcast Notices to Mariners and Local Notices to Mariners will inform the community of these safety zones. Vessel traffic may request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it,

please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.801, revise Table 1 to read as follows:

§ 165.801 Annual Fireworks displays and other events in the Eighth Coast Guard District recurring safety zones.

* * * * *

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio valley location	Safety zone
1. 3 days—Third or Fourth weekend in April.	Henderson Breakfast Lions Club Tri-Fest	Henderson, KY	Ohio River, Miles 802.5–805.5 (Kentucky).
2. Multiple days—April through November.	Pittsburgh Pirates Season Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.2–0.9 (Pennsylvania).
3. Multiple days—April through November.	Cincinnati Reds Season Fireworks	Cincinnati, OH	Ohio River, Miles 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
4. Multiple days—April through November.	Pittsburgh Riverhounds Season Fireworks	Pittsburgh, PA	Monongahela River, Miles 0.22–0.77 (Pennsylvania).
5. 1 day—First week in May.	Belterra Park Gaming Fireworks	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
6. 3 days in May	US Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Miles 48.5–52 (Tennessee).
7. 1 day—One Friday in May prior to memorial day.	Live on the Levee Memorial Day Fireworks/ City of Charleston.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
8. 1 day—Saturday before Memorial Day.	Venture Outdoors Festival	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25; Monongahela River, Miles 0.0–0.25 (Pennsylvania).
9. 3 days in June	CMA Festival	Nashville, TN	Cumberland River, Miles 190.7–191.1 extending 100 feet from the left descending bank (Tennessee).
10. 1 day in June	Cumberland River Compact/Nashville Splash Bash.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
11. 2 days—A weekend in June.	Rice's Landing Riverfest	Rice's Landing, PA	Monongahela River, Miles 68.0–68.8 (Pennsylvania).
12. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 468.6–471.0 (Kentucky and Ohio).
13. 1 day in June	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
14. 1 day—Second or Third week of June.	TriState Pottery Festival Fireworks	East Liverpool, OH	Ohio River, Miles 42.5–45.0 (Ohio).
15. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
16. 1 day—One weekend in June.	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Miles 59.5–60.5 (West Virginia).
17. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Miles 617.5–620.5 (Kentucky).
18. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Miles 265.2–266.2, Kanawha River Miles 0.0–0.5 (West Virginia).
19. 1 day—Last weekend in June or first weekend in July.	City of Aurora/Aurora Firecracker Festival	Aurora, IN	Ohio River, Mile 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
20. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom	Beaver, PA	Ohio River, Miles 25.2–25.6 (Pennsylvania).
21. 1 day—Last weekend in June or first week in July.	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
22. 1 day—Last week in June or first week of July.	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Miles 777.3–778.3 (Indiana).
23. 1 day—Last week in June or First week in July.	Rising Sun Fireworks	Rising Sun, IN	Ohio River, Miles 506.0–507.0 (Indiana).
24. 1 day—Weekend before the 4th of July.	Kentucky Dam Marine/Kentucky Dam Marina Fireworks.	Gilbertsville, KY	350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker 23 (Kentucky).
25. 1 day in July	Town of Cumberland City/Lighting up the Cumberlands.	Cumberland City, TN	Cumberland River, Miles 103.0–105.5 (Tennessee).
26. 1 day in July	Chattanooga Presents/Pops on the River	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
27. 1 day in July	Randy Boyd/Independence Celebration Fireworks Display.	Knoxville, TN	Tennessee River, Miles 625.0–628.0 (Tennessee).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio valley location	Safety zone
28. 1 day—July 3rd	Moors Resort and Marina/Kentucky Lake Big Bang.	Gilbertsville, KY	600 foot radius, from the fireworks launch site, on the entrance jetty to Moors Resort and Marina, on the Tennessee River at mile marker 30.5. (Kentucky).
29. 1 day—3rd or 4th of July.	City of Paducah, KY	Paducah, KY	Ohio River, Miles 934.0–936.0; Tennessee River, Miles 0.0–1.0 (Kentucky).
30. 1 day—3rd or 4th of July.	City of Hickman, KY/Town Of Hickman Fireworks.	Hickman, KY	700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at mile marker 921.5 on the Lower Mississippi River (Kentucky).
31. 1 day—July 4th	City of Knoxville/Knoxville Festival on the 4th	Knoxville, TN	Tennessee River, Miles 646.3–648.7 (Tennessee).
32. 1 day in July	Nashville NCVC/Independence Celebration ...	Nashville, TN	Cumberland River, Miles 189.7–192.3 (Tennessee).
33. 1 day in July	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Miles 254.5–257.4 (Alabama).
34. 1 day—4th of July (Rain date–July 5th).	Monongahela Area Chamber of Commerce/ Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Milse 032.0–033.0 (Pennsylvania).
35. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
36. 1 day—July 4th	Wellsburg 4th of July Committee/Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Miles 73.5–74.5 (West Virginia).
37. 1 day—week of July 4th.	Wheeling Symphony fireworks	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
38. 1 day—First week or weekend in July.	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Miles 322.1–323.1 (Kentucky).
39. 1 day—week of July 4th.	Chester Fireworks	Chester, WV	Ohio River mile 42.0–44.0 (West Virginia).
40. 1 day—First week of July.	Toronto 4th of July Fireworks	Toronto, OH	Ohio River, Mile 58.2–58.8 (Ohio).
41. 1 day—First week of July.	Cincinnati Symphony Orchestra	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
42. 1 day—First weekend or week in July.	Queen's Landing Fireworks	Greenup, KY	Ohio River, Miles 339.3–340.3 (West Virginia).
43. 1 day—First week or weekend in July.	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Miles 269.5–270.5 (Ohio).
44. 1 day—First week or weekend in July.	Kindred Communications/Dawg Dazzle	Huntington, WV	Ohio River, Miles 307.8–308.8 (West Virginia).
45. 1 day—First week or weekend in July.	Greenup City	Greenup, KY	Ohio River, Miles 335.2–336.2 (Kentucky).
46. 1 day—First week or weekend in July.	Middleport Community Association	Middleport, OH	Ohio River, Miles 251.5–252.5 (Ohio).
47. 1 day—First week or weekend in July.	People for the Point Party in the Park	South Point, OH	Ohio River, Miles 317–318 (Ohio).
48. 1 day—One of the first two weekends in July.	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).
49. 1 day— First Week of July.	Pittsburgh 4th of July Celebration	Pittsburgh, PA	Ohio River, Miles 0.0–0.5, Allegheny River, Miles 0.0–0.5, and Monongahela River, Miles 0.0–0.5 (Pennsylvania).
50. 1 day—First week or weekend in July.	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Miles 58.1–59.1 (West Virginia).
51. 1 day—First week or weekend in July.	Portsmouth River Days	Portsmouth, OH	Ohio River, Miles 355.5–357.0 (Ohio).
52. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
53. 1 day—During the first week of July.	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
54. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/ All American 4th of July.	Owensboro, KY	Ohio River, Miles 754.0–760.0 (Kentucky).
55. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks ..	New Albany, IN	Ohio River, Miles 606.5–609.6 (Indiana).
56. 1 day in July	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee).
57. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Miles 408–409 (Kentucky).
58. 1 day—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta	Madison, IN	Ohio River, Miles 554.0–561.0 (Indiana).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio valley location	Safety zone
59. 1 day—Third Saturday in July.	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Miles 7.0–9.0 (Pennsylvania).
60. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/ Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Miles 90.0–90.5 (West Virginia).
61. 1 day—Saturday Third or Fourth full week of July (Rain date–following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Miles 12.0–12.5 (Pennsylvania).
62. 2 days—One weekend in July.	Marietta Riverfront Roar Fireworks	Marietta, OH	Ohio River, Miles 171.6–172.6 (Ohio).
63. 1 Day in July	Three Rivers Regatta	Knoxville, TN	Tennessee River, Miles 642–653 (Tennessee).
64. 1 day—Last weekend in July or first weekend in August.	Fort Armstrong Folk Music Festival	Kittanning, PA	Allegheny River, Mile 45.1–45.5 (Pennsylvania).
65. 1 day—First week of August.	Kittaning Folk Festival	Kittanning, PA	Allegheny River, Miles 44.0–46.0 (Pennsylvania).
66. 1 day—First week in August.	Gliers Goetta Fest LLC	Newport, KY	Ohio River, Miles 469.0–471.0.
67. 1 day—First or second week of August.	Bellaire All-American Days	Bellaire, OH	Ohio River, Miles 93.5–94.5 (Ohio).
68. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Miles 0.8–1.0 (Pennsylvania).
69. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Miles 005.5–006.0 (Pennsylvania).
70. 1 day—In the Month of August.	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
71. 1 day—Third week of August.	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Miles 25.2–25.8 (Pennsylvania).
72. 1 day—One weekend in August.	Parkersburg Homecoming Festival-Fireworks	Parkersburg, WV	Ohio River, Miles 183.5–185.5 (West Virginia).
73. 1 day—One weekend in August.	Ravenswood River Festival	Ravenswood, WV	Ohio River, Miles 220–221 (West Virginia).
74. 1 day—The second or third weekend of August.	Green Turtle Bay Resort/Grand Rivers Marina Day.	Grand Rivers, KY	420 foot radius, from the fireworks launch site, at the entrance to Green Turtle Bay Resort, on the Cumberland River at mile marker 31.5. (Kentucky).
75. 1 day—last 2 weekends in August/first week of September.	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Miles 90.4–91.5 (West Virginia).
76. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25, Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1. (Pennsylvania).
77. 1 day—Labor day ..	Portsmouth Labor Day Fireworks/Hamburg Fireworks.	Portsmouth, OH	Ohio River, Mile 355.8–356.8 (Ohio).
78. 1 day—one weekend before Labor Day.	Riverfest/Riverfest Inc	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
79. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Miles 469.2–470.5 (Kentucky and Ohio) and Licking River, Miles 0.0–3.0 (Kentucky).
80. 1 day—Labor Day or first week of September.	Labor Day Fireworks Show	Marmet, WV	Kanawha River, Miles 67.5–68 (West Virginia).
81. 1 day in September	Nashville Symphony/Concert Fireworks	Nashville, TN	Cumberland River, Miles 190.1–192.3 (Tennessee).
82. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest	Clarksville, TN	Cumberland River, Miles 124.5–127.0 (Tennessee).
83. 3 days—Second or third week in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Miles 90.2–90.7 (West Virginia).
84. 1 day—One weekend in September.	Boomtown Days—Fireworks	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
85. 1 day—One weekend in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Miles 171.5–172.5 (Ohio).
86. 1 day—One weekend in September.	Tribute to the River	Point Pleasant, WV	Ohio River, Miles 264.6–265.6 (West Virginia).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio valley location	Safety zone
87. 1 day—One weekend in September.	Aurora Fireworks	Aurora, IN	Ohio River, Mile 496.3–497.3 (Ohio).
88. 1 day—Last two weekends in September.	Cabana on the River	Cincinnati, OH	Ohio River, Mile 483.2–484.2 (Ohio).
89. Multiple days—September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1, Allegheny River, Miles 0.0–0.25 (Pennsylvania).
90. 1 day—First three weeks of October.	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
91. 1 day in October	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
92. 1 day—First two weeks in October.	Yeatman's Fireworks	Cincinnati, OH	Ohio River, Miles 469.0–470.5 (Ohio).
93. 1 day in October	Outdoor Chattanooga/Swim the Suck	Chattanooga, TN	Tennessee River, Miles 452.0–454.5 (Tennessee).
94. 1 day in October	Chattajack	Chattanooga, TN	Tennessee River, Miles 462.7–465.5 (Tennessee).
95. 1 day—One weekend in October.	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Miles 58–59 (West Virginia).
96. 2 days—One of the last three weekends in October.	Monster Pumpkin Festival	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
97. 1 day—Friday before Thanksgiving.	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Miles 0.0–1.0 (Pennsylvania).
98. 1 day—Friday before Thanksgiving.	Kittanning Light Up Night Firework Display	Kittanning, PA	Allegheny River, Miles 44.5–45.5 (Pennsylvania).
99. 1 day—Friday before Thanksgiving.	Santa Spectacular/Light up Night	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
100. 1 day—Friday before Thanksgiving.	Monongahela Holiday Show	Monongahela, PA	Ohio River, Miles 31.5–32.5 (Pennsylvania).
101. 1 day in November.	Friends of the Festival/Cheer at the Pier	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
102. 1 day—Third week of November.	Gallipolis in Lights	Gallipolis, OH	Ohio River, Miles 269.2–270 (Ohio).
103. 1 day—December 31.	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River, Miles 0.5–1.0 (Pennsylvania).
104. 7 days—Scheduled home games.	University of Tennessee/UT Football Fireworks.	Knoxville, TN	Tennessee River, Miles 645.6–648.3 (Tennessee).

* * * * *

Dated: February 7, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port, Sector Ohio Valley.

[FR Doc. 2020–02978 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB–2020–0002]

RIN 3014–AA42

Americans With Disabilities Act Accessibility Guidelines for Transportation Vehicles; Rail Vehicles

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (hereafter, ''Access Board'', ''Board'', or ''we''), are issuing this Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of updating our existing accessibility guidelines for rail vehicles covered by the Americans with Disabilities Act (ADA). By this ANPRM, the Access Board invites public comment on the substance of recommendations contained in the report issued by its Rail Vehicles Access Advisory Committee (RVAAC) and poses related questions. The Board will consider comments received in response to this ANPRM, along with the recommendations in the RVACC report, to develop proposed updates to our rail vehicle accessibility guidelines in a future rulemaking.

DATE: Submit comments by May 14, 2020.

ADDRESSES: You may submit comments, identified by docket number (ATBCB–2020–0002), by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: docket@access-board.gov.* Include docket number ATBCB–2020–0002 in the subject line of the message.

• *Fax:* 202–272–0081.

• *Mail or Hand Delivery/Courier:* Office of Technical and Information Services, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

Instructions: All submissions must include the docket number (ATBCB–2020–0002) for this regulatory action. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov/docket?D=ATBCB-2020-0002.*

FOR FURTHER INFORMATION CONTACT: Technical information: Juliet Shoultz, (202) 272–0045, Email: *shoultz@access-board.gov.* Legal information: Wendy Marshall, (202) 272–0043, *marshall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Americans with Disabilities Act (ADA) charges the Access Board with developing and maintaining minimum guidelines to ensure the accessibility and usability of covered transportation vehicles, including rail passenger cars, for persons with disabilities. See 42 U.S.C. 12204; see also 29 U.S.C 792(b)(3)(B) & (b)(10) (authorizing the Access Board to ''establish and maintain'' minimum guidelines for standards issued pursuant to titles II and III of the ADA). These Access Board guidelines serve as the basis for legally enforceable accessibility standards issued by the Department of Transportation (DOT), which is the federal entity responsible for implementing and enforcing the ADA's non-discrimination provisions related to transportation vehicles. See, *e.g.,* 42 U.S.C. 12149(b), 12163, 12186(c) (accessibility standards in DOT regulations implementing ADA titles II and III must be ''consistent with'' the Access Board's minimum guidelines).

II. Background: Rulemaking History and Rail Vehicles Access Advisory Committee

In 1991, the Access Board first issued accessibility guidelines for ADA-covered transportation vehicles, which addressed minimum requirements for buses, vans, and rail vehicles. 56 FR 45756 (Sept. 6, 1991) (codified at 36 CFR part 1192) (hereafter, ''ADA Accessibility Guidelines for Transportation Vehicles''). That same day, DOT adopted the Board's ADA Accessibility Guidelines for Transportation Vehicles as enforceable accessibility standards applicable to new, used, or remanufactured ADA-covered vehicles. See 56 FR 45584, 45619–20 (Sept. 6, 1991) (codified at 49 CFR part 38).

Over the ensuing years, while the Access Board has issued updates to the ADA Accessibility Guidelines for Transportation Vehicles for non-rail vehicles, the Board has not yet revised the accessibility requirements applicable to rail vehicles since their initial promulgation.[1] The existing guidelines for rail vehicles thus need to be updated to, among other things, incorporate new accessibility-related technologies that did not exist nearly three decades ago and to ensure consistency with the Board's other subsequently issued regulations. Indeed, in 2016, when the Board revised the accessibility guidelines for non-rail vehicles, we expressly noted that our existing guidelines for transportation vehicles that operated in fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, and intercity rail), which similarly needed updating, would be addressed in a future rulemaking. See Final Rule, 81 FR at 90600.

In May 2013, as a first step in the process to update our existing rail vehicles guidelines, the Access Board convened the Rail Vehicles Access Advisory Committee (RVAAC or Committee). See Notice of Establishment; Appointment of Members, Rail Vehicles Access Advisory Committee, 78 FR 30828 (May 23, 2013). RVAAC was charged with ''mak[ing] recommendations to the Board on matters associated with revising and updating our [rail vehicle] accessibility guidelines.'' Id. at 30829. The Committee was comprised of manufacturers of transportation vehicles that operate on fixed guideway systems, transportation providers that operated fixed guideway systems, organizations representing individuals with disabilities, and other entities whose interests may be affected by the accessibility guidelines.[2] Id. Due to time constraints, the Committee decided to focus only on recommendations for new rail vehicles.

The RVAAC organized itself into the following four subcommittees: Communications; Boarding and Alighting; Onboard Circulation and Seating; and Rooms and Spaces. Committee members spent most of their time working in the subcommittees, which reported to the full Committee. The full Committee met seven times. The Committee adopted the following guiding principles to develop its recommendations:

• Features providing access for people with disabilities must be equivalent to those provided to others in terms of functionality and aesthetics, and must not segregate individuals with disabilities;

• Accessible features should be the norm for everyone;

• There may not be restrictions on using any facilities or features until the train is stopped;

• Safety concerns must be balanced with the underlying civil rights principles of the ADA;

• Establishing policy mandates will drive the development of improved generations of technology;

• All train cars should be accessible;

• Access Board guidelines should promote the development of technology, and not freeze current technology in place; and

• ''[G]rowing demographics (graying of America)'' must be considered when establishing scoping for accessible features.

In July 2015, the Committee formally presented its final report (hereinafter RVAAC Report) to the Access Board. The RVAAC Report, which totals 71 pages, consists of a ''main'' report that is broken down into five chapters (which, except for the introductory chapter, mirror the topics covered by the four subcommittees) and several accompanying appendices. The full RVAAC Report is available at *https://www.access-board.gov/guidelines-and-standards/transportation/vehicles/rail-vehicles-access-advisory-committee.*

In sum, the Report provides the Committee's recommendations for

[1] For example, in 1998, the Access Board and DOT issued a joint final rule specifying new accessibility requirements for over-the-road buses. See 63 FR 51670 (Sept. 28, 1998). Also, in 2016, the Access Board updated its existing guidelines for buses, over-the-road buses (OTRBs), and vans. These updated guidelines incorporated new accessibility-related technologies, such as automated announcement systems and level boarding bus systems, as well as additional changes to ensure that the Board's transportation vehicle guidelines remained consistent with its other regulations issued since 1998. See 81 FR 90600 (Dec. 14, 2016) (codified at 36 CFR 1192.21 & App. A). DOT has not yet adopted these updated accessibility guidelines for non-rail vehicles as enforceable standards.

[2] The full list of organizations represented on the Rail Vehicles Access Advisory Committee is available at *https://www.access-board.gov/guidelines-and-standards/transportation/vehicles/rail-vehicles-access-advisory-committee/advisory-committee-members.*

updated accessibility requirements applicable to newly acquired rail vehicles, which are written using regulatory-style language interspersed with occasional textual discussion. The appendices provide supplementary information in the form of a reference copy of ADA provisions relating to transportation vehicles (Appendix A), a list of operational matters for DOT consideration that arose during committee deliberations but fall outside the Board's jurisdiction (Appendix B), and minority reports submitted by three Committee members (Appendix C).

It is important to emphasize that the RVAAC Report merely sets forth the Committee's non-binding recommendations for consideration by the Access Board. The Committee's recommendations should not be viewed as the Board's own proposed revisions to our existing rail vehicle accessibility guidelines. While we will consider the RVAAC Report when formulating proposed updates to the rail vehicle guidelines, other pertinent sources, including public comment received in response to this ANPRM, will be considered.

III. Areas for Public Comment

Considering the significant public interest in the RVAAC Report and in anticipation of a future rulemaking to ''refresh'' the accessibility guidelines for rail vehicles, the Access Board issues this ANPRM. Specifically the Board seeks public comment in two areas: (a) The substance of the recommendations in the RVAAC Report; and (b) related questions about the feasibility or potential impact of specific recommendations (*e.g.,* design, operations, cost), as well as current research, data, and technologies relating to the improvement of rail vehicle accessibility. The Access Board encourages all interested parties to provide comment, including governmental agencies, private entities that own or operate rail vehicles, individuals with disabilities, and advocacy organizations. Comments submitted in response to this ANPRM will be considered by the Access Board when developing any forthcoming notice of proposed rulemaking.

In reviewing and commenting on the RVAAC Report, we strongly encourage commenters to focus on the substance of the Committee's recommendations, rather than the specific wording of particular recommendations. In any future proposal to update the existing accessibility guidelines for rail vehicles, the Access Board will develop its own regulatory text and ensure consistency with the formatting used in other accessibility guidelines.

While this notice highlights certain sections of the RVAAC Report and poses related questions, the Access Board seeks comments on all recommendations presented in the RVAAC Report. More broadly, we also seek comment on cross-cutting issues including the potential impact of the Report's recommendations on the safety of rail passengers and personnel, implementation costs, and the ways that such costs might be minimized while still achieving an appropriate level of access for persons with disabilities.

IV. Discussion of RVAAC Recommendations and Questions for Public Comment

Discussed below are some of the recommendations posed in the RVAAC Report that, if implemented, would represent changes from the Access Board's existing requirements for rail vehicles in the ADA Accessibility Guidelines for Transportation Vehicles (36 CFR part 1192). The Board highlights these recommendations and poses related questions to the public for the purpose of obtaining additional information about recent research and current technology relevant to these recommended changes, and the potential costs of implementing such changes.

A. Application

The Access Board's existing rail vehicle guidelines apply to all ADA-covered new, used, and remanufactured rail vehicles. However, due to time constraints, the RVAAC only addressed and provided recommendations pertaining to new rail vehicles. This limited scope of the RVAAC Report does not mean that, when the Access Board issues a proposed rule to update our existing accessibility guidelines, we will similarly limit our scope to new rail vehicles.

Question 1: Would it be feasible for remanufactured rail cars to meet the accessibility requirements recommended in the RVAAC Report? What would be the challenges and costs of applying the RVAAC's proposed accessibility requirements to remanufactured rail cars? For each challenge and or cost that you raise, please indicate the type of rail vehicle affected.

Question 2: What is the typical lifespan of different types of rail vehicles? How often is each type of existing rail vehicle replaced with a new or remanufactured vehicle?

Question 3: We are not aware of any small governmental jurisdictions that currently operate rail transportation systems covered by the ADA. With respect to small businesses, are there any specific issues or concerns that the Access Board should consider when developing any proposed regulatory updates to its existing accessibility guidelines for rail vehicles?

B. Communication Access

Currently, the only provisions regarding communication for rail vehicles in the existing guidelines specify that each vehicle be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other information, with some exceptions. See 36 CFR 1192.61, 1192.87, 1192.103 & 1192.121.

The RVAAC Report recommended a robust expansion of requirements for accessible communications, including provisions for variable message signage (VMS) and hearing induction loops. It also recommended requiring VMS and real-time route map tracking (where provided) to be located in at least two locations in each car, so that every seat has a view of one or more of the accessible signs. RVAAC Report, Chap. 2, §§ I–XI.

Question 4: What solutions or technologies are commercially available that, if implemented, would be capable of providing access to public communications onboard rail vehicles?

Question 5: What solutions or technologies are commercially available that, if implemented on rail vehicles, would provide accessible emergency information to passengers in real-time?

Question 6: What are the design and cost impacts of the RVAAC's proposed requirement for variable messaging systems on rail cars?

Question 7: What are the design and cost impacts of the RVAAC's proposed requirement for hearing induction loops on rail cars?

C. Boarding and Alighting

The RVACC Report stressed that ''full-length level or near level boarding should be the highest priority and most preferred method of boarding on all fixed guideway (*e.g.* rail) modes.'' RVAAC Report, Chap. 3, § I.A. But, when not required or possible, ''boarding should be, as often as possible, by ramp or bridge-plate as the primary means for boarding'' and mechanical lifts should only be used as a back-up alternative. See id. § I.B.

1. Car-Borne Ramps, Bridge Plates, and Lifts

Currently, the existing guidelines for rail vehicles permit station-based ramps, bridge plates, and lifts for use in boarding and alighting in certain situations. See 36 CFR 1192.83, 1192.95 & 1192.125. The Committee recommended requiring car-borne ramps, bridge plates, and lifts in certain instances. RVAAC Report, Chap. 3, § I.B. Were this recommendation included in a proposed rule, it would, in most circumstances, prohibit the use of station-based lifts, and would instead require rail vehicles to provide car-borne ramps, bridge plates, and lifts. In a minority report, the Metropolitan Transportation Authority of the State of New York raised concerns with this recommendation, asserting that the new gap recommendations will require that the bridge plates installed on the cars be capable of traversing the largest vertical and horizontal gap at any station. The station with the largest gap will dictate the bridge plate design for all new cars. Consequently, the bridge plates carried on the cars may be very long to accommodate the largest gaps. These long bridge plates may create a safety hazard when deployed in confined areas at a station. Id. at App. C (MTA–SNY Minority Report, pp. 62–63).

Question 8: Please identify research studies or data that address the impact of car-borne ramps, bridge plates, or lifts on rail vehicle operation, maintenance, or rider safety.

Question 9: What would be the cost implications if ramps, bridge plates, and lifts were required to be mounted on rail vehicles instead of being based at stations?

2. Lift Design Load

The RVAAC Report recommended increasing the lift design load from the existing requirement of 600 pounds to 800 pounds. See RVAAC Report, Chap. 3, § IV.A; see also 36 CFR 1192.83(b), 1192.95(b) & 1192.125(b) (existing Access Board specifications for design loads of rail vehicle-based lifts). In the Access Board's final rule promulgating updated accessibility requirements for non-rail vehicles, we retained the 600-pound design load for vehicle lifts based on the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards for public use lifts, which are codified at 49 CFR 571.403 and 571.404. See 36 CFR 1192.21, Appendix A, T402.2. However, the Federal Motor Vehicle Safety Standards address lifts used on motor vehicles, not rail cars. The Access Board thus seeks additional information regarding design loads on rail vehicles.

Question 10: What would be the design and cost impacts if the design load requirement for rail vehicle-based lifts was increased to 800 pounds minimum? Are there any types of rail vehicles requiring a lift to board for which an 800-pound minimum design load would not be feasible?

Question 11: What is the current design load of newly manufactured lifts used for rail vehicles?

3. Platform Lift Service Size

Currently, the Access Board's rail vehicles guidelines require lift platforms to have a minimum clear width of 30 inches and a minimum clear length of 48 inches, as measured from 2 inches above the platform surface to 30 inches above the surface. The minimum clear width as measured at the platform surface to a height of 2 inches is permitted to be 28½ inches instead of 30 inches to accommodate the structure and frame of doors on some rail vehicles. See 36 CFR 1192.83(b)(6), 1192.95(b)(6) & 1192.125(b)(6). The RVAAC Report recommended increasing the size of lift platform surfaces to a clear width of 32 inches minimum and a clear length of 54 inches minimum, both measured from the platform surface to 40 inches above the platform surface. See RVAAC Report, Chap. 3, § IV.B.

Currently available research and the RVAAC's recommendations demonstrate a potential need to increase the size of the lift platform to accommodate larger wheeled mobility devices and advancement in their engineering and design. See Center for Inclusive Design and Environmental Access, Anthropometry of Wheeled Mobility Project—Final Report (Dec. 2010), available at *http://www.udeworld.com/documents/anthropometry/pdfs/AnthropometryofWheeledMobilityProject_FinalReport.pdf.*

Question 12: What would be the design impacts on rail vehicles if the required size of platforms on rail vehicle-based lifts was increased to a clear width of 32 inches minimum and clear length of 54 inches minimum?

4. Bi-Parting Side Doors

The existing guidelines require that accessible passenger doorways have a clear opening width of 32 inches. See 38 CFR 1192.53(a)(1), 1192.73(a)(1), 1192.93(a)(1) & 1192.113(a)(1). The RVACC Report recommends that bi-parting side doors should have one leaf that provides a clear width opening of at least 32 inches. The purpose of this proposal is to ensure passengers can readily board and alight from vehicles, especially during high capacity periods and when alternative doorways are not available, including when one of the bi-parting doors fails to open. However, the Committee recommended this as a best practice and not a requirement because it recognized that larger panels can create unintended consequences and it did not want to inhibit more efficient, reliable, and safe designs. RVACC Report, Chap. 4, §§ I.A & I.B(1)–(2).

Question 13: How prevalent is the situation where a single leaf of a bi-parting side door on a rail vehicle fails to open, thereby restricting the clear width to less than 32-inches?

Question 14: What would be the design implications of a requirement that one leaf of bi-parting doors on rail vehicles provide a clear width of 32 inches minimum?

5. Between-Car Barriers

The existing guidelines for rail vehicles require between-car barriers for light and rapid rail systems and certain commuter rail systems. 36 CFR 1192.63, 1192.85 & 1192.109. This requires that a device or system be provided to prevent, deter, or warn individuals from inadvertently stepping off the platform between cars. Id.

The RVAAC Report recommends that between-car barriers also be required for rail vehicles used in intercity and high-speed rail systems. RVAAC Report, Chap. 4, § V.A. Amtrak raised concerns about this proposal in a minority report, asserting that while between-car barriers are appropriate for high-platform, level-boarding, ''[b]i-level long intercity trains will see no benefit from adding the barriers, will add cost and may in fact create a safety hazard to railroad employees responsible for coupling and uncoupling cars.'' RVAAC Report, Appendix C (Amtrak Minority Report, p. 53).

Question 15: What data or other evidence supports a need for between-car barriers on rail vehicles used for intercity or high-speed rail service, if any?

Question 16: If requirements for between-car barriers were extended to rail vehicles used for intercity or high-speed rail service, should there be a specified minimum between-car gap that would trigger application of such a requirement? If so, what size gap should be used to trigger any such requirement?

Question 17: What would be the cost of requiring between-car barriers on rail vehicles used for intercity or high-speed rail service?

D. On Board Accessibility

1. Mobility Aid Seating Location Size

The Access Board's existing guidelines require clear floor space for mobility aid seating locations of 48 inches by 30 inches. See 36 CFR 1192.83(a)(1), 1192.57(b), 1192.125(d)(2) & 1192.95(d)(2). In the RVAAC Report, the Committee recommended increasing required clear floor space to 54 inches by 32 inches where the space is confined on no more than two sides, and 59 inches by 32 inches where the space is confined on three sides. RVAAC Report, Chap 4, § IV.A. See also Center for Inclusive Design and Environmental Access, Anthropometry of Wheeled Mobility Project—Final Report (Dec. 2010), available at *http://www.udeworld.com/documents/anthropometry/pdfs/AnthropometryofWheeledMobilityProject_FinalReport.pdf.* The Metropolitan Transportation Authority of the State of New York raised concerns in a RVAAC Minority Report about the loss of additional seats with the increased floor space. RVAAC Report, Appendix C (MTA–SNY Minority Report, p. 68).

Question 18: What would be the effect on the design and operation of rail cars if the required size of mobility aid seating locations were increased from 48 inches by 30 inches to a requirement of (1) 54 inches by 32 inches where the space is confined on no more than two sides and (2) 59 inches by 32 inches where the space is confined on three sides?

2. Vertical Access

There is no requirement in the existing guidelines to provide vertical access on rail cars. In the RVAAC report, the committee recommended adding a requirement for vertical access in new intercity bi-level lounge cars. The Committee explained that a lounge ''means any car with a primary function that is to enhance the passenger experience beyond the purchased coach or sleeper accommodation and is so designed to enhance viewing from the second level.'' Such lounge cars include open platform observation areas that are accessible to passengers, whether or not an extra fare is charged, and single level cars (known as ''dome cars) that offer an elevated area designed for viewing scenery. The Committee explained that the goal is to expand the full rail travel experience for passengers who might otherwise miss out on key features of the travel. This would include providing a lift, an accessible restroom (if an upper level restroom is provided), and accessible wheelchair spaces on the upper level. RVAAC Report, Chap 4, § IX.

Question 19: Should vertical access be required on new intercity bi-level lounge cars? If so, should such a requirement apply only to certain types of intercity bi-level cars (such as those that provide a viewing dome on the upper level)?

Question 20: Is it technically feasible for platform lifts to serve the upper levels of bi-level rail cars?

Question 21: What are the likely costs, including both one-time equipment installation costs and ongoing maintenance, if vertical access was required on intercity bi-level rail cars?

3. Handrails and Stanchions for Onboard Circulation

The Access Board's existing guidelines require that handrails and stanchions not encroach on the accessible routes and permit safe boarding, onboard circulation, seating and standing assistance, and alighting by persons with disabilities. 36 CFR 1192.57, 1192.77, 1192.97 & 1192.115. The RVAAC recommended retaining the existing requirement for the diameter of the interior handrails and stanchions with additional specifications that (a) handrails or handholds be included on transverse passenger seats in all rail cars, and (b) in light and rapid rail systems, vertical stanchions be provided adjacent to, or as part of, seats on alternate rows and sides of the aisle. RVAAC Report, Chap. 4, § VI.B. The current regulation does not address the visibility of handholds, handrails, and stanchions. The Access Board is interested in obtaining public comment on any potential need for visual contrast for handholds, handrails, or stanchions.

Question 22: Are additional types of handholds, handrails, or stanchions needed on rapid, light rail, intercity or commuter rail vehicles beyond those currently required? If so, please describe.

Question 23: Are handholds, handrails, or stanchions for rail vehicles currently designed with visual contrast?

Question 24: Is there a need for visual contrast on handholds, handrails, or stanchions? If so, please explain.

E. Dining Cars

Regarding accessible seating in dining cars, the RVAAC proposed to increase the required wheelchair spaces and transfer seating at tables from one to two spaces. The Committee also noted that this requirement could be met with convertible spaces. RVAAC Report, Chap. 5, § II.A. In response to this suggested requirement, Amtrak, in a minority report, indicated that when they attempted to use convertible spaces during the development of their new dining cars, the convertible spaces were criticized as ''making a spectacle'' of the arrival of someone using a wheelchair. RVAAC Report, Appendix C (Amtrak Minority Report, p. 54).

Question 25: What would be the advantages and disadvantages of having convertible/readily removable seating in dining cars on rail vehicles to accommodate passengers using wheelchairs.

David M. Capozzi,

Executive Director.

[FR Doc. 2020–02843 Filed 2–13–20; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0029; FRL–10005–07-Region 1]

Air Plan Approval; New Hampshire; Approval of Single Source Order

AGENCY: Environmental Protection Agency(EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision approves a single source order for PSI Molded Plastics. The intended effect of this action is to propose approval of this item into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before March 16, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0029 at *https://www.regulations.gov,* or via email to *mcconnell.robert@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1046. *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: January 30, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–02226 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 37

[Docket No. CDC–2019–0088; NIOSH–330]

RIN 0920–AA68

Coal Workers' Health Surveillance Program: B Reader Decertification and Autopsy Payment

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: HHS proposes to revise the National Institute for Occupational Safety and Health (NIOSH), Coal Workers' Health Surveillance Program (Program) regulations by adding a provision to allow NIOSH to suspend or revoke B Reader certification. Certification may be revoked for any B Reader found by NIOSH to have engaged in a pattern of providing unreasonably inaccurate chest radiograph classifications in practice—those that are found by the Program to diverge substantially from a competent interpretation of the radiographs, as determined by a panel of practicing, certified B Readers selected by NIOSH. In addition to the B Reader provisions, HHS would also amend existing regulatory text to allow compensation for pathologists who perform autopsies on coal miners at a market rate, on a discretionary basis as needed for public health purposes.

DATES: Comments must be received by May 14, 2020. Comments on the information collection approval request sought under the Paperwork Reduction Act must be received by April 14, 2020.

ADDRESSES: *Written comments:* Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to the docket.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 1090 Tusculum Avenue, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2019–0088; NIOSH–330) or Regulation Identifier Number (0920–AA68) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For detailed instructions on submitting public comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst; 1090 Tusculum Ave., MS: C–48, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed. You may submit comments on any topic related to this notice of proposed rulemaking.

II. Statutory Authority

The Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173, 30 U.S.C. 801 *et seq.*) (Mine Act), authorizes the HHS Secretary (Secretary) to work with coal mine operators to make available to coal miners the opportunity to have regular and routine chest radiographs (X-rays) in order to detect coal workers' pneumoconiosis (*i.e.,* black lung) and prevent its progression in individual miners. The Mine Act grants the Secretary general authority to issue regulations as is deemed appropriate to carry out provisions of the Act and specifically directs that medical examination of coal miners shall be given in accordance with specifications prescribed by the Secretary (30 U.S.C. 843(a), 957). The Mine Act also authorizes the Secretary to establish specifications for the reading of radiographs and to pay for autopsies submitted to the Program.

III. Background and Need for Rulemaking

All mining work generates fine particles of dust in the air. Coal miners who inhale excessive dust are known to develop a group of diseases of the lungs and airways, including dust-induced fibrotic lung disease (pneumoconiosis) and chronic obstructive pulmonary disease, including chronic bronchitis and emphysema. To address such

threats to the U.S. coal mining workforce, the Mine Act was enacted in 1969 and amended in 1977, authorizing the NIOSH Coal Workers' Health Surveillance Program, within the Respiratory Health Division, to detect pneumoconiosis and prevent its progression in individual miners, while at the same time providing information for evaluation of temporal and geographic trends in pneumoconiosis.

To inform each miner of his or her health status, the Act requires that coal mine operators provide each miner who begins work at a coal mine for the first time a chest radiograph (X-ray) through an approved facility as soon as possible after employment starts. Three years later a miner must be offered a second chest radiograph. If this second examination reveals evidence of pneumoconiosis, the miner is entitled to a third chest radiograph 2 years after the second. Further, all miners working in a coal mine must be offered a chest radiograph approximately every 5 years.

Under NIOSH supervision, chest radiographs are assessed and a summary report based on at least two independent classifications (readings) of each periodic chest radiograph is sent to each participating coal miner, who then has the opportunity to take action to reduce further dust exposure if early dust-induced lung disease is detected. The combined results of these radiographic examinations of miners also enable NIOSH to track rates and patterns of pneumoconiosis among the participating miners.

B Readers

Pursuant to NIOSH Coal Workers' Health Surveillance Program regulations in 42 CFR 37.51 and 37.52, chest radiographs taken for the Program are assessed by qualified licensed physician B Readers. B Readers are physicians who have demonstrated proficiency in the use of the International Labour Office (ILO) Classification of Radiographs of Pneumoconioses [1] by taking and passing a specially-designed proficiency examination offered by NIOSH, as specified in 42 CFR 37.52. The goal of the NIOSH B Reader Program is to ensure competency in the detection of pneumoconiosis by evaluating the ability of readers to classify a test set of radiographs, thereby creating and maintaining a pool of qualified readers having the skills and ability to provide accurate and precise classifications in accordance with ILO standards. The B Reader examination currently offered by NIOSH consists of the classification of 125 chest radiographs over the course of 6 hours; the test addresses proficiency in classification of small opacities, large opacities, pleural abnormalities, and certain other abnormalities that may appear in the lung radiographs. In order to maintain B Reader status, B Readers must take and pass the B Reader recertification exam every 5 years.

B Readers participate in the NIOSH Coal Workers' Health Surveillance Program, as well as other national and state programs addressing dust-related illnesses,[2] and are also involved with epidemiologic evaluations, surveillance, and worker monitoring programs involving many types of pneumoconioses. In applying the ILO Classification, B Readers compare sets of standard images, which represent different types of abnormalities and levels of disease severity, with images of the individual being evaluated to identify parenchymal abnormalities (small and large opacities), pleural changes, and other features that can occur in chest radiographs of individuals with pneumoconiosis. In the current ILO Classification, the B Reader is first asked to grade film quality and then to categorize small opacities according to their presence, shape and size, location, and profusion. Large opacities are classified according to their presence and size. The B Reader also assesses the presence, location, width, extent, and degree of calcification of pleural abnormalities as well as provides a description of additional features related to dust exposure and other etiologies visible on the chest radiograph.[3]

The classification of chest radiographs is semi-quantitative and relies on the B Reader's professional judgment, comparing case radiographs to the ILO standard classification radiographs. Skilled B Readers can disagree about the presence of disease, particularly in a radiograph with borderline findings, or differ somewhat in classifying the severity of disease. However, since the beginning of the Program in the 1970s, the NIOSH Respiratory Health Division has occasionally learned of B Readers found to provide unreasonably inaccurate radiograph classifications in formal litigation and compensation proceedings relative to the actual features of the chest radiographs in question. ''Unreasonably inaccurate'' classifications are those that diverge substantially from a competent interpretation of the radiographs and are unsupported by the chest radiographs in question, as determined by a panel of practicing, certified B Readers selected by NIOSH. For example, one B Reader was accused of ''under-reading'' chest radiographs, frequently not identifying severe cases of pneumoconiosis that may have been indicated by the radiographs; [4] another was accused of ''over-reading,'' frequently identifying asbestosis where the radiographs were subsequently found not to support that determination.[5] The Program regulations in 42 CFR part 37 do not currently provide a mechanism for NIOSH to take remedial action addressing such B Readers.

Autopsies

The Mine Act also authorizes HHS to provide for coal miner autopsies and to pay for their submission to NIOSH. Autopsies can be used for public health purposes such as studying the emerging issue of rapidly progressive and severe pneumoconiosis in coal miners by assessing its pathology and lung content of mineral particles relative to what was seen in the past. Also, autopsies are sometimes requested after mine disasters. The current regulatory language, promulgated over 45 years ago, provides for payments to pathologists up to $200; today, autopsies generally cost between $2,000 and $3,000. As a result, very few autopsies of coal miners are provided to the Coal Workers' Health Surveillance Program and the Autopsy Program is rarely used. Increasing the compensation rate would make it possible for pathologists to conduct autopsies of coal miners, thereby allowing the NIOSH Respiratory Health Division to better study pneumoconiosis in contemporary coal miners and to more thoroughly perform public health investigations, especially in the aftermath of mine disasters.

[1] International Labour Office [2011], *Guidelines for the use of ILO International Classification of Pneumoconiosis,* revised edition 2011, Geneva, Switzerland: International Labour Office. Occupational Safety and Health Series No. 22 (Rev. 2011).

[2] Other examples of national compensation programs that use B Readers include the Department of Labor, Office of Workers' Compensation Programs (OWCP), Division of Coal Mine Workers' Compensation, Black Lung Program; and the Asbestos Medical Surveillance Program, administered by the Navy and Marine Corps Public Health Center.

[3] NIOSH [2015], *Chest Radiograph Classification,* CDC/NIOSH form (M) 2.8, *http://www.cdc.gov/niosh/topics/surveillance/ords/pdfs/CWHSP-ReadingForm-2.8.pdf.*

[4] The Center for Public Integrity [2013], *Johns Hopkins Medical Unit Rarely Finds Black Lung, Helping Coal Industry Defeat Miners' Claims, https://publicintegrity.org/environment/johns-hopkins-medical-unit-rarely-finds-black-lung-helping-coal-industry-defeat-miners-claims/.*

[5] Fisher D [2012], *Law Firm Hit with $429,000 Verdict over Faked Asbestos Suits,* Forbes, *https://www.forbes.com/sites/danielfisher/2012/12/21/law-firm-hit-with-429000-verdict-over-faked-asbestos-suits/#14f1d2f92325.*

IV. Summary of Proposed Rule

To promote administrative efficiency and ensure program integrity, HHS proposes to amend 42 CFR part 37 by adding a new paragraph (d) to § 37.52, to allow NIOSH to take remedial action for any B Reader found by NIOSH to have engaged in a pattern of providing chest radiograph classifications in practice that are found by the Program to be unreasonably inaccurate, as determined by a panel of practicing, certified B Readers selected by NIOSH.

Remedial actions may be taken at NIOSH's discretion or in response to a complaint from any interested party or at the discretion of the Coal Workers' Health Surveillance Program. To ensure that NIOSH can identify those B Readers who provide unreasonably inaccurate classifications to compensation programs, a valid complaint from any interested party must provide the chest radiograph(s) and ILO classification(s) being contested, as well as a letter from a medical professional supporting the complaint that the classification was unreasonable. A new § 37.52(d)(1) would describe the complaint process. Paragraph (d)(1)(i) would define ''unreasonably inaccurate'' classifications as those that a panel of B Readers would unanimously determine are substantially divergent from a competent interpretation of the radiographs and are unsupported by the radiographs in question. Paragraph (d)(1)(ii) would describe the elements of a valid complaint; paragraph (d)(1)(iii) would describe an invalid complaint.

A new § 37.52(d)(2) would describe the procedures that would be used by NIOSH to determine whether an individual B Reader has engaged in a pattern of providing unreasonably inaccurate chest radiographs in practice. Complaint investigations would involve a panel of at least four B Readers who would independently review the information provided in each complaint. If at least one B Reader on the panel finds that the contested classification is reasonable, no further review will be conducted. If the B Readers on the panel independently and unanimously conclude that the classification is not reasonable, the actions described in paragraphs (d)(2)(ii)–(v) will be taken.

In accordance with the new provisions in § 37.52(d)(2), the certification of a B Reader who is under investigation will remain in good standing until the Program issues its final decision regarding remedial actions. If three independent complaint investigations conclude that an individual B Reader has engaged in a pattern of providing unreasonably inaccurate chest radiographs in practice, the B Reader's certification will be permanently revoked.

A new paragraph (d)(3) would establish an appeal process for those B Readers whose certifications have been revoked by the Coal Workers' Health Surveillance Program.

HHS is also considering permitting the revocation or suspension of B Reader certifications for demonstrated patterns of violating the B Reader's Code of Ethics. The Code of Ethics is available on the NIOSH website at *https://www.cdc.gov/niosh/topics/chestradiography/breader-ethics.html,* and would be included in part 37 as an appendix should this option be adopted. HHS encourages comments on this matter.

In addition to the proposed regulatory language on remediating inaccurate B Readers, HHS would also amend existing regulatory text in §§ 37.202 through 37.204 to allow NIOSH, on a discretionary basis as needed for public health purposes, to better compensate pathologists who perform autopsies on coal miners. Existing text in § 37.202(a) would be revised to clarify that pathologists must secure prior authorization from NIOSH and have legal consent to conduct an autopsy on a coal miner. New language in § 37.202(a)(2)(i) and (ii) would clarify the types of chest radiographs accepted by the Program, and new language in § 37.202(b) would specify that pathologists would be compensated in accordance with the ordinary, usual, or customary fee charged by other pathologists for the same services. Section 37.203 would be revised to update the reference for standard autopsy procedures. Finally, new language in § 37.204(a) would detail the new requirement that the pathologist obtain written authorization from the NIOSH Respiratory Health Division prior to completion of the autopsy. Existing language specifying how claims for payment should be submitted to NIOSH would be reorganized.

In existing § 37.201(b), the definition of *Miner* would be revised to remove the word ''underground,'' to clarify that the autopsy provisions pertain to all coal miners. Section 37.201(d) would also be revised to update the definition of ''NIOSH,'' clarifying that the name of the NIOSH division responsible for administering the Coal Workers' Health Surveillance Program is now the Respiratory Health Division.

V. Regulatory Assessment Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f) of E.O. 12866. The revisions proposed in this notice would allow NIOSH to take remedial action addressing any B Readers who frequently provide chest radiograph classifications in practice that are determined by the Program to be unreasonably inaccurate. Part 37 would also be revised to allow NIOSH to compensate pathologists at a contemporary rate for autopsies submitted to the Coal Workers' Health Surveillance Program.

The proposed revisions to Part 37 would not impose significant costs on the public and would benefit coal miners and coal mine operators. Depending on the types of unreasonably inaccurate classifications they provide, B Readers can compromise the health of and benefits owed to coal miners who have pneumoconiosis by under-reading or cause unnecessary emotional distress to miners and unnecessary costs for mine operators by over-reading. Allowing the NIOSH Respiratory Health Division to take remedial actions addressing these B Readers through suspension or revocation of their B Reader certifications would ensure that these adverse outcomes were minimized or avoided. Allowing the NIOSH Respiratory Health Division to better compensate pathologists for autopsies submitted to the Program would also ensure that NIOSH is able to study pneumoconiosis in coal miners.

The costs to the Federal government of administering these revisions would be minor and infrequent. NIOSH estimates that over a 5-year period, it might conduct two evaluations of B Readers, costing NIOSH approximately $3,000. Over the same period, NIOSH estimates it might fund up to 20

autopsies, costing NIOSH approximately $60,000.

The only costs potentially imposed on the public would be borne by B Readers whose certifications are suspended or revoked. NIOSH estimates that over a 5-year period it might suspend or revoke certifications for one B Reader. However, conducting B Reader medical examinations is generally infrequent within a physician's medical practice, and moreover, other medical procedures similarly compensated would likely substitute for conducting B Reader examinations. It is not possible to reasonably estimate whether such costs would arise and, if so, their level and frequency.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 requires executive departments and agencies to eliminate at least two existing regulations for every new significant regulation that imposes costs. HHS has determined that this rulemaking is cost-neutral because it does not require any new action by stakeholders. The rulemaking ensures that coal miners properly receive compensation for their occupational illness and that NIOSH can more thoroughly study the development of pneumoconiosis. Because OMB has determined that this rulemaking is not significant, pursuant to E.O. 12866, and because it does not impose costs, OMB has determined that this rulemaking is exempt from the requirements of E.O. 13771. Thus it has not been reviewed by OMB.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this proposed rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain Office of Management and Budget (OMB) approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. In accordance with section 3507(d) of the PRA, HHS has determined that the PRA does apply to information collection and recordkeeping requirements included in this rule. OMB has already approved the information collection and recordkeeping requirements under OMB Control Number 0920–0020, *National Coal Workers' Health Surveillance Program (CWHSP)* (expiration date 9/30/2021). HHS has determined that the proposed amendments in this rulemaking would not impact the existing collection of data but would add two new items to the approval: B Reader challenge and appeal, and the pathologist prior authorization request. To request more information or to obtain a copy of the data collection plans and instruments, you may call 404–639–5960; send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333; or send an email to *omb@cdc.gov.*

Comments are invited on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. Written comments should be received within 60 days of the publication of this notice. The addition of additional paperwork requirements resulting from this proposed rule will increase the burden associated with the following provisions:

Section 37.52 Proficiency in the use of systems for classifying the pneumoconioses. This section establishes the process for certifying B Readers. Of the 167 B Readers currently certified and the approximately additional 200 who will be certified over the next 10 years, HHS anticipates that no more than three B Readers may be disciplined over time. Of those, HHS expects two B Readers to challenge or appeal the decision to take disciplinary action; if all decisions are challenged and the final decision to revoke certification is appealed, NIOSH would receive up to eight letters (for each of the four final disciplinary decisions). HHS estimates that the challenge or appeal letter will take no more than 30 minutes to complete, totaling 4 hours annually. There will be no form associated with this collection.

Section 37.204 Procedure for obtaining payment. This section would establish that a pathologist who wants to submit an autopsy to the Coal Workers' Health Surveillance Program must first obtain written authorization from the NIOSH Respiratory Health Division. HHS expects that the number of requests will vary substantially from year-to-year. For example, more requests might be granted following a mine disaster. Over a period of years, HHS expects an average of about four requests for prior authorization annually. HHS estimates that each request for prior authorization will take no more than 15 minutes to complete, averaging about 1 hour annually over a period of years.

Section	Title	Number of respondents	Responses per respondent	Average burden per response (min)	Total burden (hr)
37.52	Challenge to disciplinary action and appeal of decertification decision.	2	4	30/60	4
37.204	Autopsy prior authorization	4	1	15/60	1
Total					5

E. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the

effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local, or Tribal governments in the aggregate, or by the private sector.

G. Executive Order 12988 (Civil Justice Reform)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13132 (Federalism)

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

I. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

J. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

K. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 42 CFR Part 37

Chronic Obstructive Pulmonary Disease, Coal Workers' Pneumoconiosis, Incorporation by reference, Lung diseases, Mine safety and health, Occupational safety and health, Part 90 miner, Part 90 transfer rights, Pneumoconiosis, Respiratory and pulmonary diseases, Silicosis, Spirometry, Surface coal mining, Underground coal mining, X-rays.

Proposed Rule

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 37 as follows:

PART 37—SPECIFICATIONS FOR MEDICAL EXAMINATIONS OF COAL MINERS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: Sec. 203, 83 Stat. 763, 30 U.S.C. 843, unless otherwise noted.

■ 2. Revise § 37.52 by adding paragraph (d) to read as follows:

§ 37.52 Proficiency in the use of systems for classifying the pneumoconioses.

* * * * *

(d) *Remedial Actions.* (1) Any interested party may make a complaint to the NIOSH Coal Workers' Health Surveillance Program against any B Reader who routinely provides chest radiograph classifications in practice that are believed to be unreasonably inaccurate.

(i) Inaccurate classifications are those that fail to identify small or large opacities in lung fields, pleural changes, and other features indicating the presence of lung disease where they exist, or those that identify small or large opacities, pleural changes, and other features where they do not exist. Unreasonably inaccurate classifications are those that a panel of B Readers would unanimously determine are substantially divergent from a competent interpretation of the radiographs and are unsupported by the chest radiographs in question.

(ii) A valid complaint must be submitted to the NIOSH Coal Workers' Health Surveillance Program, Respiratory Health Division, and include the chest radiographs and ILO classifications being contested as well as a letter of support from a medical professional. A complaint that demonstrates more than a reasonable difference of opinion will be considered valid.

(iii) A complaint that fails to include any required element will be considered invalid, and the NIOSH Respiratory Health Division will notify the complainant that no further investigation will occur.

(2) Investigations may be initiated at NIOSH's discretion or in response to a valid complaint, pursuant to paragraph (d)(1) of this section, to determine whether a B Reader has provided chest radiograph classifications in practice that are unreasonably inaccurate.

(i) Investigations will include the following:

(A) The NIOSH Respiratory Health Division will choose a panel of at least four B Readers who will independently review the information provided in each valid complaint.

(B) If one or more of the B Readers on the panel independently determines that the classification being contested is reasonable, the NIOSH Respiratory Health Division will conclude that the classification being contested is reasonable. The complainant will be notified of the finding and no further action will be conducted.

(C) If the B Readers on the panel independently and unanimously concur that the classification being contested is unreasonable, remedial actions will be taken by the NIOSH Respiratory Health Division pursuant to paragraphs (d)(2)(ii) through (v) of this section, accordingly.

(ii) If, after an investigation, a panel of B Readers unanimously finds that the classification contested in a complaint is unreasonably inaccurate, the Program will issue an initial report to the B Reader under review. If the B Reader chooses not to challenge the initial report within 30 days, the initial report becomes a final determination. If the B Reader chooses to challenge the initial report, the Coal Workers' Health Surveillance Program will respond within 90 days; the Program's decision is final. The first final report may be considered a warning that further misclassification of small or large opacities or other types of pleural abnormalities will result in suspension or revocation of the B Reader's certification.

(iii) If, after an investigation, a panel of B Readers unanimously finds that the classification contested in a second complaint is unreasonably inaccurate, the Program will issue an initial report to the B Reader under review. If the B Reader chooses not to challenge the initial report within 30 days, the initial report becomes a final determination. If the B Reader chooses to challenge the initial report, the Coal Workers' Health Surveillance Program will respond

within 90 days, during which time the B Reader's certification will remain in good standing; the Program's decision is final and may result in the 1-year suspension of the B Reader's certification with the 1-year period beginning on the date the Program issues the final decision letter. The suspended B Reader must take and pass the certification examination at the conclusion of the suspension period in order to be reinstated.

(iv) If, after an investigation, a panel of B Readers unanimously finds that the classification contested in a third complaint is unreasonably inaccurate, the Program will issue an initial report to the B Reader under review. If the B Reader chooses not to challenge the initial report within 30 days, the initial report becomes a final determination. If the B Reader chooses to challenge the initial report, the Coal Workers' Health Surveillance Program will respond within 90 days, during which time the B Reader's certification will remain in good standing; the Program's decision is final, unless the B Reader successfully appeals the decision pursuant to § 37.52(d)(3), and will result in permanent revocation of the B Reader's certification beginning on the date the Program issues the final decision letter.

(v) If the first complaint is found to be valid and to demonstrate a pattern of inaccurate chest radiograph classifications, the Program will issue an initial report to the B Reader under review and immediately apply the procedures in paragraph (d)(2)(iv) of this section. To demonstrate a pattern of inaccurate classifications, the valid complaint must provide radiographs from three or more patients conducted within a one-year period that are determined by the Program to be inaccurate.

(3) A B Reader whose certification is revoked after three final adverse determinations is no longer a certified B Reader. Such B Reader may appeal the Coal Workers' Health Surveillance Program's decision to revoke the B Reader's certification.

(i) An appeal request must be submitted in writing to the NIOSH Respiratory Health Division Director, signed and postmarked within 30 calendar days of the date of the letter notifying the B Reader of the decertification decision. Electronic versions of the signed appeal request letter will also be accepted.

(ii) The appeal request must state the reason(s) the B Reader believes the decertification decision is incorrect and should be reversed. The appeal request may include scientific or medical information correcting factual errors, any information demonstrating that the decertification decision was not reasonable, and/or relevant new information not previously considered by the Coal Workers' Health Surveillance Program.

(iii) The appeal request must be sent to the NIOSH Respiratory Health Division Director at the address specified in the decertification letter.

(iv) The NIOSH Respiratory Health Division Director will review the Coal Workers' Health Surveillance Program decision and any relevant information provided by the B Reader and make a final decision on the appeal. The Director will notify the B Reader of the following in writing:

(A) The Director's final decision on the appeal;

(B) An explanation of the reason(s) for the Director's final decision on the appeal; and

(C) Any administrative actions taken by the Coal Workers' Health Surveillance Program.

■ 3. Revise § 37.201 to read as follows:

§ 37.201 Definitions.

As used in this subpart:

(a) *Secretary* means the Secretary of Health and Human Services.

(b) *Miner* means any individual who during his/her life was employed in any coal mine.

(c) *Pathologist* means

(1) A physician certified in anatomic pathology or pathology by the American Board of Pathology or the American Osteopathic Board of Pathology,

(2) A physician who possesses qualifications which are considered board-eligible by the American Board of Pathology or American Osteopathic Board of Pathology, or

(3) An intern, resident, or other physician in a training program in pathology who performs the autopsy under the supervision of a pathologist as defined in paragraph (c) (1) or (2) of this section.

(d) *NIOSH* means the National Institute for Occupational Safety and Health, located within the Centers for Disease Control and Prevention (CDC). Within NIOSH, the Respiratory Health Division (formerly called the Division of Respiratory Disease Studies and the Appalachian Laboratory for Occupational Safety and Health) is the organizational unit that has programmatic responsibility for the medical examination and surveillance program.

■ 4. Revise § 37.202 to read as follows:

§ 37.202 Payment for autopsy.

(a) NIOSH may, at its discretion, pay any pathologist who has received prior authorization from NIOSH pursuant to § 37.204(a), and with legal consent:

(1) Performs an autopsy on a miner in accordance with this subpart; and

(2) Submits the findings and other materials to NIOSH in accordance with this subpart within 180 calendar days after having performed the autopsy.

(i) Types of chest radiographic images accepted for submission include a digital chest image (posteroanterior view) provided in an electronic format consistent with the DICOM standards described in § 37.42(c)(5), a chest computed tomography provided in an electronic format consistent with DICOM standards, or a good-quality copy or original of a film chest radiograph (posteroanterior view).

(ii) More than one type of chest radiographic image may be submitted.

(b) Pathologists will be compensated in accordance with the ordinary, usual, or customary fee charged by other pathologists for the same services, at the discretion of NIOSH. NIOSH will additionally compensate a pathologist for the submission of chest radiographic images made of the subject of the autopsy within 5 years prior to his/her death together with copies of any interpretations made.

(c) A pathologist who receives any other specific payment, fee, or reimbursement in connection with the autopsy from the miner's widow/widower, his/her family, his/her estate, or any other Federal agency will not receive compensation from NIOSH.

■ 5. Revise § 37.203 to read as follows:

§ 37.203 Autopsy specifications.

(a) Each autopsy for which a claim for payment is submitted pursuant to this subpart must be performed in a manner consistent with standard autopsy procedures such as those, for example, set forth in *Autopsy Performance & Reporting, third edition* (Kim A. Collins, ed., College of American Pathologists, 2017). Copies of this document may be borrowed from NIOSH.

(b) Each autopsy must include:

(1) Gross and microscopic examination of the lungs, pulmonary pleura, and tracheobronchial lymph nodes;

(2) Weights of the heart and each lung (these and all other measurements required under this subparagraph must be in the metric system);

(3) Circumference of each cardiac valve when opened;

(4) Thickness of right and left ventricles; these measurements must be made perpendicular to the ventricular surface and must not include trabeculations or pericardial fat. The right ventricle must be measured at a

point midway between the tricuspid valve and the apex, and the left ventricle must be measured directly above the insertion of the anterior papillary muscle;

(5) Size, number, consistency, location, description and other relevant details of all lesions of the lungs;

(6) Level of the diaphragm;

(7) From each type of suspected pneumoconiotic lesion, representative microscopic slides stained with hematoxylin eosin or other appropriate stain, and one formalin fixed, paraffin-impregnated block of tissue; a minimum of three stained slides and three blocks of tissue must be submitted. When no such lesion is recognized, similar material must be submitted from three separate areas of the lungs selected at random; a minimum of three stained slides and three formalin fixed, paraffin-impregnated blocks of tissue must be submitted.

(c) Needle biopsy techniques will not be accepted.

■ 6. Revise § 37.204 to read as follows:

§ 37.204 Procedure for obtaining payment.

(a) Prior to performing an autopsy, the pathologist must obtain written authorization from NIOSH and agreement regarding payment amount for services specified in § 37.202(a) by submitting an Authorization for Payment of Autopsy (form CDC #0.1585).

(1) NIOSH will maintain up-to-date information about the availability of payments on its website. If payments are not available, the online Authorization of Payment for Autopsy form will not be active and available for completion on the NIOSH website.

(2) After receiving a completed authorization request form, NIOSH will reply in writing with an authorization determination within 3 working days.

(b) After performance of an autopsy, each claim for payment under this subpart must be submitted to NIOSH and must include:

(1) An invoice (in duplicate) on the pathologist's letterhead or billhead indicating the date of autopsy, the amount of the claim and a signed statement that the pathologist is not receiving any other specific compensation for the autopsy from the miner's widow/widower, his/her surviving next-of-kin, the estate of the miner, or any other source.

(2) Completed Consent, Release and History Form for Autopsy (CDC/NIOSH (M)2.6). This form may be completed with the assistance of the pathologist, attending physician, family physician, or any other responsible person who can provide reliable information.

(3) Report of autopsy:

(i) The information, slides, and blocks of tissue required by this subpart.

(ii) Clinical abstract of terminal illness and other data that the pathologist determines is relevant.

(iii) Final summary, including final anatomical diagnoses, indicating presence or absence of simple and complicated pneumoconiosis, and correlation with clinical history if indicated.

Dated: January 10, 2020.

Alex M. Azar II

Secretary, Department of Health and Human Services.

[FR Doc. 2020–02705 Filed 2–13–20; 8:45 am]

BILLING CODE 4163–218–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 20–02]

RIN 3072–AC80

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) proposes to amend its rules governing Service Contracts. The proposed rule is intended to reduce regulatory burden.

DATES: Submit comments on or before: April 14, 2020.

In compliance with the Paperwork Reduction Act, the Commission is also seeking comment on revisions to one information collections. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to the revised information collections to the Commission and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before April 14, 2020. Comments to OMB are most useful if submitted within 30 days of publication.

ADDRESSES: You may submit comments identified by the Docket No. 20–02 in the heading of this document, by the following methods:

• *Email: secretary@fmc.gov.* Include in the subject line: ''Docket No. 20–02, Comments on Proposed Service Contract Regulations.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Comments containing confidential information should not be submitted by email.

• *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.*

• Comments regarding the revised information collections should be submitted to the Commission through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street NW, Washington, DC 20503; by Fax: (202) 395–5167; or by email: *OIRA_Submission@OMB.EOP.GOV.*

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of 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 the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/20-02/,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Rachel E. Dickon, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.* For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5796. *Email: TradeAnalysis@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On September 18, 2018, the Federal Maritime Commission (FMC or Commission) issued a Notice of Filing and Request for Comments to obtain public comments on Petition No. P3–18, the petition of the World Shipping Council (WSC), (Petitioner) pursuant to 46 CFR 502.92 ''. . . for an exemption from service contract filing and essential terms publication requirements set forth at 46 U.S.C 40502(b) and (d), respectively . . .'' Petitioner further petitions the Commission for the initiation of a rulemaking proceeding to

amend its service contract regulations set forth at 46 CFR part 530 in a manner consistent with the requested exemption.

Comments were received in support of WSC's petition from Atlantic Container Line, AB (ACL); the National Industrial Transportation League (NITL); and the Caribbean Shipowners Association (CSO). Frankford Candy LLC (Frankford) and Wheaton Grain Inc. (Wheaton) filed comments opposing the petition.

On December 20, 2019, the Commission issued an order denying in part and granting in part the petition. Specifically, the Commission denied WSC's request for an exemption from the requirement in 46 U.S.C. 40502(b) that ocean common carriers file service contracts with the Commission. *Pet'n of the World Shipping Council for an Exemption from Certain Provisions of the Shipping Act of 1984, as amended, and for a Rulemaking Proceeding,* Pet. No. P3–18, slip op., (FMC Dec. 20, 2019) (P3–18 Order). In contrast, the Commission granted WSC's request for an exemption from the requirement in § 40502(d) that carriers publish ETs with each service contract, determining that an exemption from § 40502(d) would not result in a substantial reduction in competition or be detrimental to commerce. *Id.* The Commission also determined to initiate a rulemaking to implement the ET publication exemption. *Id.*

The Commission is therefore proposing to amend its regulations in part 530 in accordance with the P3–18 Order and requests comment on the proposed changes. The Commission emphasizes that the scope of this rulemaking is limited to amending part 530 in line with the Commission's decision. The merits of WSC's petition and the Commission's findings in the P3–18 Order are outside the scope of this rulemaking.

Background

The Shipping Act of 1984 (the Shipping Act or the Act) introduced the option for liner services to be priced via negotiated service contracts between ocean common carriers and their shipper customers, rather than solely by public tariffs. Pursuant to the Shipping Act and FMC regulations, ocean freight rates, surcharges, and accessorial charges had to be published in tariffs, or agreed to via a service contract filed with the Commission. Contemporaneous with the filing of service contracts, ocean carriers were required to make publicly available a statement of the essential terms (ET) of the service contract, including the line-haul rate, in tariff format.

The Ocean Shipping Reform Act of 1998 (OSRA) amended the Shipping Act of 1984 to eliminate the requirement that service contract rates be published in the carrier's public tariff. Public Law 105–258, 106. One of the primary impacts of OSRA was to render service contract rates confidential, and thus no longer available to ocean carriers and shippers as carrier pricing information. In addition, similarly situated shippers could no longer utilize the rates and terms of published service contracts. Subsequent to OSRA, the ET publication has been limited to: origin and destination port ranges, commodities, minimum volume or portion, and duration. The deletion of rates from the scope of the ET publication protected U.S. exporters from their foreign competitors who would be able to ascertain proprietary business information from these publicly available essential terms. At the same time, the ET publication was also no longer useful either to shippers in contract negotiations with carriers, or among carriers as a tool in potential pricing coordination.

Discussion

As explained in the P3–18 Order, the Commission's experience indicates that the publication of Statements of Essential Terms corresponding to individual service contracts is of questionable value. No commenters claimed a use for these publications, nor does the Commission use them in-house inasmuch as the Commission has the ability to access complete service contracts, including rate matrices and contract terms.

In determining how to best implement the determination to exempt carriers from the ET publication requirements in 46 U.S.C. 40502(d), the Commission notes that § 40502(d) and the Commission's regulations at 46 CFR 530.12 require that carriers publish concise Statements of Essential Terms corresponding to individual service contracts in tariff format. In addition to the required Statements of Essential Terms, carriers often include in their ET tariff rules and notices that generally apply to all service contracts. An ocean carrier's ET tariff may therefore comprise two components: (1) Tariff rules and notices that generally apply to all service contracts; and (2) the required concise Statements of Essential Terms corresponding to individual service contracts.

The general tariff rules and notices are rarely amended once initially published. Indeed, there are significant benefits to publishing a ''blanket'' rule or notice in the carrier's ET tariff that applies to most, or all, service contracts, thereby eliminating the potential need to periodically amend hundreds of individual service contracts. In contrast, a Statement of Essential Terms is published in the carrier's tariff when each new service contract is confidentially filed, and typically must be reviewed by the tariff publisher each time a contract is amended, whether or not it is ultimately determined that the public terms must be updated. In some cases, the Statement of Essential Terms is continuously updated to keep the ET amendment number in sync with the contract amendment number.

Although the Commission has determined to exempt carriers from the requirement that they publish Statements of Essential Terms for individual service contracts, the Commission wants to ensure that carriers continue to publish generally applicable service contract tariff rules and notices. The Commission therefore proposes to replace the requirement in § 530.12 that carriers publish Statements of Essential Terms for individual service contracts with a requirement that carriers publish general service contract rules and notices as a separate part of the individual carrier's automated tariff system. The Commission is also proposing changes to a number of other sections in part 530 to reflect the elimination of the Statement of Essential Terms publication requirements. Finally, the Commission proposes to correct in part 530 outdated references to FMC bureaus and offices, as well as correct an outdated reference to a Department of Defense Command.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

Regulatory Notices and Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. Accordingly, the Chairman of the Federal Maritime Commission certifies that the proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. The regulated business entities that would be impacted by the rule are vessel-operating common carriers (VOCCs). The Commission has determined that VOCCs generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA). *See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (Feb. 7, 2003), available at *https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in Part 530, Service Contracts, are currently authorized under OMB Control Number 3072–0065. If approved, this rule would eliminate for VOCCs the publication of concise statements of essential terms in their carrier automated tariff systems. The proposed rule would require VOCCs to continue their general practice of publishing service contract rules and notices in their carrier automated tariff systems. The proposed rule does not make any changes to the requirement to file service contracts with the Commission.

As background, of the 155 vessel-operating common carriers serving the U.S. trades, 68 do not file service contracts with the Commission, and thus would not be impacted by this rulemaking. Further, of the 87 carriers that file service contracts, 31 filed less than ten contracts or amendments thus far in FY 2019, with ten of those only filing 1 contract this fiscal year. Among VOCCs that utilize service contracts more extensively as a pricing mechanism, only 31 filed over 100 original contracts this fiscal year.

With respect to the cost savings associated with eliminating the publication of statements of essential terms corresponding to original service contracts and amendments, the Commission estimates the savings to VOCCs as roughly 41,048 man-hours, for an approximate savings of $1,987,133 annually.[1] Service contract rules and notices in carrier automated tariff systems, on the other hand, are rarely published or revised, inasmuch as they govern a broad swath of carrier contracts, and many times are intended to quickly and efficiently address an *ad hoc* industry situation.[2] Thus, in any given year, there may be no new service contract rules or notices published in a carrier's automated tariff system. The Commission observes that the benefit of maintaining rules and notices which allow a carrier to avoid revising hundreds of service contracts greatly outweighs the burden of publishing such a notice. The Commission invites comment on this.

Regarding the burden associated with the filing of service contracts with the Commission, a substantial majority of filers, 74 percent, have recognized greater efficiencies by automating their service contract filing processes using the Commission's ''web services'' automated filing system. Using FY 2018 figures, BTA staff estimates the remaining burden associated with service contract filing to be roughly 3,542 man-hours, or $402,088 annually.[3] Inclusive of the burden

[1] The Commission's previous service contract rulemaking in Docket No. 16–05 estimated the time associated with preparation of an individual ET publication as 3 minutes. No commenters opposed that estimate. More recently, BTA informally interviewed two major tariff publishers that file service contracts and publish ETs for multiple VOCCs. These tariff publishers estimated the time required to prepare an ET to be 3 to 6 minutes. The larger of the two tariff publishers reported that their 3-minute preparation time was due to its proprietary technological efficiencies. The above-referenced savings are based on the 3-minute preparation time estimate, using the Commission's most recent fiscal year's filing statistics for new contracts and amendments. In FY 2018, 47,962 new service contracts and 772,803 amendments were filed.

[2] As one example, a major ocean carrier published a blanket notice in its ET tariff applying to hundreds of its service contracts when it deployed an extra loader vessel to meet unexpected shipper demand. This notice allowed existing contract rates applying to a specifically named service string to also apply to cargo moving on the extra loader vessel, thereby eliminating the VOCC's burden of amending hundreds of service contracts.

[3] In the Commission's previous service contract rulemaking in Docket No. 16–05, each service contract filing (new or amendment) was estimated to take 3 minutes. Since that rulemaking, carriers and tariff publishers comprising the highest volume service contract filers have continued automating their filing processes. Filers that implemented the Commission's ''web services'' automated filing process have advised that minimal software programming was required to facilitate the automated upload of service contracts and

Continued

associated with the Service Contract Rules Publication requirement,[4] the entire burden associated with this information collection is calculated as $3,482,351 for contract filers, a substantial reduction.

In compliance with the PRA, the Commission has submitted the proposed revised information collection to the Office of Management and Budget.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The proposed rule amends the requirements related to the publication of essential terms associated with service contracts. This rulemaking thus falls within the categorical exclusion for actions related to the receipt service contracts (§ 504.4(a)(5)). Therefore, no environmental assessment or environmental impact statement is required.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, at *http://www.reginfo.gov/public/do/eAgendaMain.*

Proposed Rule

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR part 530 as follows:

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

PART 530—SERVICE CONTRACTS

■ 1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

■ 2. Amend § 530.1 by revising the first sentence to read as follows:

§ 530.1 Purpose

The purpose of this part is to facilitate the filing of service contracts as required by section 8(c) of the Shipping Act of 1984 (''the Act'') (46 U.S.C. 40502).
* * *

■ 3. Amend § 530.3 by revising paragraphs (d) and (o) and removing paragraph (s) to read as follows:

§ 530.3 Definitions.

* * * * *

(d) *BTA* means the Commission's Bureau of Trade Analysis or its successor bureau.

* * * * *

(o) *OIT* means the Commission's Office of Information Technology.

* * * * *

■ 4. Amend § 530.5 by revising paragraphs (a) and (c)(1) to read as follows:

§ 530.5 Duty to file.

(a) The duty under this part to file service contracts, amendments, and notices shall be upon the individual carrier party or parties participating or eligible to participate in the service contract.

* * * * *

(c) * * *

(1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTA the Registration Form (FMC–83) in Exhibit 1 to this part.

* * * * *

■ 5. Amend § 530.8 by revising paragraph (d) introductory text and removing paragraph (d)(4) to read as follows:

§ 530.8 Service Contracts.

* * * * *

(d) Every service contract filed with BTA shall include, as set forth in appendix A to this part by:

* * * * *

§ 530.10 [Amended]

■ 6. Amend § 530.10 by removing paragraph (f).

■ 7. Revise subpart C heading to read as follows.

Subpart C—Publication of Essential Terms

■ 8. Revise § 530.12 to read as follows:

§ 530.12 Rules and Notices.

(a) *Location*—(1) *Generally.* A statement of service contract rules and notices shall be published as a separate part of the individual ocean common carrier's automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to participate, the statement of service contract rules and notices shall be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference's automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers' individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(b) *Certainty of terms.* The statement of service contract rules and notices described in paragraph (a) of this section may not:

(1) Be uncertain, vague, or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of service contract rules and notices, unless those terms are contained in a publication widely available to the public and well known within the industry.

(c) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

amendments. Once automated, contract data can be transmitted into SERVCON in a matter of seconds, without need for human intervention.

[4] In our OMB filing related to this Information Collection, the burden of maintaining service contract rules and notices is estimated at 87 hours.

(d) *Commission listing.* The Commission will publish on its website, *www.fmc.gov,* a listing of the locations of all service contract rules and notices.

■ 9. Amend § 530.13 by revising paragraph (b)(2) to read as follows:

§ 530.13 Exceptions and exemptions.

* * * * *

(b) * * *

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Surface Deployment and Distribution Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

* * * * *

■ 10. Amend § 530.15 by revising paragraph (c) to read as follows:

§ 530.15 Recordkeeping and audit.

* * * * *

(c) *Production for audit within 30 days of request.* Every carrier or agreement shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original service contracts or their associated records within thirty (30) days of the date of the request.

* * * * *

Appendix A to Part 530 [Amended]

■ 11. In Appendix A revise all references to ''BTCL'' to read ''BTA'' and revise all references to ''OIRM'' to read ''OIT''.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–02561 Filed 2–13–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[EB Docket No. 20–22; FCC 20–11; FRS 16480]

Implementing the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to establish a registration process for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

DATES: Comments are due on or before February 24, 2020 and reply comments are due on or before March 2, 2020.

ADDRESSES: You may submit comments, identified by EB Docket No. 20–22, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th 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: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Sonja Rifken of the Telecommunications Consumers Division, Enforcement Bureau, at *Sonja.Rifken@fcc.gov* or (202) 418–1730.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 20–11, EB Docket No. 20–22, adopted on February 5, 2020 and released on February 6, 2020. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or online at *https://docs.fcc.gov/public/attachments/FCC-20-11A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) proposes to implement section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement Act (TRACED Act). Unlawful prerecorded voice message calls—robocalls—plague the American public. Despite the Commission's efforts to combat unlawful robocalls, which includes efforts to trace unlawful spoofed robocalls to their origination—a process known as traceback—these calls persist. Congress recognized the continued problem and enacted the TRACED Act to further aid the Commission's efforts. Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and, in section 13(d) of the TRACED Act, required the Commission to issue rules for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

2. The Commission proposes rules to implement a simple registration process. First, we propose that the Enforcement Bureau issue an annual public notice seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls. The Enforcement Bureau would issue the public notice no later than April 28 this year, as required by the TRACED Act, and by that date annually thereafter. We invite comment on this proposal.

3. Second, we propose to require an entity that plans to register as the consortium for private-led traceback efforts to submit in this docket a letter

of notice of its intent to conduct private-led traceback efforts and its intent to register as the single consortium. We propose that the letter of notice include the name of the entity and a statement of its intent to conduct private-led traceback efforts and its intent to register with the Commission as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls. We invite comment on this proposal.

4. Third, we propose to mandate that the entity address the statutory requirements in such letter by:

(a) Demonstrating that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(b) including a copy of the consortium's written best practices regarding management of its traceback efforts and regarding providers of voice services' participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls, and an explanation thereof;

(c) certifying that, consistent with section 222(d)(2) of the Communications Act, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and

(d) certifying that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

We invite comment on this proposal. We also invite comment on how to construe the terms used in these four statutory criteria and whether we should adopt any specific rules to ensure compliance with them. In addition, we seek comment on whether we should require any additional information or consider any other factors.

5. Fourth, we note that the statute contemplates a single registrant with the Commission, and so we must select a single consortium if more than one qualified consortium seeks to register. To do that, we propose that the Enforcement Bureau select the single registered consortium based on its analysis of any letter and associated documentation submitted by an entity seeking to register as the single consortium. Our judgment of compliance with the TRACED Act's requirements will be informed by the work we have done with the private sector, particularly the Industry Traceback Group. We propose to heavily weight the consortium applicant's expertise in both managing and improving the traceback process to the benefit of interested parties, including the Commission. Moreover, we propose to heavily weight whether the consortium applicant is open to all voice service providers. The degree of openness is indicative of the level of neutrality we would expect in order to accept a consortium's registration. We invite comment on these proposals and also seek comment on methods we should use to select between or among any competing consortium applicants. We welcome comment on other factors that merit consideration in evaluating any consortium application.

6. Fifth, while we propose to continue to solicit interest by public notice on an annual basis, in order to minimize the burdens of the registration process we propose not to require the incumbent consortium to file a new application each year. Rather, under our proposal, our rules will require that each certification in a letter extend for the duration of each subsequent year that the incumbent consortium serves, unless the incumbent consortium notifies the Commission otherwise in writing on or before the date for the filing of such letters set forth in the annual public notice. In the event of any delays in our annual selection process, we also propose to authorize the incumbent consortium to continue its traceback efforts during the pendency of that process, until the effective date of the selection of any new consortium. We propose that the Bureau shall select any new consortium no later than 90 days after the date set forth in the annual public notice. We seek comment on these proposals.

7. Initial Regulatory Flexibility Certification. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Certification reflecting its analysis that there will be no significant economic impact on small entities by the implementation of the policies and rules addressed in this Notice. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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).

8. In this NPRM, the Commission seeks comment on a limited and simple process for registration with the Commission of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls as required by section 13 of the TRACED Act. We reasonably expect, based on our experience, that no more than a few entities, and perhaps only one, would apply to serve as the consortium. Moreover, the proposals contained herein impose minimal registration burdens such that they will have no more than a *de minimis* economic impact on any entity that has the resources to perform the private-led traceback efforts. Therefore, we certify that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of this NPRM, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. This initial certification will also be published in the **Federal Register**.

10. Initial Paperwork Reduction Act of 1995 Analysis. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

11. Ex Parte Rules. This proceeding 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 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 filing 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 meeting are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules 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.

12. *Ordering Clauses.* Accordingly, *it is ordered*, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Public Law 116–105, 133 Stat. 3274, this Notice of Proposed Rulemaking, is hereby *adopted.*

13. *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 Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in Parts 0 and 64

Authority delegations (Government agencies), Telecommunications.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0 and 64 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 is revised to read as follows:

Authority: 47 U.S.C. 155, 225 unless otherwise noted.

■ 2. Amend section 0.111 by revising paragraph (i) and adding paragraph (j) to read as follows:

§ 0.111 Functions of the Bureau.

* * * * *

(i) Conduct the annual registration and selection of a single consortium to conduct private-led efforts to trace back the origin of suspected unlawful robocalls, under section 13(d) of the TRACED Act, 133 Stat. at 3287, and § 64.1203 of this chapter.

(j) Perform such other functions as may be assigned to it or referred to it by the Commission.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(e), 254(k), 262, 287, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 4. Add § 64.1203 to subpart L to read as follows:

§ 64.1203 Consortium registration process.

(a) The Enforcement Bureau shall issue a public notice no later than April 28th annually seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

(b) Except as provided in paragraph (c) of this section, an entity that seeks to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls must submit a letter and associated documentation in response to the public notice issued pursuant to paragraph (a) of this section. In the letter, the entity must:

(1) Demonstrate that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(2) Include a copy of the consortium's written best practices regarding the management of its traceback efforts and regarding providers of voice services participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls and an explanation thereof;

(3) Certify that, consistent with section 222(d)(2) of the Communications Act of 1934, as amended, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and

(4) Certify that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.

(c) The entity selected to be the registered consortium will not be required to file the letter mandated in paragraph (b) of this section in subsequent years after the consortium's initial registration. The registered consortium's initial certifications, required by paragraph (b) of this section, will continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing on or before the date for filing letters set forth in the annual public notice issued pursuant to paragraph (a) of this section.

(d) The current registered consortium shall continue its traceback efforts until the effective date of the selection of any new registered consortium.

[FR Doc. 2020–03065 Filed 2–13–20; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17–287, 11–42 and 09–197; Report No. 3141; FRS 16467]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding by Nicholas G. Alexander, on behalf of Telscape Communications, Inc. dba TruConnect and Sage Telecom Communications, LLC, Derrick B. Owens, on behalf of WTA-Advocates for Rural Broadband, and Brita D. Strandberg, on behalf of Sprint Corporation.

DATES: Oppositions to the Petitions must be filed on or before March 2, 2020. Replies to an opposition must be filed on or before March 10, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas Page, Attorney Advisor, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–2783.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3141, released January 30, 2020. The full text of the Petitions is available for viewing and copying at the FCC Reference

Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Petitions also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801 because no rules are being adopted by the Commission.

Subject: Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support, WC Docket Nos. 17–287, 11–42, and 09–197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 19–111, published at 84 FR 71308, December 27, 2019. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 3.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02926 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BJ16

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Announcement of the availability of a proposed fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council has submitted Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan to the Secretary of Commerce for review and approval. We are requesting comments from the public on this amendment. This amendment would designate essential fish habitat; set catch limits for 2020–2022; and implement an annual catch limit, accountability measures, possession limits, permitting and reporting requirements, and other administrative measures for Atlantic chub mackerel caught from Maine through North Carolina. The purpose of this action is to implement measures required by the Magnuson-Stevens Fishery Conservation and Management Act to formally integrate Atlantic chub mackerel as a stock in the fishery under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

DATES: Comments must be received on or before April 14, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0109, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0109,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Chub Mackerel NOA.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Mid-Atlantic Council prepared an environmental assessment (EA) for Amendment 21 that describes the proposed action and provides a thorough analysis of the impacts of the proposed measures and other alternatives considered. Copies of Amendment 21, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the internet *http://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, 978–281–9141.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council developed temporary measures to regulate Atlantic chub mackerel catch as part of Amendment 18 to the Atlantic Mackerel Squid, and Butterfish Fishery Management Plan (FMP) (August 28, 2017; 82 FR 40721). Those measures were intended to regulate a developing commercial fishery for Atlantic chub mackerel until the Council could formally integrate this species as a stock in the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through a separate action. Those temporary measures, including an annual landing limit, possession limit, and permitting and reporting requirements, became effective on September 27, 2017, and expire on December 31, 2020. The Council initiated Amendment 21 in December 2016 to implement long-term measures for Atlantic chub mackerel. The purpose of this amendment is to implement measures required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to manage Atlantic chub mackerel as a stock in the FMP. Specifically, this action proposes the following measures:

- Atlantic chub mackerel essential fish habitat for all life stages;
- An Atlantic chub mackerel management unit from Maine through North Carolina where management measures would apply;
- A yearly process to set specifications that considers scientific and management uncertainty, Atlantic chub mackerel catch from South Carolina–Florida, and discards;
- 2020–2022 specifications, including a 2,300-mt acceptable biological catch and optimum yield, a 2,261.7-mt annual catch limit for both commercial and recreational catch after deducting an estimate of South Carolina–Florida catch (38.2 mt), a 2,171.2-mt annual catch target (ACT) after deducting a 4 percent management uncertainty buffer, and a 2,040.9-mt total allowable landing limit (TAL) after deducting a 6-percent discard estimate;
- Accountability measures to prevent the ACT from being exceeded, including an 18.1-mt (40,000 lb) possession limit once 90 percent of the TAL is landed, a 4.5-mt (10,000-lb) possession limit once 100 percent of the TAL is landed),

and an overage adjustment if the ACT is exceeded;

- A requirement for vessels possessing Atlantic chub mackerel to be issued an Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit from the Greater Atlantic Regional Fisheries Office and comply with existing reporting requirements; and

- Corrections to existing regulations to differentiate between Atlantic mackerel and Atlantic chub mackerel measures and ensure consistency with Council intent.

We are soliciting public comments on Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish FMP and its incorporated documents through the end of the comment period specified in the **DATES** section of this notice of availability (NOA). We will publish a proposed rule in the **Federal Register** that would implement the amendment's management measures for additional public comment. All comments received by the end of the comment period on the NOA, whether specifically directed to the NOA or the proposed rule, will be considered in the approval/disapproval decision on the amendment. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision of this action.

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

Dated: February 10, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–02960 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 31
Friday, February 14, 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 AGRICULTURE

Agricultural Marketing Service

[DOC. NO. AMS–FGIS–19–0107]

Grain Fees for Official Inspection and Weighing Services Under the United States Grain Standards Act (USGSA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the 2020 fee schedule for official inspection and weighing services performed under the USGSA, as amended, in order to comply with agency regulations and the Agriculture Reauthorizations Act of 2015. This action publishes the annual review of Schedule A fees calculation and the resulting fees.

DATES: The new fees went into effect on January 1, 2020.

ADDRESSES: Prospective customers can find the fee scheduled posted on the Agency's public website.

FOR FURTHER INFORMATION CONTACT: Denise Ruggles, FGIS Executive Program Analyst, USDA AMS; Telephone: (816) 659–8406; Email: *Denise.M.Ruggles@usda.gov.*

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act (USGSA) provides the Secretary of Agriculture with the authority to charge and collect reasonable fees to cover the costs of performing official services and the costs associated with managing the program. The regulations require that Federal Grain Inspection Service (FGIS) annually review the national tonnage fees, local tonnage fees, and fees for service. After calculating the tonnage fees according to the regulatory formula in 7 CFR 800.71(b)(1), FGIS then reviews the amount of funds in the operating reserve at the end of the fiscal year (FY2019 in this case) to ensure that it has 4½ months of operating expenses as required by section 800.71(b)(2) of the regulations. If the operating reserve has more, or less than 4½ months of operating expenses, then FGIS must adjust all Schedule A fees. For each $1,000,000, rounded down, that the operating reserve varies from the target of 4½ months, FGIS will adjust all Schedule A fees by 2 percent. If the operating reserve exceeds the target, all Schedule A fees will be reduced. If the operating reserve does not meet the target, all Schedule A fees will be increased. The maximum annual increase or decrease in fees is 5 percent (7 CFR 800.71(b)(2)(i)–(ii)).

Tonnage fees for the 5-year rolling average tonnage were calculated on the previous 5 fiscal years 2015, 2016, 2017, 2018, and 2019. Tonnage fees consist of the national tonnage fee and local tonnage fee and are calculated and rounded to the nearest $0.001 per metric ton. The tonnage fees are calculated as following:

National tonnage fee. The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by FGIS during the previous 5 fiscal years.

$$\text{National Tonnage Fee} = \frac{\text{FY2019 National Administrative Costs}}{\text{5 Year Rolling Average Export Tons}}$$

Fiscal year	Metric tons
2015	118,758,937
2016	122,330,979
2017	135,017,935
2018	129,687,652
2019	107,896,235
5-year Rolling Average	122,738,348

The national program administrative costs for fiscal year 2019 were $6,836,376. The fiscal year 2020 national tonnage fee, prior to the operating reserve review, is calculated to be at $0.056 per metric ton.

Local tonnage fee. The local tonnage fee is the field office administrative costs for the previous fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the field office during the previous 5 fiscal years.

$$Local\ Tonnage = \frac{FY2019\ Field\ Office\ Administrative\ Costs}{5\ Year\ Rolling\ Average\ Export\ Tons\ (Local)}$$

The field offices fiscal year tons for the previous 5 fiscal years and calculated 5-year rolling average are as follows:

Field office	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	5-year rolling average
New Orleans	65,244,517	66,077,535	70,439,862	66,996,126	57,807,378	65,313,084
League City	12,474,343	12,581,236	13,307,780	8,424,216	7,939,994	10,945,514
Portland	4,111,533	4,645,754	5,175,459	4,643,241	2,530,648	4,221,327

Field office	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	5-year rolling average
Toledo	2,484,604	2,030,506	2,229,920	1,802,762	1,597,584	2,029,075

The local field office administrative costs for fiscal year 2019 and the fiscal year 2020 calculated local field office tonnage fee, prior to the operating reserve review, are as follows:

Field office	FY 2019 local administrative costs	Calculated FY 2020 local tonnage fee
New Orleans	$1,517,733	$0.023
League City	755,374	0.069
Portland	329,221	0.078
Toledo	236,158	0.116

Operating reserve. In order to maintain an operating reserve not less than 3 and not more than 6 months, FGIS reviewed the value of the operating reserve at the end of FY2019 to ensure that an operating reserve of 4½ months is maintained.

The program operating reserve at the end of fiscal year 2019 was $15,543,893 with a monthly operating expense of $3,159,182. The target of 4.5 months of operating reserve is $14,216,321. Therefore, the operating reserve is greater than 4.5 times the monthly operating expenses by $1,327,572. For each $1,000,000, rounded down, above the target level, all Schedule A fees must be reduced by 2 percent. The operating reserve is $1.3 million above the target level resulting in a calculated 2 percent reduction, as required by 800.71(b)(2)(ii). Therefore, for 2020, FGIS is reducing all the 2019 Schedule A fees for service in Schedule A in paragraph (a)(1) by 2 percent. All Schedule A fees for service are rounded to the nearest $0.10, except for fees based on tonnage or hundredweight. The fee Schedule A has been published on the agency's public website.

Authority: 7 U.S.C. 71–87k.

Dated: February 10, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–02948 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notices of Prospective Exclusive, Co-Exclusive or Partially Exclusive Domestic or Foreign Licenses of Government-Owned Inventions

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice.

SUMMARY: Currently, the Agricultural Research Service (ARS) publishes notices of prospective exclusive, co-exclusive or partially exclusive domestic or foreign licenses of Government owned inventions of USDA (including, but not limited to, Agricultural Research Service, Forest Service and Animal and Plant Health Inspection Service) in the **Federal Register**.

DATES: ARS is announcing that starting on March 15, 2020, it will begin publishing such notices at the Federal Laboratory Consortium for Technology Transfer website (*https://www.federallabs.org/licenses-list*), providing opportunity for filing written objections within at least a 15-day period.

ADDRESSES: Questions related to this notice may be submitted to USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: Pursuant to 37 CFR 404.7(a)(1)(i), an exclusive, co-exclusive or partially exclusive domestic license, and, pursuant to 37 CFR 404.7(b)(1)(i), an exclusive, co-exclusive or partially exclusive foreign license, may be granted on Government owned inventions only if notice of a prospective license has been published in the **Federal Register** or other appropriate manner, providing opportunity for filing written objections within at least a 15-day period.

ARS provides notice that it will publish future notices of prospective exclusive, co-exclusive or partially exclusive domestic or foreign licenses at the Federal Laboratory Consortium for Technology Transfer website (*https://www.federallabs.org/licenses-list*), providing opportunity for filing written objections within at least a 15-day period.

Authority: 35 U.S.C. 200 *et seq.*

Mojdeh Baharm,

Assistant Administrator,

[FR Doc. 2020–03011 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by March 16, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Special Use Administration.

OMB Control Number: 0596–0082.

Summary of Collection: Several statutes authorize the Forest Service (FS) to issue and administer authorizations for use and occupancy of National Forest System (NFS) lands and require the collection of information from the public for those purposes. The laws for authorizing the use and managing these uses of NFS lands include: The Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); The Act of March 4, 1915 (16 U.S.C. 497); The National Forest Ski Area Permit Act (16 U.S.C. 497b); Section 28 of the Mineral Leasing Act (30 U.S.C. 185); The National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); Section 7 of the Granger-Thye Act (16 U.S.C. 480d); The Act of May 26, 2000 (16 U.S.C. 460*l*–6d); The Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C.1996); The Rural Electrification Act of 1936, as amended; and Title VI of the Civil Rights Act of 1964.

Forest Service regulations implementing these authorities are found under Title 36, Code of Federal Regulations, Section 251, Subpart B (36 CFR 251, Subpart B). Information collected include submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information; to prepare and update an operating plan; to prepare and update a maintenance plan; and to submit compliance reports and information updates.

Under this request, FS seeks to amend an existing form FS–2700–4i (Special Use Permit for Outfitting and Guiding) and create two supporting documents, FS 2700–4i, Appendix H (Annual Stewardship Act Fee Offset Agreement) and FS–2700–4i, Appendix I (Stewardship Act Fee Offset Claim Certification). The burden hours in this notice only account for the amendment to the existing form and the creation of the two new supporting documents, and not the overall collection.

Need and Use of the Information: The information collected is evaluated by the FS to ensure that authorized uses of NFS lands are in the public interest and are compatible with the agency's mission. The information helps each agency identify environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. Information is collected under six categories: (1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands; (2) information required from applicants to complete special use authorizations; (3) annual financial information required from holders to determine land use fees; (4) information required from holders to prepare and update operating plans; (5) information required from holders to prepare and update maintenance plans; and (6) information required from holders to complete compliance reports and information updates.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–03024 Filed 2–13–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 16, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1783, Revolving Fund Program.

OMB Control Number: 0572–0138.

Summary of Collection: On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Public Law 107–171. Section 6002 of the Farm Security and Rural Investment Act of 2002 amended the Consolidated Farm and Rural Development Act by adding a grant program that established the Revolving Fund Program (RFP) to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a revolving loan fund. Loans will be made to eligible entities to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems.

Need and Use of the Information: Non-profit organizations applying for the RFP grant(s) must submit an application package that includes an application form, narrative proposal (work plan), various other forms, certifications, and supplemental information. The Rural Development State Offices and the Rural Utilities Service National Office staff will use the information collected to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Grant recipients will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grant(s) authorized by the Revolving Fund Program.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 376.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–02982 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0085]

Privacy Act of 1974; System of Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget Circular No. A–108, the U.S. Department of Agriculture (USDA) gives notice that a component agency, the Animal and Plant Health Inspection Service (APHIS) proposes to add a new system of records to its inventory of records. The system of records being proposed is the APHIS Plant Protection and Quarantine's Lacey Act Declaration Information Systems (LADIS), USDA/APHIS–24. The purpose of this system is enable businesses to file Lacey Act declarations. LADIS collects these records as part of an effort to combat illegal timber imports and to protect global natural resources. Under the Lacey Act, it is unlawful to import certain plants and plant products without an import declaration. The records in LADIS contain information regarding imported shipments, description of shipments, and the name and address of the importer and consignee.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice will become applicable upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM'' section of this system of records notice. Please submit any comments by *March 16, 2020.*

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to: *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0085.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0085* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Dr. Robert Baca, Assistant Director, Permitting and Compliance Coordination, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 851–2292. For Privacy Act questions concerning this system of records notice, please contact Ms. Tonya Woods, Director, Freedom of Information and Privacy Act Staff, 4700 River Road Unit 50, Riverdale, MD 20737; (301) 851–4076. For USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave., SW, Washington, DC 20250; email: *USDAPrivacy@ocio.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is given that the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is proposing to add a new system of records, titled Lacey Act Declaration Information Systems (LADIS), to maintain records of activities conducted by the agency pursuant to its mission and responsibilities authorized by the Lacey Act (16 U.S.C. 3371 *et seq.*).

LADIS supports the mission of the Lacey Act program in APHIS by providing to agency personnel information that can be used to assist with combatting illegal timber imports and protecting global natural resources. For formal customs entries, importers are required to submit a Lacey Act plant declaration based on products as listed on the implementation schedule of enforcement of Harmonized Tariff Schedule codes. The declaration information may be filed electronically through U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) or through APHIS' Lacey Act Web Governance System (LAWGS) importer interface. (Using ACE or LAWGS, APHIS can more quickly review the declaration information for accuracy and completeness to assist APHIS in verifying that plants and plant products imported into the United States are

legally harvested, sold, and transported.) ACE enables importers or brokers to file their declaration information when they file their customs entry information and enables them to correct erroneous data entries through the ACE system. LAWGS may also be used to file declaration information through the internet into a system owned and operated by APHIS. LAWGS enables APHIS to assist importers or brokers in correcting declaration information they filed through a notification option in the system. Alternatively, paper declaration forms may be submitted to APHIS by U.S. mail service to APHIS headquarters in Riverdale, MD.

LAWGS collects declaration information during a self-registration process through which APHIS customers and employees may obtain accounts as authorized users of APHIS services. Users will be able to securely generate and file the declaration form, and save it for their records electronically via the internet for future use.

The CBP ACE users will submit the Lacey Act declaration information using systems that are not owned or managed by APHIS. The users (importers or brokers) enter data required under the Act into to a set of fields or message set that was designed by APHIS to ensure all information is captured. The data is then moved to LADIS for storage by APHIS.

APHIS personnel use the information in LADIS to monitor compliance with the Lacey Act declaration requirement, identify trends in international trade, and alert other Federal enforcement agencies of unusual or suspicious activity. All individuals about whom information in this system is maintained voluntarily submit the information for the express purpose of participating in the program and will receive benefits equal to or greater than any potential impact on their privacy.

APHIS will share information from the system pursuant to the requirements of the Privacy Act and, in the case of its routine uses, when the disclosure is compatible with the purpose for which the information was compiled. A full list of routine uses is included in the routine uses section of the document published with this notice.

A report on the new system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget (OMB) Circular A–108, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, OMB.

Done in Washington, DC, this 7th day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

SYSTEM NAME AND NUMBER:

Lacey Act Declaration Information System (LADIS), USDA/APHIS–24.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The master data for the Lacey Act Declaration Information System (LADIS) are stored and maintained electronically via the National Information Center (NITC) on a secure U.S. Department of Agriculture (USDA) owned and operated system at 8930 Ward Parkway, Kansas City, MO 64114. Paper declarations are securely maintained under the control of Plant Protection and Quarantine at 4700 River Road, Riverdale, MD 20737.

SYSTEM MANAGERS:

Lacey Act Program Manager, 4700 River Road Unit 150, Riverdale, MD 20737–1234; IT Project Manager, 4700 River Road Unit 144, Riverdale, MD 20737–1234; phone (301) 851–2021.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Lacey Act, 16 U.S.C. 3372 *et seq.*

PURPOSES OF THE SYSTEM:

The Animal and Plant Health Inspection Service (APHIS) Lacey Act Declaration Information Systems (LADIS) is an online tool which enables the users (importers) to securely generate and file the declaration form, and save it for their records electronically via the internet for future use. LADIS also enables filers to save commonly used declaration data in templates for quick and easy future submissions. Filers are able to view, edit, and resubmit declarations they created. The forms, as physical hardcopy or electronic format, are used to obtain the information required by the Lacey Act. The declaration form contains the estimated date of arrival, shipment information, description of merchandise, scientific name of the plant, value, quantity of plant material, the name of the country from which the plant was taken. The form also contains the name and address of the importer and consignee to provide contact information for APHIS. APHIS uses this information to verify compliance with the declaration requirement and examine trends associated with imported plants and plant products.

The U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) users will submit the Lacey Act declaration information using systems not associated with APHIS. The data is then moved to LADIS by APHIS. LADIS enables the Plant Protection and Quarantine (PPQ) Lacey Act Program officials to review the submitted declaration for accuracy and completeness.

APHIS' Lacey Act Web Governance System (LAWGS) generates the declaration form containing all data collected in PDF format. The importer can file the electronic declaration form and print it for their records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals granted access to the LADIS are covered: (1) Employees and contractors of the USDA (''USDA personnel''); (2) other Government officials; and (3) business personnel. All individuals, even if they are not users of the LADIS, who are mentioned or referenced in any documents entered into LADIS by a user are also covered. This group may include, but is not limited to, plant workers, vendors, agents, consignees, importers of record, and brokers with a CBP power of attorney who import or aid in the importation of merchandise subject to the provisions of the Lacey Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

LADIS collects, uses, disseminates and maintains records received from business personnel. They provide declaration information regarding the shipment details, entry information, Lacey Act compliance data, and contact information associated with the business.

The information includes the importer name, importer address, importer email address, consignee name, consignee address, the shipment estimated date of arrival, entry number, harmonized tariff code number, container number, bill of lading, manufacturing identification code, and description of merchandise. The compliance data includes the value, description of the article or component of the article, plant scientific name (genus and species), country of harvest, quantity of plant material, unit of measure, and percent of recycled plant material.

RECORD SOURCE CATEGORIES:

The information source is primarily provided by the importers or customs brokers, and Federal regulatory agencies. For formal customs entries,

importers are required to submit a Lacey Act plant declaration consisting of the data elements on the Plant and Plant Product Declaration form via a paper form, or CBP's ACE, or APHIS' LAWGS importer interface.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside USDA as a routine use under 5 U.S.C. 552a(b)(3), as follows, to the extent that such disclosures are compatible with the purposes for which the information was collected:

(1) To other Federal enforcement agencies, including the U.S. Fish and Wildlife Service (Department of the Interior), U.S. Department of Justice, and including CBP and Homeland Security Investigations within the U.S. Department of Homeland Security, who will treat the data as law enforcement sensitive primarily for the purpose of enforcing the Lacey Act or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(2) To other cooperating Federal, State, and local government officials, employees, or contractors, and other parties assisting in administering the Lacey Act program who will be bound by the nondisclosure provision of the Privacy Act and the Trade Secrets Act;

(3) To appropriate law enforcement agencies, entities, and persons, whether Federal, foreign, State, Tribal, local, or other public authority responsible for enforcing, investigating, or prosecuting an alleged violation or a violation of law or charged with enforcing, implementing, or complying with a statute, rule, regulation, or order issued pursuant thereto, when a record in this system on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or court order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity;

(4) To the Department of Justice when: (a) USDA, or any component thereof; or (b) any employee of USDA in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by USDA to be for a purpose for which USDA collected the records;

(5) To a court or adjudicative body in a proceeding when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity; or (c) any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records;

(6) To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(7) To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security;

(8) To a Congressional office in response to an inquiry made at the written request of the individual to whom the record pertains;

(9) To USDA contractors and other parties engaged to assist in administering the program, analyzing data, and conducting audits. Such contractors and other parties will be bound by the nondisclosure provisions of the Privacy Act;

(10) To USDA contractors, partner agency employees or contractors, or private industry employed to identify patterns, trends, or anomalies indicative of fraud, waste, or abuse; and

(11) To the National Archives and Records Administration (NARA) or to other Federal government agencies pursuant to records management activities being conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are maintained on the LADIS server at NITC in Kansas City, MO; and the backup server is at St. Louis, MO, on magnetic hard-disk. Paper records are temporarily maintained in a secured building which requires LincPass ID for entry. The Lacey Act Program will move the paper records to a separate, secure USDA building, under control of PPQ personnel, or in a National Archives and Records Administration-approved records storage facility until the records are no longer necessary for the conduct of business and the records are disposed of in accordance with an approved records disposition authority.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by importer or consignee name, entry number or unique LAWGS assigned identifier, manufacturer identification number, container number, and bill of lading. Users of the electronic systems can retrieve their own records in the systems by their name, entry or submission date, entry number, or unique LAWGS assigned identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

APHIS records disposition authority from the National Archives and Records Administration allows for retention of records for at least 5 years, and records will then be disposed of in accordance with the authority granted.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records, both paper and electronic, are only accessible to authorized personnel. The following physical security measures are in place to prevent outsiders from entering LADIS:

The electronic records are stored on secure file servers. To gain access to LAWGS, all users are required to have a USDA e-Authentication account. This a 2-step process where the user name identifies the user and the password authenticates that the user is in fact who he claims to be. On the Government side, PPQ Lacey Act Program officials who have level 2 e-Authentication can review, print, and analyze the data to meet program needs. Access to system

data is granted to Lacey Act Program employees, administrators, and federal contractors, including help desk individuals to facilitate assisting system users. All APHIS officials and contractors must take the annual security awareness training provided by USDA.

LAWGS users are granted access to their own basic information. LAWGS users can use their account's user ID and password and can modify basic personal data such as address and email. Users can adjust the level of access and permissions within their own organization's account; however, users do not have access to modify sensitive data such as level of access and permissions associated with another account. Also, they cannot access the declaration information submitted by other users of the system.

System security measures in place to protect the safety and integrity of declaration information filed in ACE, including access controls, is administered by CBP. Neither importers nor brokers using ACE to file declaration information have access to the data stored in the LADIS database.

Paper files are kept in a safeguarded environment with controlled access only by authorized personnel. All APHIS personnel are required to go through a basic security clearance and are required to complete appropriate training to learn requirements for safeguarding records maintained under the Privacy Act.

USDA's NITC safeguards records and ensures privacy requirements are met in accordance with Federal cyber security mandates. NITC provides continuous storage management, security administration, regular dataset backups and contingency planning including disaster recovery.

RECORD ACCESS PROCEDURES:

An individual who is the subject of a record in this system may seek access to those records that are not exempt from the access provisions. Exemptions apply only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2), if applicable. A determination whether a record may be accessed will be made at the time a request is received. All inquiries should be addressed under ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the address indicated in the ''Notification procedures'' section, below. Some information may be exempt from the amendment provisions, as described in the section entitled ''Exemptions promulgated for the system.'' An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.da.usda.gov/foia.htm* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5, you must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the agency may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

N/A.

[FR Doc. 2020–03007 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0087]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Plum Pox Compensation

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox virus.

DATES: We will consider all comments that we receive on or before April 14, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0087*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0087, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0087* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for plum pox compensation, contact Ms. Lynn Evans-Goldner, National Policy Manager, PPQ, APHIS, 4700 River Road, Unit 150, Riverdale, MD 20737; (301) 851–2292; *lynn.evans-goldner@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Plum Pox Compensation.

OMB Control Number: 0579–0159.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox virus (PPV), that are new to or not widely distributed within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long distance spread of PPV occurs by budding and grafting with infected plant material and by farm tools/equipment, and through movement of infected budwood, nursery stock, and other plant parts. There are no known effective methods for treating trees or other plant material infected with PPV, nor are there any known effective preventive treatments. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other infected plant material.

The regulations in ''Subpart L—Plum Pox'' (7 CFR 301.74–301.74–5) quarantine areas of the United States where PPV has been detected, restrict the interstate movement of host material from quarantined areas, and when the Secretary of Agriculture declares an extraordinary emergency, provides for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate PPV. Eligible applicants must submit an application for compensation with a supplemental indemnity claim statement. This may include providing direct deposit information for claim payment and applying for a data universal numbering system (DUNS) number, if needed. Applicants must also maintain or provide records verifying losses and destruction of stocks, and respond to an emergency action notification if issued by the Animal and Plant Health Inspection Service.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1 hour per response.

Respondents: Owners and affiliates of stone fruit orchards and fruit tree nurseries, and State plant health officials.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–03004 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gallatin Resource Advisory Committee (RAC) will meet in Bozeman, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/custergallatin/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Friday, February 28, 2020, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Community Room on the 3rd floor of the Courthouse at 311 W. Main in Bozeman, MT.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Custer Gallatin National Forest Supervisor's Office. Please call ahead at 406–587–6701 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Karen Tuscano, RAC Coordinator, by phone at 406–932–5155 ext 115 or via email at *karen.tuscano@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve minutes from November 12, 2019 meeting;

2. Discuss, recommend, and approve new Title II projects; and

3. Discuss next meeting for the Gallatin RAC which will provide feedback on recreation fee proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, February 21, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Karen Tuscano, RAC Coordinator, P.O. Box 1130, Big Timber, Montana 59011; by email to *karen.tuscano@usda.gov,* or via facsimile to 406–587–6758.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 10, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–03002 Filed 2–13–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Environmental Policy Act, Revised Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: This notice announces the establishment of a categorical exclusion (CE) for the USDA, Forest Service as directed by the amendment of the Healthy Forests Restoration Act (HFRA) of 2003 by the Agriculture Improvement Act of 2018. This establishment revises Forest Service policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended. This CE, as well as others established by Congress, as described below, will be incorporated into the Forest Service Handbook.

DATES: The new and updated CEs will be incorporated into Forest Service Handbook (FSH) 1909.15, Chapter 30 March 16, 2020.

ADDRESSES: The public will be able to review the revised FSH on the Forest Service's website at: *https://www.fs.fed.us/emc/nepa/nepa_procedures/index.shtml.* The Forest Service's current procedures can also be viewed at that website.

FOR FURTHER INFORMATION CONTACT: James Smalls, Assistant Director, Ecosystem Management Coordination via phone at 202–205–1475 or via email at *james.smalls@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Over the past several years, Congress has established new or revised existing CEs or exceptions from NEPA for use by the Forest Service. These actions are listed in FSH 1909.15—National Environmental Policy Act Handbook, Chapter 30—Categorical Exclusion from Documentation. Section 32.3 lists categories established by statute and section 32.4 lists statutory NEPA exceptions. Chapter 30 is being updated to add a new statutorily established CE for greater sage-grouse or mule deer habitat. The Agriculture Improvement Act of 2018 amended Title VI of HFRA of 2003 (16 U.S.C. 6591 *et seq.*) to add section 606. Section 606 directed development of a CE for specified covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer (HFRA, Section 606(b)(1)). Section 606 further provides the specific terms, actions, limitations, exclusions, and definitions of activities to be included in the CE established. As directed by this section, the Forest Service is to establish the CE that meets these same specific terms, actions, limitations, exclusions, and definitions; and to establish the CE within one year of the enactment of the legislation (by December 20, 2019).

In addition to adding the section 606 CE, the Forest Service is combining sections 32.3 and 32.4 of FSH 1909.15, Chapter 30. The updated section 32.3 will also incorporate updates to the Forest Service's approach to implementation of the section 603 CE and incorporate several other CEs established by Congress in recent years. Section 32.3 has also been reordered to list the categories and exceptions in chronological order based on when they were enacted.

Because the categories and exceptions are established or directed by Congress, the Forest Service does not have the discretion to change their terms. Below is the new text of FSH 1909.15, Chapter 30, Section 32.3:

32.3—Categories and Exceptions Established by Statute

Congress has statutorily established the following CEs or exceptions from NEPA. Excluding the exception for organizational camp special use authorizations, all of the following items must be published to the Schedule of Proposed Actions and must be entered into the Planning, Appeals, and Litigation System (PALS). Specific requirements on public input, collaboration, documentation, and extraordinary circumstances vary by each category and are specified below. The responsible official should be familiar with each category, as they have varying procedural requirements.

1. *Organizational Camp Special Use Authorizations.* The National Forest Organizational Camp Fee Improvement Act of 2003 (16 U.S.C. 6231 *et seq.*) established that the ministerial issuance or amendment of an organizational camp special use authorization is not subject to NEPA. Sections 502(c) and 507 (16 U.S.C. 6231, 6236) provide as follows:

502(c) Definitions. In this Act:

(1) The term ''organizational camp'' means a public or semipublic camp that—

(A) is developed on National Forest System lands by a nonprofit organization or governmental entity;

(B) provides a valuable service to the public by using such lands as a setting to introduce young people or individuals with a disability to activities that they may not otherwise experience and to educate them on natural resource issues; and

(C) does not have as its primary purpose raising revenue through commercial activities.

507(a) NEPA EXCEPTION.—The ministerial issuance or amendment of an organizational camp special use authorization shall not be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(b) RULE OF CONSTRUCTION.—For purposes of subsection (a), the ministerial issuance or amendment of an authorization occurs only when the issuance or amendment of the authorization would not change the physical environment or the activities, facilities, or program of the operations

governed by the authorization, and at least one of the following apply.

(1) The authorization is issued upon a change in control of the holder of an existing authorization.

(2) The holder, upon expiration of an authorization, is issued a new authorization.

(3) The authorization is amended—

(A) to effectuate administrative changes, such as modification of the land use fee or conversion to a new special use authorization form; or

(B) to include nondiscretionary environmental standards or to conform with current law.

Cite this authority as 16 U.S.C. 6236.

2. *Applied Silvicultural Assessments.* Section 404 of the Healthy Forests Restoration Act categorically excludes applied silvicultural assessments for information gathering and research purposes. Section 404 (16 U.S.C. 6554) provides as follows:

Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969.

Applied silvicultural assessments must be peer reviewed by scientific experts including non-Federal experts. This CE is subject to the extraordinary circumstances provisions (sec. 31.4). For guidance on use of this CE, see Title IV of the Healthy Forests Restoration Act 16 U.S.C. 6551–6556.

Cite this authority as (16 U.S.C. 6554(d)).

3. *Oil and Gas Leases.* Section 390 of the Energy Policy Act of 2005 directs that certain activities shall be subject to a rebuttable presumption that the use of a CE under NEPA would apply if the activity is conducted pursuant to the Mineral Leasing Act (30 U.S.C. *et seq.,* as amended) for the purpose of exploration or development of oil or gas. Section 390 identifies five categories of actions that are subject to the statutory categorical exclusion.

The categorical exclusions apply exclusively to oil and gas exploration and development activities conducted pursuant to the Mineral Leasing Act on Federal oil and gas leases. They do not apply to geothermal leases.

Section 390 (42 U.S.C. 15942) provides as follows:

a. NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

b. ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

Additional guidance on using these CEs can be found in the June 9, 2010 Deputy Chief's 1950 memo to Regional Forester and in the Deputy Chief's 1950 memo to Regional Foresters dated September 1, 2011, entitled Energy Policy Act of 2005, Adjusted Use of Section 390 Categorical Exclusions for Oil and Gas due to *Western Energy Alliance* v. *Salazar,* No. 10–237 (D. Wyo. August 12, 2011). Copies of these letters are added at Exhibit 01 at the end of section 32.3. Per the 2011 memo, a review of extraordinary circumstances is not required for use of Section 390 CEs. A decision memo is required to document:

(1) Identification of the applicable categories.

(2) A brief narrative stating the rationale for making the determination that use of the categorical exclusion(s) applies to the activity under consideration, specifically addressing the applicable review criteria, including extraordinary circumstances.

(3) Any additional information required to demonstrate compliance with all applicable laws, regulations, and policies (*e.g.,* Biological Assessment/Biological Evaluation, cultural/heritage resource clearance, etc.).

(4) Copies or reference to materials used to support the determination.

Cite this authority as 42 U.S.C. 15942.

4. *Lake Tahoe Basin Hazardous Fuel Reduction Projects.* The 2009 Omnibus Appropriations Act (Public Law (Pub. L.) 111–8) established a CE for hazardous fuels reduction projects within the Lake Tahoe Basin Management Unit.

Within the Lake Tahoe Basin Management Unit, projects carried out under this authority are limited to the following size limitations:

a proposal to authorize a hazardous fuel reduction project, not to exceed 5,000 acres, including no more than 1,500 acres of mechanical thinning. (Sec. 423(a))

This CE can be used if the project:

is consistent with the Lake Tahoe Basin Multi-Jurisdictional Fuel Reduction and Wildfire Prevention Strategy published in December 2007 and any subsequent revision to the strategy;

is not conducted in any wilderness areas; and

does not involve any new permanent roads. (Sec. 423(a))

A proposal using this CE shall be subject to:

the extraordinary circumstances procedures . . . ; and

an opportunity for public input. (Sec. 423(b))

Document this category in a decision memo (FSH 1909.15, 33.2–33.3). The decision memo should include a description of the efforts taking by the Lake Tahoe Basin Management Unit provide an opportunity for public input.

Cite this authority as Public Law 111–8, Sec. 423.

5. *Insect and Disease Infestation.* Section 8204 of the Agricultural Act of 2014 (Pub. L. 113–79) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 *et seq.*) to add sections 602 and 603. Section 8407 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) later amended sections 602 and 603 to add hazardous fuels reduction projects to the types of projects that may be carried out under sections 602 and 603. Projects completed using the section 603 provisions are considered categorically excluded from the requirements of NEPA and evaluation of extraordinary circumstances is not required.

Section 603 can be used for qualifying insect and disease or hazardous fuels reduction projects in areas designated by the Secretary under section 602 on National Forest System lands. Landscape scale areas may be designated by the Secretary if they meet at least one of the criteria found in HFRA, sections 602(c)(1)(2) & (3). An insect and disease or hazardous fuels project that may be carried out under this authority is a project that is designed to reduce the risk or extent of, or increase the resilience to, insect or disease infestation, or to reduce hazardous fuels in the areas (HFRA, Sections 602(d) and 603(a)).

Within designated landscape scale areas, projects carried out under this authority are limited to areas in:

the wildland-urban interface; or

Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland urban interface. (HFRA, Sections 603(c)(2)(A) & (B))

Projects carried out under this authority may not be implemented in any of the following areas:

a component of the National Wilderness Preservation System;

any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

a congressionally designated wilderness study area; or

an area in which activities . . . would be inconsistent with the applicable land and resource management plan. (HFRA, Sections 603(d)(1)–(4))

A project under this authority must either carry out a forest restoration treatment that:

complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)). (HFRA, Sections 603(b)(2))

Or, a project under this authority must carry out a forest restoration treatment that:

maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease;

considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and

is developed and implemented through a collaborative process that—

includes multiple interested persons representing diverse interests; and

is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125). (HFRA, Sections 603(b)(1)(A)–(C)).

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 3000 acres. (HFRA, Section 603(c)(1))

Projects carried out under this authority are subject to the following limitations relating to roads:

A project . . . shall not include the establishment of permanent roads.

The Secretary may carry out necessary maintenance and repairs on existing permanent roads for purposes of this section.

The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed. (HFRA, Section 603(c)(3))

All projects and activities carried out under this authority:

shall be consistent with the land and resource management plans. . .'' (HFRA, Section 603(e))

For projects and actions carried out under this authority:

The Secretary shall conduct public notice and scoping for any project or action. (HFRA, Section 603(f))

Document this category in a decision memo (FSH 1909.15, 33.2–33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 603(b)(1).

Cite this authority as section 603 of HFRA (16 U.S.C. 6591b).

6. *Grazing Permits and Leases.* The Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291) amended section 402 of the Federal Land Policy and Management Act (43 U.S.C. 1752) to add a grazing permit categorical exclusion (402(h)(1)).

(1) In general.—The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(a) the issued permit or lease continues the current grazing management of the allotment; and

(b) the Secretary concerned—

(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and

(ii) based on the assessment and evaluation under clause (i), has determined that the allotment—

(II) with respect to National Forest System land administered by the Secretary of Agriculture—

(aa) is meeting objectives in the applicable land and resource management plan; or

(bb) is not meeting the objectives in the applicable land resource management plan due to factors other than existing livestock grazing.

The category is subject to extraordinary circumstances review and should be documented in a decision memo (FSH 1909.15, 33.2–33.3).

Cite this authority as section 402(h)(1) of FLPMA (43 U.S.C. 1752).

7. *Trailing and Crossing of Livestock.* The Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291) amended section 402 of the Federal Land Policy and Management Act (U.S.C. 1752) to add a trailing and crossing categorical exclusion (402(h)(2)).

(2) The trailing and crossing of livestock across public land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

This category is subject to extraordinary circumstances review and should be documented in a decision memo (FSH 1909.15, 33.2–33.3).

Cite this authority as section 402(h)(2) of FLPMA (43 U.S.C. 1752).

8. *Lake Tahoe Basin Forest Management Activities.* In 2016, the Water Infrastructure Improvements for the Nation Act (WIIN) (Pub. L. 114–322) amended the Lake Tahoe Restoration Act (Pub. L. 106–506; 114 Stat. 2353) by establishing a CE for forest management activities in the Lake Tahoe Basin Management Unit for the purpose of reducing forest fuels.

Within the Lake Tahoe Basin Management Unit, projects carried out under this authority can be carried out using the CE if the forest management activity:

notwithstanding section 423 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009 (division E of Pub. L. 111–8; 123 Stat. 748), does not exceed 10,000 acres, including not more than 3,000 acres of mechanical thinning; (Pub. L. 114–322, Sec. 3603(c))

Projects must be developed:

in coordination with impacted parties, specifically including representatives of local governments, such as county supervisors or county commissioners; and in consultation with other interested parties (Pub. L. 114–322, Sec. 3603(c))

All projects and activities carried out under this authority must be:

consistent with the Lake Tahoe Basin Management Unit land and resource management plan. (Pub. L. 114–322, Sec. 3603(c))

This category is subject to extraordinary circumstances review and should be documented in a decision memo (FSH 1909.15, 33.2–33.3). The decision memo should include a description of the efforts taken by the Lake Tahoe Basin Management Unit to meet the coordination and consultation requirements.

Cite this authority as Public Law 114–322, Sec. 3603.

9. *Wildfire Resilience.* The Consolidated Appropriations Act of 2018 (Pub. L. 115–171) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 *et seq.*) to add Section 605. Section 605 establishes a categorical exclusion for hazardous fuels reduction projects in designated areas on National Forest System lands. A hazardous fuels reduction project that may be categorically excluded under this authority is a project that is designed to maximize the retention of old-growth and large trees, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to, wildfires (HFRA, Sections 605(b)(1)(A)).

This categorical exclusion may be used to carry out a hazardous fuels project in an insect and disease treatment area that was designated by the Secretary under HFRA section 602(b) by March 23, 2018. (HFRA, Section 605(c)(2)(C))

Within designated landscape scale areas, projects carried out under this authority are:

Prioritized in the wildland-urban interface; or

If located outside the wildland-urban interface, limited to Condition Classes 2 or 3 in Fire Regime Groups I, II, or III that contain very high wildfire hazard potential. (HFRA, Sections 605(c)(2)(A) & (B))

Projects carried out under this authority may not be implemented in any of the following areas:

a component of the National Wilderness Preservation System;

any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

a congressionally designated wilderness study area; or

an area in which activities . . . would be inconsistent with the applicable land and resource management plan. (HFRA, Sections 605(d)(1)–(4))

A project under this authority must either carry out a forest restoration treatment that:

complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)). (HFRA, Sections 605(b)(2))

Or, a project under this authority must carry out a forest restoration treatment that:

maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to, wildfires;

considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and

is developed and implemented through a collaborative process that—

includes multiple interested persons representing diverse interests; and

is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125). (HFRA, Sections 605(b)(1)(A)–(C)).

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 3000 acres. (HFRA, Section 605(c)(1))

Projects carried out under this authority are subject to the following limitations relating to roads:

A project . . . shall not include the establishment of permanent roads.

The Secretary may carry out necessary maintenance and repairs on existing permanent roads for purposes of this section.

The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed. (HFRA, Section 605(c)(3))

All projects and activities carried out under this authority:

shall apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or successor regulations) when using the categorical exclusion under this section. (HFRA, Section 605((c)(4))

shall be consistent with the land and resource management plans. . . (HFRA, Section 605(e))

For projects and actions carried out under this authority:

The Secretary shall conduct public notice and scoping for any project or action. (HFRA, Section 605(f))

Document this category in a decision memo (FSH 1909.15, 33.2–33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 605(b)(1).

Cite this authority as Section 605 of HFRA (16 U.S.C. 6591d).

10. *Greater Sage-Grouse and Mule Deer Habitat.* The Agriculture Improvement Act of 2018 (Pub. L. 115–334) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 *et seq.*) to add Section 606. Section 606 establishes a categorical exclusion for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer. (HFRA, Section 606(b)(1))

This categorical exclusion may be used to carry out a covered vegetation management activity on National Forest System land that was designated under HFRA section 602(b), by December 20, 2018. (HFRA, Section 606(g)(2))

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 4,500 acres. (HFRA, Sections 606(g)(1))

Covered vegetation management activities under this authority include:

manual cutting and removal of juniper trees, pinyon pine trees, other

associated conifers, or other nonnative or invasive vegetation;

mechanical mastication, cutting, or mowing, mechanical piling and burning, chaining, broadcast burning, or yarding;

removal of cheat grass, medusa head rye, or other nonnative, invasive vegetation;

collection and seeding or planting of native vegetation using a manual, mechanical, or aerial method;

seeding of nonnative, noninvasive, ruderal vegetation only for the purpose of emergency stabilization;

targeted use of an herbicide, subject to the condition that the use shall be in accordance with applicable legal requirements, Federal agency procedures, and land use plans;

targeted livestock grazing to mitigate hazardous fuels and control noxious and invasive weeds;

temporary removal of wild horses or burros in the area in which the activity is being carried out to ensure treatment objectives are met;

in coordination with the affected permit holder, modification or adjustment of permissible usage under an annual plan of use of a grazing permit issued by the Secretary . . . to achieve restoration treatment objectives;

installation of new, or modification of existing, fencing or water sources intended to control use or improve wildlife habitat; or

necessary maintenance of, repairs to, rehabilitation of, or reconstruction of an existing permanent road or construction of temporary roads to accomplish the activities described in this subparagraph. (HFRA, Sections 606(a)(1)(B))

A covered vegetation management activity that may be categorically excluded under this authority is a project that:

is carried out on National Forest System land administered by the Forest Service; conforms to an applicable forest plan;

protects, restores, or improves greater sage-grouse or mule deer habitat in a sagebrush steppe ecosystem as described in—

Circular 1416 of the United States Geological Survey entitled 'Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat—Part 1. Concepts for Understanding and Applying Restoration' (2015); or

the habitat guidelines for mule deer published by the Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies;

will not permanently impair—

the natural state of the treated area;

outstanding opportunities for solitude;

outstanding opportunities for primitive, unconfined recreation;

economic opportunities consistent with multiple-use management; or

the identified values of a unit of the National Landscape Conservation System;

restores native vegetation following a natural disturbance; prevents the expansion into greater sage-grouse or mule deer habitat of juniper, pinyon pine, or other associated conifers; or nonnative or invasive vegetation; reduces the risk of loss of greater sage-grouse or mule deer habitat from wildfire or any other natural disturbance; or provides emergency stabilization of soil resources after a natural disturbance; and provides for the conduct of restoration treatments that—

maximize the retention of old-growth and large trees, as appropriate for the forest type;

consider the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity;

are developed and implemented through a collaborative process that—includes multiple interested persons representing diverse interests; and is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125); and

may include the implementation of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)). (HFRA, Sections 606(a)(1)(A))

Covered vegetation management activities under this authority do not include:

any activity conducted in a wilderness area or wilderness study area;

any activity for the construction of a permanent road or permanent trail;

any activity conducted on Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

any activity conducted in an area in which activities under subparagraph (B) would be inconsistent with the applicable land and resource management plan; or

any activity conducted in an inventoried roadless area. (HFRA, Sections 606(a)(1)(C))

This categorical exclusion shall:

comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and

consider the relative efficacy of landscape-scale habitat projects; the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and the need for habitat restoration activities after wildfire or other natural disturbances. (HFRA, Sections 606(b))

If the categorical exclusion . . . is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer. (HFRA, Sections 606(c))

In regards to the disposal of vegetation material under this authority:

Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity under this authority may be used for fuel wood; or other products; or piled or burned, or both. (HFRA, Sections 606(e))

Any temporary road constructed in carrying out a covered vegetation management activity under this authority:

shall be used . . . for not more than 2 years; and

shall be decommissioned . . . not later than 3 years after the earlier of the date on which—

the temporary road is no longer needed; and

the project is completed;

shall include reestablishing native vegetative cover as soon as practicable; but not later than 10 years after the date of completion of the applicable covered vegetation management activity. (HFRA, Sections 606(f))

Under this authority, a temporary road means a road that is:

authorized by a contract, permit, lease, other written authorization; or pursuant to an emergency operation;

not intended to be part of the permanent transportation system of a Federal department or agency;

not necessary for long-term resource management;

designed in accordance with standards appropriate for the intended use of the

road, taking into consideration safety; the cost of transportation; and impacts to

land and resources; and

managed to minimize erosion; and the introduction or spread of invasive species. (HFRA, Sections 606(a)(3))

Document this category in a decision memo (FSH 1909.15, 33.2–33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 606(a)(1)(A)(vii)(III).

Cite this authority as Section 606 of HFRA (16 U.S.C. 6591e).

Dated: January 16, 2020.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–03009 Filed 2–13–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for Inviting Applications for the Rural Business Development Grant Program To Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to invite applications for grants to provide Technical Assistance for Rural Transportation (RT) systems under the Rural Business Development Grant (RBDG) to provide Technical Assistance for RT systems and for RT systems to Federally Recognized Native American Tribes' (FRNAT) (collectively ''Programs'') and the terms provided in such funding. This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare, and submit their applications and give the Agency time to process applications within fiscal year (FY) 2020. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the website at: *https://www.rd.usda.gov/newsroom/fy2020-appropriated-funding* will identify the amount received in the appropriations.

All applicants are responsible for any expenses incurred in developing their applications.

DATES: The deadline for completed applications to be received in the United States Department of Agriculture (USDA) Rural Development State Office is no later than 4:30 p.m. (local time) on May 14, 2020, to be eligible for FY 2020 grant funding. Applications received after the deadline will be ineligible for funding.

ADDRESSES: Applications must be submitted to the USDA Rural Development State Office where the Project is located. A list of the USDA Rural Development State Office contacts can be found at: *http://www.rd.usda.gov/contact-us/state-offices.*

FOR FURTHER INFORMATION CONTACT: Cindy Mason at (202) 690–1433, *cindy.mason@wdc.usda.gov* or Sami Zarour at (202) 720–9549, *sami.zarour@wdc.usda.gov,* Specialty Programs Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 4204-South, Washington, DC 20250–3226, or call 202–720–1400. For further information on this notice, please contact the USDA Rural Development State Office in the State in which the applicant's headquarters is located. A list of Rural Development State Office contacts is provided at the following link: *http://www.rd.usda.gov/contact-us/state-offices.*

SUPPLEMENTARY INFORMATION:

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at: *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships, and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the State and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce, and quality of life, the Agency encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment, and/or recovery at the community, county, State, and/or regional levels. See *https://www.cdc.gov/pwid/vulnerable-counties-data.html.*

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments to areas for the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts.

Overview

Solicitation Opportunity Title: Rural Business Development Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.351.

Dates: The deadline for completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on

May 14, 2020, to be eligible for FY 2020 grant funding.

A. Program Description

1. *Purpose of the Program.* The purpose of this program is to improve the economic conditions of Rural Areas.

2. *Statutory Authority.* This program is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 4280, subpart E. The program is administered on behalf of Rural Business-Cooperative Service (RBS) at the State level by the USDA Rural Development State Offices. Assistance provided to Rural Areas under the program has historically included the provision of on-site Technical Assistance to tribal, local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in Rural Areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in Rural Areas.

Awards under the RBDG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart E, and in accordance with section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Information required to be in the application package includes Standard Form (SF) 424, ''Application for Federal Assistance;'' environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' SF LLL, ''Disclosure of Lobbying Activities;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' and a letter providing Board authorization to obtain assistance. For the FRNAT grant, which must benefit FRNATs, at least 75 percent of the benefits of the Project must be received by members of FRNATs. The Project that scores the greatest number of points based on the RBDG selection criteria and the discretionary points will be selected for each grant.

For the funding for Technical Assistance for RT systems, applicants must be qualified national organizations with experience in providing Technical Assistance and training to rural communities nationwide for the purpose of improving passenger transportation services or facilities. To be considered ''national,'' RBS requires a qualified organization to provide evidence that it can operate RT assistance programming nation-wide. An entity can qualify if they can work in partnership with other entities to fulfill the national requirement as long as the applicant will have ultimate control of the grant administration. For the funding for RT systems to FRNATs, an entity can qualify if they can work in partnership with other entities to support all federally recognized tribes in all States, as long as the applicant will have ultimate control of the grant administration. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national organizations for the provision of Technical Assistance and training to Rural communities for the purpose of improving passenger transportation services or facilities.

3. *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4280.403.

4. *Application Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions in 7 CFR 4280, subpart E and as indicated in this notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting a complete application in response to this notice.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2020 (amount to be determined).

Available Funds: Anyone interested in submitting an application for funding under this program is encouraged to consult the Rural Development Web Newsroom website at: *http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Approximate Number of Awards: To be determined based on the number of qualified applications received. Historically two awards have been made.

Maximum Awards: Will be determined by the specific funding provided for the program in the FY 2020 Appropriations Act. The Agency will publish any maximum award amount on its website at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Award Date: Prior to September 30, 2020.

Performance Period: October 1, 2020, through September 30, 2021.

Renewal or Supplemental Awards: None.

C. Eligibility Information

1. *Eligible Applicants.*

To be considered eligible, an entity must be a qualified national organization serving Rural Areas as evidenced in its organizational documents and demonstrated experience, per 7 CFR part 4280, subpart E. Grants will be competitively awarded to qualified national organizations.

The Agency requires the following information to make an eligibility determination that an applicant is a national organization. These applications must include, but are not limited to, the following:

(a) An original and one copy of SF 424, ''Application for Federal Assistance (for non-construction);''

(b) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(c) A proposed scope of work, including a description of the proposed Project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months for the duration of the Project, and the estimated time it will take from grant approval to beginning of Project implementation;

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the Project is needed, the benefits of the proposed Project, and how the Project meets the grant eligible purposes;

(2) Area to be served, identifying each governmental unit, *i.e.,* tribe, town, county, etc., to be affected by the Project;

(3) Description of how the Project will coordinate Economic Development activities with other Economic Development activities within the Project area;

(4) Businesses to be assisted, if appropriate, and economic development to be accomplished;

(5) An explanation of how the proposed Project will result in newly created, increased, or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed Project assistance, including experience of key staff members and persons who will be providing the proposed Project activities and managing the Project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed, including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making a grant award determination.

(e) The latest 3 years of financial information to show the applicant's financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s), and cash flow statement(s). A current audited report is required if available;

(f) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from RBDG;

(g) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the Project.

2. *Cost Sharing or Matching.* Matching funds are not required.

3. *Other.*

Applications will only be accepted from qualified national organizations to provide Technical Assistance for RT. There are no ''responsiveness'' or ''threshold'' eligibility criteria for these grants. There is no limit on the number of applications an applicant may submit under this announcement. In addition to the forms listed under Program Description, Form AD–3030 ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' must be completed in the affirmative.

None of the funds made available may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

None of the funds made available may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

4. *Completeness Eligibility.*

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

D. Application and Submission Information

1. *Address to Request Application Package.*

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

Prior to official submission of grant applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to April 6, 2020 Technical Assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for Agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Applications must be submitted in paper format or electronic submission. If you want to submit an electronic application, follow the instructions for the RBDG funding announcement located at: *http://www.grants.gov.* Please review the *Grants.gov* website for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. Applications submitted to a USDA Rural Development State Office must be received by the closing date and local time.

2. *Content and Form of Application Submission.*

You may submit your application in paper form or electronically through *Grants.gov*. Your application must contain all required information using only one of the submission methods. If you submit in paper form, any forms requiring signatures must include an original signature.

To apply electronically, you must follow the instructions for this funding announcement at: *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the Catalog of Federal Domestic Assistance number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov*, you must already have a Dun and Bradstreet Universal Numbering System (DUNS) number and you must also be registered and maintain registration in the System Awards Management (SAM). We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

Documents submitted electronically through *Grants.gov* must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

If you want to submit a paper application, send it to the State Office located in the State where the Project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.*

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Each selection priority criterion outlined in 7 CFR 4280.435 must be addressed in the application. Failure to address any of the criterion will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of

7 CFR part 4280, subpart E, will be provided to any interested applicant making a request to a USDA Rural Development State Office.

All Projects to receive Technical Assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple Project applications must identify each individual Project, indicate the amount of funding requested for each individual Project, and address the criteria as stated above for each individual Project.

For multiple-Project applications, the average of the individual Project scores will be the score for that application.

The applicant documentation and forms needed for a complete application are located in the Program Description section of this notice, and 7 CFR part 4280, subpart E.

(a) There are no specific formats, specific limitations on number of pages, font size and type face, margins, paper size, number of copies, and the sequence or assembly requirements.

(b) The component pieces of this application should contain original signatures on the original application.

(c) Since these grants are for Technical Assistance for transportation purposes, no additional information requirements other than those described in this notice and 7 CFR part 4280, subpart E are required.

3. *Unique entity identifier and System for Award Management.*

All applicants must have a DUNS number which can be obtained at no cost via a toll-free request line at (866) 705–5711 or at: *http://fedgov.dnb.com/webform.* Each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from the requirements under 2 CFR 25.110(b) or (c) or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to: (i) Be registered in SAMS before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

(a) Application Deadline Date: No later than 4:30 p.m. (local time) on May 14, 2020. *Electronic applications must be submitted via grants.gov no later than midnight eastern time on* May 14, 2020.

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the local deadline date and time as indicated above. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day.

(b) The deadline date means that the completed application package must be received in the USDA Rural Development State Office by the deadline date established above. All application documents identified in this notice are required.

(c) If complete applications are not received by the deadline established above, the application will neither be reviewed nor considered under any circumstances.

(d) The Agency will determine the application receipt date based on the actual date postmarked.

(e) This notice is for RT Technical Assistance grants only and therefore, intergovernmental reviews are not required.

(f) These grants are for RT Technical Assistance grants only, no construction or equipment purchases are permitted. If the grantee has a previously approved indirect cost rate, it is permissible, otherwise, the applicant may elect to charge the 10 percent indirect cost permitted under 2 CFR 200.414(f) or request a determination of its Indirect Cost Rate. Due to the time required to evaluate Indirect Cost Rates, it is likely that all funds will be awarded by the time the Indirect Cost Rate is determined. No foreign travel is permitted. Pre-Federal award costs will only be permitted with prior written approval by the Agency.

(g) Applicants must submit applications in paper copy format or an electronic submission as previously indicated in the Application and Submission Information section of this notice. If the applicant wishes to hand deliver its application, the addresses for these deliveries can be located in the **ADDRESSES** section of this notice.

(h) If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

E. Application Review Information

1. *Criteria.*

All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4280.435 and will select grantees subject to the grantees' satisfactory submission of the additional items required by 7 CFR part 4280, subpart E and the USDA Rural Development Letter of Conditions. Failure to address any one of the criteria in 7 CFR 4280.435 by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding. The amount of an RT grant may be adjusted, at the Agency's discretion, to enable the Agency to award RT grants to the applications with the highest priority scores in each category.

2. *Review and Selection Process.*

The State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR 4280.416 and 4280.417. If determined eligible, your application will be submitted to the National Office. Funding of Projects is subject to the applicant's satisfactory submission of the additional items required by that subpart and the USDA Rural Development Letter of Conditions. The Agency reserves the right to award additional discretionary points under 7 CFR 4280.435(k).

In awarding discretionary points, the Agency scoring criteria regularly assigns points to applications that direct loans or grants to Projects based in or serving census tracts with poverty rates greater than or equal to 20 percent. This emphasis will support Rural Development's mission of improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.

F. Federal Award Administration Information

1. *Federal Award Notices.*

Successful applicants will receive notification for funding from their USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

2. *Administrative and National Policy Requirements.*

Additional requirements that apply to grantees selected for this program can be found in 7 CFR 4280.408, 4280.410, and 4280.439. Awards are subject to USDA Departmental Grant Regulations at 2

CFR Chapter IV which incorporates the new Office of Management and Budget (OMB) regulations at 2 CFR part 200.

All successful applicants will be notified by letter, which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance. If the applicant wishes to consider beginning performance prior to the grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency. The grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the Project.

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4280, subpart E; the Grants and Agreements regulations of the U.S. Department of Agriculture codified in 2 CFR Chapter IV, and successor regulations.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for this program:

(a) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(f) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

(g) Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''

(h) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Must be signed by corporate applicants who receive an award under this notice.

(i) Form RD 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4 which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and other Agency regulations. That no person will be discriminated against based on race, color, or national origin, in regard to any program or activity for which the recipient receives Federal financial assistance. That nondiscrimination statements are in advertisements and brochures.

Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(j) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(k) Form SF 270, ''Request for Advance or Reimbursement.''

3. *Reporting.*

(a) A Financial Status Report and a Project performance activity report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. The grantee will complete the Project within the total time available to it in accordance with the Scope of Work and any necessary modifications thereof prepared by the grantee and approved by the Agency. A final Project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the grant if applicable. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The Project performance reports must include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall Project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(3) Objectives and timetable established for the next reporting period;

(4) Any special reporting requirements, such as jobs supported and created, businesses assisted, or Economic Development which results in improvements in median household incomes, and any other specific requirements, should be placed in the reporting section in the Letter of Conditions; and

(5) Within 90 days after the conclusion of the Project, the grantee will provide a final Project evaluation report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement on a monthly basis, the last 3 months of reimbursements will be withheld until a final Project, Project performance, and financial status report are received and approved by the Agency.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this notice.

H. Civil Rights Requirements

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570–0070.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711, or online at: *http://fedgov.dnb.com/webform.* Similarly, all applicants must be registered in SAM prior to submitting an application. Applicants may register for the SAM at: *http://www.sam.gov/SAM.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD 3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–02949 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Cardinal-Hickory Creek 345-kV Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: The U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS), U.S. Fish and Wildlife Service (USFWS), and U.S. Army Corps of Engineers (USACE) have issued a single Record of Decision (ROD) to approve the Final Environmental Impact Statement (FEIS) for the proposed Cardinal-Hickory Creek 345-kilovolt (kV) Transmission Line Project (C–HC Project). The C–HC Project will connect the Cardinal Substation in Dane County, Wisconsin with the Hickory Creek Substation in Dubuque County, Iowa. The C–HC Project also includes a new intermediate 345-/138-kV substation near the village of Montfort in Grant County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 100 miles.

ADDRESSES: To obtain copies of the ROD or for further information, contact: Dennis Rankin, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW, Room 2244, Stop 1571, Washington, DC 20250–1571, by telephone at (202) 720–1414, or email *Dennis.Rankin@usda.gov.* The ROD and Final Environmental Impact Statement are available online at *https://www.rd.usda.gov/publications/environmental-studies/impact-statements/cardinal-%E2%80%93-hickory-creek-transmission-line.*

For information about the Upper Mississippi River National Wildlife and Fish Refuge and the U.S. Fish and Wildlife Service, contact: Tim Yager, Deputy Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, 51 E 4th Street, Winona, MN 55987, by telephone at (507) 494–6219, or email at *timothy_yager@fws.gov.*

SUPPLEMENTARY INFORMATION: RUS, the lead Federal agency, has approved the C–HC Project to proceed to the RUS loan review and engineering review processes for Dairyland Power Cooperative's (Dairyland's) share in the construction of the C–HC Project. The USFWS has received an application package from ITC Midwest LLC (ITC Midwest) and Dairyland for a right-of-way (ROW) permit to cross the Upper Mississippi River National Wildlife and Fish Refuge (Refuge). The USFWS is obligated to review the right-of-way application package, complete an associated National Environmental Policy Act (NEPA) process, identify a preferred alternative, and decide whether or not to issue a right-of-way permit. Before a right-of-way permit can be issued, the USFWS must determine that the proposed use (a transmission line across the Refuge) is compatible with the purpose for which the Refuge was established. The USFWS has found the proposed transmission line ROW across the Refuge as presented in Alternative 6 and described in the right-of-way application from ITC Midwest and Dairyland to be compatible. As a cooperating agency, the USFWS agrees that the NEPA process is complete and the FEIS adequately describes impacts to the human environment. The FEIS will be used to inform USFWS decision makers on the impacts of allowing a transmission line ROW across the Refuge. The USACE will approve the ROW request and will issue permit applications required by Section 10 and Section 408 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

The ROD has been signed by the Administrator for the Rural Utilities Service, Regional Director for the USFWS in Unified Region 3, and Colonel Steven M. Sattinger, Commander and District Engineer for USACE, which was effective upon signing on January 17, 2020.

The RUS is the lead agency for the Federal environmental review, with USFWS, USACE, and the U.S. Environmental Protection Agency (USEPA) serving as cooperating agencies, and the National Park Service (NPS) as a participating agency. The FEIS was prepared pursuant to NEPA (United States Code [U.S.C.] 4231 *et seq.*) and in accordance with Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] 1500–1508), RUS Environmental Policies and Procedures (7 CFR 1970), USFWS Environmental Policies and Procedures (43 CFR 46.10–46.50 and 560 DM 8), and the USACE's

NEPA implementing procedures (33 CFR 230.9). As the lead Federal agency, and as part of its broad environmental review process, RUS must take into account the effect of the C–HC Project on historic properties in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulation ''Protection of Historic Properties'' (36 CFR 800). Pursuant to 36 CFR 800.2(d)(3), RUS used its procedures for public involvement under NEPA, in part, to meet its responsibilities to solicit and consider the views of the public and other interested parties during the Section 106 review process. Accordingly, comments submitted in the EIS process also informed RUS's decision making in the Section 106 review process. Dairyland is participating in the proposed project with two other utilities: American Transmission Company LLC and ITC Midwest (altogether referred to as ''the Utilities''). The purpose of the proposed project is to: (1) Address reliability issues on the regional bulk transmission system, (2) alleviate congestion that occurs in certain parts of the transmission system and remove constraints that limit the delivery of power, (3) expand the access of the transmission system to additional resources, (4) increase the transfer capability of the electrical system between Iowa and Wisconsin, (5) reduce the losses in transferring power and increase the efficiency of the transmission system, and (6) respond to public policy objectives aimed at enhancing the nation's transmission system and to support the changing generation mix.

The C–HC Project includes the construction and operation of the 345-kV transmission line and its associated infrastructure, including the following facilities:

- At the existing Cardinal Substation in Dane County, Wisconsin: A new 345-kV terminal within the substation;
- At the proposed Hill Valley Substation near the village of Montfort, Wisconsin: An approximately 22-acre facility with five 345-kV circuit breakers, one 345-kV shunt reactor, one 345-/138-kV autotransformer, and three 138-kV circuit breakers;
- At the existing Eden Substation near the village of Montfort, Wisconsin: Transmission line protective relaying upgrades to be compatible with the new protective relays installed at the new Hill Valley Substation and replacement of conductors and switches to meet the Utilities' operating limits;
- Between the existing Eden Substation and the proposed Hill Valley Substation near the village of Montfort, Wisconsin: A rebuild of approximately 1 mile of the Hill Valley to Eden 138-kV transmission line;
- At the existing Wyoming Valley Substation near Wyoming, Wisconsin: Installation of nine 16-foot ground rods to mitigate potential fault current contributions from the proposed project;
- Between the existing Cardinal Substation and the proposed Hill Valley Substation: A new 53-mile 345-kV transmission line;
- Between the proposed Hill Valley Substation and existing Hickory Creek Substation: A new 49-mile 345-kV transmission line;
- At the Mississippi River in Cassville, Wisconsin: A relocation of the existing Mississippi River transmission line crossing to accommodate the new 345-kV transmission line and Dairyland's 161-kV transmission line, which would be capable of operating at 345-/345-kV but would initially be operated at 345-/161-kV;
- a new 161-kV terminal and transmission line protective relaying upgrades within the existing Nelson Dewey Substation in Cassville, Wisconsin;
- replacement or reinforcement of an existing transmission line structure within the Stoneman Substation in Cassville, Wisconsin;
- Multiple, partial, or complete rebuilds of existing 69-kV, 138-kV, and 161-kV transmission lines in Wisconsin that would be collocated with the new 345-kV line;
- At the existing Turkey River Substation in Clayton County, Iowa: One new 161-/69-kV transformer, three new 161-kV circuit breakers, and four new 69-kV circuit breakers; and
- At the existing Hickory Creek Substation in Dubuque County, Iowa: A new 345-kV terminal within the existing Hickory Creek Substation.

The decisions documented in the ROD are as follows:

- The RUS agrees to consider, subject to loan approval, financing Dairyland's share in the proposal. Details regarding RUS's regulatory authority, rationale for the decision, and compliance with applicable regulations are included in the ROD.
- The USFWS has determined that the NEPA review is complete and the FEIS adequately evaluates and describes impacts on the human environment. The USFWS agrees that the preferred alternative most effectively avoids, minimizes, and mitigates impacts to the Refuge. The USFWS also agrees that consultation under the Endangered Species Act is complete with the issuance of the biological opinion. The USFWS has found the transmission line route which crosses the Refuge as described in the preferred alternative to be compatible. The USFWS will continue to review a right-of-way permit application from ITC Midwest and Dairyland and will make a decision on granting a right-of-way permit within 270 days of signature of the ROD. Subsequent special use permits authorizing construction of the transmission line would be evaluated and issued after the right-of-way permit is granted.
- The USACE will issue a permit for the C–HC Project under Sections 10 and 14 of the Rivers and Harbors Act, for the crossing of the Mississippi River at the selected alternative. The USACE will also issue permits under Section 404 of the Clean Water Act, for activities that discharge fill into waters of the U.S., including wetlands. The USACE will also grant a ROW authorization to issue an easement across USACE-managed/owned lands for the selected alternative.

RUS published its Notice of Availability (NOA) for the Draft EIS (DEIS) in the **Federal Register**, 83 FR 235 (December 7, 2018), and in newspapers of general circulation within the proposed project's area of environmental impact. The USEPA published its notice of receipt of the DEIS in the **Federal Register** 83 FR 235 (December 7, 2018). The comment period for the DEIS was extended from February 5, 2019, to April 1, 2019, due to a partial lapse in Federal government funding.

Public meetings to receive comments on the DEIS were held from March 13 to 20, 2018, in Dodgeville, Barneveld, Cassville, and Middleton, Wisconsin, and Guttenberg and Peosta, Iowa. All comments received on the DEIS were addressed in the FEIS. The RUS published its NOA of the FEIS in the **Federal Register** 84 FR 205 (October 23, 2019) and in newspapers of general circulation within the proposed project's area of environmental impact. The USEPA published its notice receipt of the FEIS in the **Federal Register** 84 FR 2017 (October 25, 2019). The 30-day comment period ended on November 25, 2019. Comments received on the FEIS were addressed in the ROD.

The FEIS considered six action alternatives to meet the project need. These alternatives were evaluated in terms of ability to meet the purpose and need, technical feasibility, and environmental impacts (*e.g.,* geology and soils; vegetation, including wetlands and special status plants; wildlife, including special status species; water resources and quality; air quality and climate change; noise;

transportation; cultural and historic resources; land use, including agriculture and recreation; visual quality and aesthetics; socioeconomics and environmental justice; public health and safety; Upper Mississippi River National Wildlife and Fish Refuge; and cumulative effects).

The RUS selected Alternative 6. See ROD Section 2.6.1 ''Selected Alternative and Agency Rationale'' for the rationale for selecting Alternative 6. The resources or environmental impacts that could be affected by the C–HC Project selected alternative are summarized in the ROD Section 2.7 ''Summary of Environmental Consequences.''

Based on an evaluation of the information and impact analyses presented in the FEIS, including the evaluation of all alternatives, and in consideration of RUS's NEPA implementing regulations, Environmental Policies and Procedures, as amended (7 CFR part 1970), RUS finds the evaluation of reasonable alternatives is consistent with NEPA.

Because the proposed project may involve action in floodplains or wetlands, this NOA also serves as a final notice of action in floodplains and wetlands (in accordance with Executive Orders 11988 and 11990).

The ROD is not a decision on Dairyland's loan application and therefore not an approval of the expenditure of Federal funds. This notice of the ROD concludes RUS's environmental review process in accordance with NEPA and RUS's Environmental Policies and Procedures (7 CFR 1970). The ultimate decision as to loan approval depends upon the conclusion of this environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed.

The ROD is not a decision on the ROW permit application the USFWS has received from Dairyland and ITC Midwest, and therefore not an approval for crossing the Refuge. This notice concludes USFWS's environmental review process in accordance with NEPA and USFWS Environmental Policies and Procedures (43 CFR 46.10–46.450 and 516 DM 8). Processing, review, and further evaluation of the ROW permit application received from Dairyland Power and ITC can proceed with issuance of the ROD.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–02946 Filed 2–13–20; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2021 Government Units Survey

AGENCY: U.S. Census Bureau, 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 a proposed reinstatement of the Government Units Survey, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before April 14, 2020.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2020–0002, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joy P. Pierson by phone at 301–763–7196 or by email at *Joy.P.Pierson@census.gov* and Amber Hennessy at *Amber.L.Hennessy@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, Section 161 of the United States Code requires the Secretary of Commerce to conduct a Census of Governments every five years, in years ending in ''2'' and ''7''. Section 193 provides for the collection of preliminary and supplementary statistics as related to the main topic of the census. The Census of Governments publishes unit counts and legal descriptions as well as employment and finance data for all county, municipal, township, school district, and special district governments in the United States. Prior to conducting the Census of Governments, it is necessary to ensure that the universe of all governments is as accurate and up to date as possible. The Government Units Survey (GUS) is conducted the year prior to the full Census of Governments collection operation and is used to evaluate and update the universe of all local and special district governments. Public sector surveys draw their sampling frames from this universe.

The 2021 GUS will target townships, special districts, independent school districts, and educational service authorities (ESA). The GUS is particularly beneficial for identifying smaller units that have not been included in surveys in-between census years and identifying changes to the universe of special district governments that experience substantial change in a five-year period. The GUS contributes to the quality and timely releases of the other components of the Census of Governments.

The 2021 GUS consists of yes/no type questions and checkbox selection questions designed to determine whether a government unit is in operation and verify contact information. Other questions collect information about a unit's function, legal organization, and other characteristics. The 2021 GUS estimated time to respond is 15 minutes which is the same as the 2016 GUS. The 2021 GUS is designed to diminish unnecessary burden, and to collect information essential for maintaining the government universe.

The scope for 2021 GUS collections is scaled back in comparison to the 2016 GUS collection operation. For greater efficiency, the 2021 GUS intends to collect information only from government units for which this information is difficult to obtain via other methods, such as internet research. There are a number of governments, particularly special district governments, for which information has not been collected since the 2017 Census of Governments. It is necessary to determine if these governments still exist. The GUS obtains information that can be difficult to verify conclusively through regular internet research, as many states do not provide this information for free via

online tools. It is necessary to verify and update this information prior to mailing the Employment and Finance components of the 2022 Census of Governments. GUS information also assists the Census Bureau with maintaining accurate classification of all local and special district governments.

II. Method of Collection

Respondents will receive emails and letters about completing the GUS via the internet. The GUS collection instrument will be available online to respondents in February 2021. The website is secure, and respondents will receive a unique user identification and password for login. A toll-free number will be provided to respondents, which they may call to obtain assistance.

III. Data

OMB Control Number: 0607–0930.

Form Number(s): The GUS will utilize an electronic collection instrument and have four paths based on the type of respondent.

Type of Review: Regular submission.

Affected Public: Public sector entities consisting of townships; special districts; independent school districts; and educational service authorities in the U.S.

Estimated Number of Respondents: 43,454.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 10,864.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.).

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 193.

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. 2020–02660 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 2019

AGENCY: Office of the Secretary, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting age population estimates as of July 1, 2019, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act. In addition, the data have been available online at the U.S. Census Bureau's website since December 30, 2019 at: *https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html.*

FOR FURTHER INFORMATION CONTACT: Karen Battle, Chief, Population Division, U.S. Census Bureau, Room HQ–6H174, Washington, DC 20233, at 301–763–2071, or at *karen.battle@census.gov.*

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 52, United States Code, Section 30116(e), I hereby give notice that the estimates of the voting age population for July 1, 2019 for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2019

Area	Population 18 and over	Area	Population 18 and over
United States	255,200,373		
Alabama	3,814,879	Missouri	4,766,843
Alaska	551,562	Montana	840,190
Arizona	5,638,481	Nebraska	1,458,334
Arkansas	2,317,649	Nevada	2,387,517
California	30,617,582	New Hampshire	1,104,458
Colorado	4,499,217	New Jersey	6,943,612
Connecticut	2,837,847	New Mexico	1,620,991
Delaware	770,192	New York	15,425,262
District of Columbia	577,581	North Carolina	8,187,369
Florida	17,247,808	North Dakota	581,891
Georgia	8,113,542	Ohio	9,111,081
Hawaii	1,116,004	Oklahoma	3,004,733
Idaho	1,338,864	Oregon	3,351,175
Illinois	9,853,946	Pennsylvania	10,167,376
Indiana	5,164,245	Rhode Island	854,866
Iowa	2,428,229	South Carolina	4,037,531
Kansas	2,213,064	South Dakota	667,558
Kentucky	3,464,802	Tennessee	5,319,123
Louisiana	3,561,164	Texas	21,596,071
Maine	1,095,370	Utah	2,274,774
Maryland	4,710,993	Vermont	509,984
Massachusetts	5,539,703	Virginia	6,674,671
Michigan	7,842,924	Washington	5,951,832

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2019—Continued

Area	Population 18 and over	Area	Population 18 and over
Minnesota	4,336,475	West Virginia	1,432,580
Mississippi	2,277,566	Wisconsin	4,555,837
		Wyoming	445,025

Source: U.S. Census Bureau, Population Division, Vintage 2019 Population Estimates.

I have certified these estimates for the Federal Election Commission.

Wilbur Ross,

Secretary, U.S. Department of Commerce.

[FR Doc. 2020–03000 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–833]

Utility Scale Wind Towers From Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2018 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Benjamin Luberda or Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2185 or (202) 482–3860, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 5, 2019.[1] On December 3, 2019, Commerce postponed the preliminary determination of this investigation; the revised deadline is now February 4, 2019. [2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. 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 to all parties 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 at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for PT Kenertec Power System (Kenertec) or for all other producers or exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Kenertec, the only individually examined exporter/producer in this investigation. Because

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 37992 (August 5, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 66151 (December 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Kenertec is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent)[6]
PT Kenertec Power System	6.38	6.35
All Others	6.38	6.35

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a

[6] In the companion countervailing duty (CVD) investigation, Commerce calculated a 0.03 percent export subsidy rate for Kenertec and for all other producers and exporters under the program ''Exemption from Import Income Tax Withholding for Companies in Bonded Zones.'' *See Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 68109 (December 13, 2019) and accompanying Preliminary Decision Memorandum at 21–23. Because we determined the LTFV all-others rate based on Kenertec's estimated weighted-average dumping margin, the export subsidy offset for all other producers and exporters is the lesser of the export subsidy rate for Kenertec and the export subsidy rate for all other producers and exporters in the CVD preliminary determination (*i.e.,* 0.03 percent).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On January 17 and 30, 2020, pursuant to 19 CFR 351.210(e), the petitioner and Kenertec, respectively, requested that Commerce postpone the final determination, and Kenertec consented to the extension of provisional measures for a period not to exceed six months.[8] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–02963 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* Petitioner's Letter, ''Utility Scale Wind Towers from Canada, Indonesia, Republic of Korea and Socialist Republic of Vietnam: Request to Postpone Final Determination,'' dated January 17, 2020; *see also* Kenertec's Letter, ''Utility Scale Wind Towers from Indonesia: Request to Postpone Final Determination,'' dated January 30, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–902]

Utility Scale Wind Towers From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2018 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Janz or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2972 or (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 5, 2019.[1] On December 3, 2019, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 4, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 37992 (August 5, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 66151 (December 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Memorandum is included as Appendix II to this notice. 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 to all parties 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 at *https://enforcement.trade.gov/frn/summary/korea-south/korea-south-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist for Dongkuk S&C Co., Ltd. (Dongkuk) and the companies covered by the all-others rate. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Dongkuk, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Dongkuk is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	5.98
All Others	5.98

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Dongkuk and the companies covered by the all-others rate. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producers or exporters identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 84 FR at 37993.

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

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, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On January 27, 2020, pursuant to 19 CFR 351.210(e), Dongkuk requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[7] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; and (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–02715 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Dongkuk's Letter, ''Utility Scale Wind Towers from the Republic of Korea: Request to Extend the Deadline for the Final Determination,'' dated January 27, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–867]

Utility Scale Wind Towers From Canada: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from Canada are being sold, or are likely to be sold, in the United States at less-than-fair-value (LTFV). The period of investigation (POI) is July 1, 2018 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mike Heaney or Paul Walker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 5, 2019.[1] On December 3, 2019, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 4, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. 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 to all parties 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 at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices and constructed export prices in accordance with section 772(a) & (b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for the Marmen Group and the non-selected companies receiving the all-others rate. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for the Marmen Group, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for the Marmen Group is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)[6]
Marmen Inc./Marmen Énergie Inc	5.04	5.04
All Others	5.04	5.04

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 37992 (August 5, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 66151 (December 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Preliminary Determination Calculations for the Marmen Group,'' dated February 4, 2020.

others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Between January 17 and 27, 2020, pursuant to 19 CFR 351.210(e), the Marmen Group and the Wind Tower Trade Coalition requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[8] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish,

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See* the Marmen Group's Letter, ''Utility Scale Wind Towers from Canada—Request for Postponement of Final Determination and Provisional Measures Period,'' dated January 27, 2020; *see also* Wind Tower Trade Coalition's Letter, ''Utility Scale Wind Towers from Canada, Indonesia, Republic of Korea and Socialist Republic of Vietnam: Request to Postpone Final Determination,'' dated January 17, 2020.

painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 11150 (February 15, 2013).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–02962 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–825]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam) produced and exported by CS Wind Vietnam Co., Ltd. (CS Wind) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV). The period of investigation (POI) is January 1, 2019 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua A. DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 5, 2019.[1] On December 3, 2019, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 4, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. 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 to all parties 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 at *https://enforcement.trade.gov/frn/summary/vietnam/vietnam-fr.htm.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has relied on facts otherwise available, with adverse inferences, for CS Wind because it did not timely respond to our request for information. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist with respect to CS Wind. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 37992 (August 5, 2019) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 66151 (December 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent)
CS Wind Vietnam Co., Ltd	CS Wind Vietnam Co., Ltd	65.96	63.82

Suspension of Liquidation

This investigation covers a single producer/exporter combination that is excluded from the existing AD order covering the same merchandise from Vietnam (A–552–814). Therefore, in this investigation, and in accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation only for entries of subject merchandise from the producer/exporter combination identified above, that were entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit for the covered producer/exporter combination, as indicated in the chart above.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered or withdrawn from warehouse for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from CS Wind. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from CS Wind when it is the producer and exporter, that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied adverse facts available (AFA) to CS Wind in this investigation in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the mandatory respondent in this investigation did not provide information requested by Commerce and Commerce preliminarily determines that the mandatory respondent has been uncooperative, verification will not be conducted.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 11150 (February 15, 2013).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–02725 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Tuesday, March 3, 2020.

DATES: The meeting will be held Tuesday, March 3, 2020 from 8 a.m. to 12:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in Building 101, The Portrait Room, at NIST, 100 Bureau Drive, Gaithersburg, MD 20899. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone number 301–975–2785; email: *cheryl.gendron@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69), as amended by the American Innovation and Competitiveness Act, Public Law 114–329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the state, federal and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Tuesday, March 3, 2020, from 8 a.m. to 12:30 p.m. Eastern Standard Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan. The MEP Advisory Board will provide input to NIST on supply chain development with an emphasis on defense suppliers in order to strengthen the defense industrial base. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than three to five minutes each. Requests must be received in writing by Feb. 25, 2020 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800, via fax at 301–963–6556 or

electronically by email to *cheryl.gendron@nist.gov.*

Admittance Instructions: All visitors to the NIST site are required to preregister to be admitted. Please submit your name, company name, time of arrival, email address and telephone number to Ms. Gendron by 5 p.m. Eastern Standard Time, Tuesday, Feb. 25, 2020. Non-U.S. citizens must submit additional information; please contact Ms. Gendron via email at *cheryl.gendron@nist.gov* or phone 301–975–2785. For participants planning to attend in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federally issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Gendron at 301–975–2785 or visit: *http://nist.gov/public_affairs/visitor/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–03017 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA043]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 135th Scientific and Statistical Committee (SSC), Social Science Planning Committee, Program Planning and Research Standing Committee, Pelagic and International Standing Committee, Executive and Budget Standing Committee, and 181st Council meetings to take actions on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between March 3 and 12, 2020. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 135th SSC, Social Science Planning Committee, the Council's Executive and Budget Standing Committee, Pelagic and International Standing Committee, and Program Planning and Research Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The 181st Council meeting will be held at the Laniakea YWCA, Fuller Hall, 1040 Richards Street, Honolulu, HI 96813, phone: (808) 538–7061. The Fishers Forum will be held at the Aloha Tower Marketplace, 1 Aloha Tower Drive, Honolulu, Hawai'i 96813, phone: (808) 544–1453.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The 135th SSC meeting will be held between 8:30 a.m. and 5 p.m. on March 3 to 5, 2020. The Social Science Planning Committee meeting will be held between 1:30 p.m. to 5 p.m. on March 5, 2020. The Program Planning and Research Standing Committee will be held on March 9, 2020, between 8:30 a.m. and 10:30 a.m. The Pelagic and International Standing Committee will be held on March 9, 2020, between 11 a.m. and 2:30 p.m. The Executive and Budget Standing Committee meeting will be held on March 9, 2020, between 3 p.m. and 5:30 p.m. The 181st Council meeting will be held between 9 a.m. and 5 p.m. on March 10, 2020, and between 8:30 a.m. and 5 p.m. on March 11–12, 2020. On March 10, 2020, the Council will host a Fishers Forum between 6 p.m. and 9 p.m.

Agenda items noted as ''Final Action'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 135th SSC Meeting

Tuesday, March 3, 2020, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 134th SSC Meeting Recommendations
4. Report from Pacific Islands Fisheries Science Center Director
5. Program Planning and Research
   - A. Standardized Bycatch Reporting Methodology
   - B. Public Comment
   - C. SSC Discussion and Recommendations
6. Island Fisheries
   - A. Options Paper to Amend Bottomfish Management Unit Species in the American Samoa and Marianas Fishery Ecosystem Plans (FEP) (Initial Action)
   - B. Specifying the Acceptable Biological Catches (ABC) in the Marianas Bottomfish Fisheries
   - 1. P-star analysis
   - 2. SEEM analysis
   - 3. Options for ABC in the Marianas Bottomfish Fisheries (Final Action)
   - C. Interim Measure for American Samoa Bottomfish Fishery
   - D. Requirements for Rebuilding Plans
   - E. Update on Hawaii Precious Corals Essential Fish Habitat (EFH) and Associated Bed Designation Issues
   - F. Public Comment
   - G. SSC Discussion and Recommendations
7. Protected Species
   - A. False Killer Whale Abundance Estimates
   - B. Assessing Population Level Impacts of Marine Turtle Interactions in the Hawaii Deep-set Longline Fishery
   - C. Hawaii-based Shallow-set Longline Fishery Biological Opinion Reasonable and Prudent Measures Working Group
   - D. Ecosystem-based Fisheries Management Project for Protected Species Impacts Assessment for Hawaii and American Samoa Longline Fisheries
   - E. Public Comment
   - F. SSC Discussion and Recommendations

Wednesday, March 4, 2020, 8:30 a.m.–5 p.m.

SSC Plenary Presentation: Threat Management Plan for Two Endemic Subspecies of Dolphins

8. Pelagic Fisheries
   - A. American Samoa Longline Annual

Fishery Report
B. Hawaii Longline Annual Fishery Report
C. Bigeye Tuna Research Initiative
D. Electronic Reporting and Electronic Monitoring
1. Electronic Technologies Implementation Plan
2. Pacific Islands Region Longline Electronic Reporting Plan and Options for Implementation of Mandatory Reporting
3. Pacific Islands Regional Observer Program Overview and Costs
4. 2020 Electronic Monitoring Workshop
E. U.S. Territory Longline Bigeye Catch/Allocation Limits (Final Action)
F. Deep Sea Mining and Spatial Planning in the Pacific
G. International Fisheries
1. Western and Central Pacific Fisheries Commission (WCPFC)
a. Conservation and Management Measures on Tropical Tunas
b. North Pacific Striped Marlin Rebuilding Plan
H. Report on Scoping Meeting on Small Boat Pelagic Reporting
I. Public Comment
J. SSC Discussion and Recommendations

Thursday, March 5, 2020, 8:30 a.m.–5 p.m.

9. Other Business
A. June 2020 SSC Meetings Dates
B. National SSC Meeting Trigger Questions
10. Summary of SSC Recommendations to the Council

Agenda for the Social Science Planning Committee

Thursday, March 5, 2020, 1:30 p.m. to 5 p.m.

1. Welcome and Introductions
2. Approval of Agenda
3. Review of the Social Science Planning Committee Research Plan and Priorities
4. NMFS Socioeconomic Aspects in Stock Assessments
5. Social Impact Assessment
6. Cost-benefit Analysis to Evaluate Impacts of Council Management Actions
7. Report on OceanObs 2019 Outcomes on Incorporating Traditional Knowledge
8. User Group Involvement in Developing Stock Assessments
9. Public Comment
10. Discussion and Recommendations
11. Other Business

Agenda for the Program Planning and Research Standing Committee

Monday, March 9, 2020, 8:30 a.m. to 10:30 a.m.

1. Territorial Bottomfish
A. Interim Measure for the American Samoa Bottomfish Fishery
B. Annual Catch Limits (ACL) and Accountability Measures (AM) for Mariana Archipelago Bottomfish
1. P* Report and SEEM Report
2. Alternatives for ACLs and AMs (Final Action)
2. Options Paper to Amend the Bottomfish Management Unit Species in the American Samoa and Marianas FEP (Initial Action)
3. Requirements for Rebuilding Plans
4. Standardized Bycatch Reporting Methodology
5. Update to Council FEPs
6. Advisory Group Report and Recommendations
A. Advisory Panel Report
B. Archipelagic Plan Team Report
C. Scientific & Statistical Committee
7. Other Issues
8. Public Comment
9. Discussion and Recommendations

Agenda for the Pelagic and International Standing Committee

Monday, March 9, 2020, 11 a.m. to 2:30 p.m.

1. Hawaii-based Shallow-set Longline Fishery Biological Opinion Reasonable and Prudent Measures Working Group
2. Assessing Population Level Impacts of Marine Turtle Interactions in the Hawaii Deep-set Longline Fishery
3. Electronic Reporting and Electronic Monitoring
A. Electronic Technologies Implementation Plan
B. Pacific Islands Region Longline Electronic Reporting Plan and Options for Implementation of Mandatory Reporting
4. U.S. Territory Longline Bigeye Catch/Allocation Limits (Final Action)
5. International Fisheries
A. WCPFC
a. Report on 16th Regular Session of the WCPFC
b. North Pacific Striped Marlin Rebuilding Plan
B. Outcomes of UN Biodiversity Beyond National Jurisdiction (BBNJ) Meeting
6. Advisory Group Report and Recommendations
A. Advisory Panel
B. Scientific & Statistical Committee
7. Other Issues
8. Public Comment
9. Discussion and Recommendations

Agenda for the Executive and Budget Standing Committee

Monday, March 9, 2020, 3 p.m. to 5:30 p.m.

1. Financial Reports
A. Current Grants
B. New Grants
2. Administrative Reports
3. Freedom of Information Act and Congressional Requests
4. Council Coordination Committee Meeting
5. Council Family Changes
A. Archipelagic Plan Team
B. American Samoa Advisory Panel
6. Meetings and Workshops
7. Other Issues
8. Public Comment
9. Discussion and Recommendations

Agenda for 181st Council Meeting

Tuesday, March 10, 2020, 9 a.m. to 5 p.m.

1. Welcome and Introductions
2. Oath of Office
3. Approval of the 181st Agenda
4. Approval of the 180th Meeting Minutes
5. Executive Director's Report
6. Agency Reports
A. NOAA Office of General Counsel, Pacific Islands Section
B. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
3. Revising NEPA Procedure Provisions
C. U.S. State Department
D. U.S. Fish and Wildlife Service
E. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel, Enforcement Section
F. Public Comment
G. Council Discussion and Action
7. Hawaii Archipelago & Pacific Remote Island Areas (PRIA)
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Hawaii Management Initiatives and Research
1. Report on State of Hawaii Kona Crab Rule Changes
2. Aquarium Fishery Update
E. Report on MHI Small-boat Scoping Meetings
F. Update on Precious Corals EFH and Associated Bed Designation Issues
G. Community Activities and Issues
H. Education and Outreach Initiatives
I. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee

J. Public Comment
K. Council Discussion and Action
8. Protected Species
A. False Killer Whale Abundance Estimate
B. Status of Endangered Species Act (ESA) Consultations
C. Pacific Islands Regional Office Green Turtle Recovery Plan Implementation
D. Other ESA and Marine Mammal Protection Act Updates
E. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
F. Public Comment
G. Council Discussion and Action

Tuesday, March 10, 2020, 4 p.m.

9. Public Comment on Non-agenda Items

Tuesday, March 10, 2020, 6 p.m.–9 p.m.

Fishers Forum

Wednesday, March 11, 2020, 8:30 a.m.–5 p.m.

10. Program Planning and Research
A. National Legislative Report
B. Territorial Bottomfish
1. Interim Measure for the American Samoa Bottomfish Fishery
2. Annual Catch Limits (ACLs) and Accountability Measures (AMs) for Mariana Archipelago Bottomfish
a. P* Report
b. SEEM* Report
c. Alternatives for ACLs and AMs (Final Action)
C. Options paper to Amend the Bottomfish Management Unit Species in the American Samoa and Marianas FEP (Initial Action)
D. Requirements for Rebuilding Plans
E. Standardized Bycatch Reporting Methodology
F. PRIA and Hawaii Marine Conservation Plans
G. Update to Council FEPs
H. Regional, National, & International Outreach & Education
I. Advisory Group Report and Recommendations
1. Advisory Panel Report
2. Archipelagic Plan Team Report
3. Scientific & Statistical Committee
J. Standing Committee Report
K. Public Comment
L. Council Discussion and Action
11. Pelagic & International Fisheries
A. American Samoa Longline Annual Fishery Report
B. Hawaii Longline Annual Fishery Report
C. Hawaii-based Shallow-set Longline Fishery Biological Opinion Reasonable and Prudent Measures Working Group
D. Assessing Population Level Impacts of Marine Turtle Interactions in the Hawaii Deep-set Longline Fishery
E. Electronic Reporting and Electronic Monitoring
1. Electronic Technologies Implementation Plan
2. Pacific Islands Region Longline Electronic Reporting Plan and Options for Implementation of Mandatory Reporting
3. Pacific Islands Regional Observer Program Overview & Costs
4. 2020 Electronic Monitoring Workshop
F. US Territory Longline Bigeye Catch/Allocation Limits (Final Action)
G. Deep Sea Mining and Spatial Planning in the Pacific
H. International Fisheries
1. WCPFC
a. Report on 16th Regular Session of the WCPFC
b. Conservation & Management Measures on Tropical Tunas
c. North Pacific Striped Marlin Rebuilding Plan
2. Outcomes of UN BBNJ Meeting
I. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
J. Standing Committee Report and Recommendations
K. Public Comment
L. Council Discussion and Action

Thursday, March 12, 2020, 8:30 a.m. to 5 p.m.

12. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Management and Research Initiatives
1. Pacific Insular Fisheries Monitoring Assessment and Planning Summit (PIFMAPS) Implementation
a. Regulation Patch Up
b. Director Annual Proclamation
E. Community Activities and Issues
F. Education and Outreach Initiatives
G. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
H. Public Comment
I. Council Discussion and Action
13. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Management and Research Initiatives
a. PIFMAPS Implementation
i. Draft Regulations for Licensing
5. Guam Marine Conservation Plan
6. Community Activities and Issues
7. Education and Outreach Initiatives
B. CNMI
1. Arongol Falú
2. Legislative Report
3. Enforcement Issues
4. Management and Research Initiatives
a. PIFMAPS Implementation
i. Issuing Licenses for Fishermen
b. Reporting App Update
5. CNMI Marine Conservation Plan
6. Community Activities and Issues
7. Education and Outreach Initiatives
C. Advisory Group Reports and Recommendations
1. Mariana Archipelago FEP Advisory Panel
2. Scientific & Statistical Committee
D. Public Comment
E. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
1. Current Grants
2. New Grants
B. Administrative Reports
C. Council Coordination Committee Meeting
D. Council Family Changes
1. Archipelagic Plan Team
2. American Samoa Advisory Panel
E. Meetings and Workshops
F. Standing Committee Report
G. Public Comment
H. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 181st meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least five days prior to the meeting date.

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

Dated: February 10, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02950 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA039]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; issuance of one Section 10(a)(1)(A) permit to enhance the propagation and survival of threatened species.

SUMMARY: Notice is hereby given that NMFS has issued one direct take permit (#14741) pursuant to the Endangered Species Act (ESA) of 1973, as amended, to the Monterey Peninsula Water Management District (District) for the Carmel River Steelhead Rescue and Rearing Enhancement Program (Program) for a five year period (with the opportunity for a five year renewal). On June 4, 2018, NMFS provided notice of our receipt of this permit application and Rescue and Rearing Management Plan (RRMP) in the **Federal Register**. The RRMP specifies operational methods for South-Central California Coast (S–CCC) steelhead (*Oncorhynchus mykiss*) rescue, rearing, and translocation activities associated with the Sleepy Hollow Steelhead Rearing Facility (Facility). The Facility is located on the Carmel River on the Central California Coast.

DATES: Permit 14741, issued on September 30, 2019, has an expiration date of September 30, 2024, with the opportunity for a five year renewal. The issued permits are subject to certain conditions set forth therein. Subsequent to issuance, the necessary countersignatures by the applicants were received.

ADDRESSES: Requests for copies of the decision documents or any of the other associated materials should be directed to NOAA's National Marine Fisheries Service, California Coast Office, USGS Pacific Coast & Marine Science Center, 2885 Mission Street, Santa Cruz, CA 95060. The decision documents for Permit 14741 are also available online at *https://www.fisheries.noaa.gov/action/notice-issuance-permit-implementation-carmel-river-steelhead-rescue-and-rearing-enhancement.*

FOR FURTHER INFORMATION CONTACT: Erin Seghesio at 707–578–8515, *Erin.Seghesio@noaa.gov* or Mandy Ingham at 831–460–7580, *Mandy.Ingham@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

This notice is relevant to the following listed species: South-Central California Coast (S–CCC) Steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), which is listed as threatened.

Authority

Enhancement permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–227). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Permit 14741

The District has been issued a permit under section 10(a)(1)(A) of the ESA for a period of five years that allows the take of juvenile and adult steelhead from the threatened S–CCC DPS pursuant to the RRMP. The RRMP was developed with technical assistance from NMFS. The Program's objective is to assist with the restoration, conservation, and maintenance of the steelhead population in the Carmel River Watershed as mitigation for environmental impacts caused by diversion of surface and subsurface streamflow in the lower 38.6 kilometers (24 miles) of the mainstem Carmel River. The Program which was initiated in 1997, was necessary to ensure compliance with California Environmental Quality Act (CEQA) from the environmental impacts of California American Water Company's water withdrawals.

The RRMP will be implemented as an enhancement program, and actions taken pursuant to the permit are designed to enhance survival of S–CCC steelhead that are subject to annual low-flow river dryback. The RRMP incorporates three main components: (1) Rescue and relocation activities; (2) captive rearing activities, and (3) subsequent post-release monitoring. There is no captive spawning of steelhead reared at the facility.

Activities that constitute take of S–CCC steelhead and are permitted include rearing, handling and transport, and tagging. The RRMP includes measures to minimize the likelihood of genetic or ecologic effects to naturally produced S–CCC steelhead resulting from operations at the Facility and translocation activities. Post-release monitoring activities conducted by the District will collect necessary data to document the achievement of performance indicators specified in the RRMP. For a more detailed discussion of these activities, please see the associated documents at *https://www.fisheries.noaa.gov/action/notice-issuance-permit-implementation-carmel-river-steelhead-rescue-and-rearing-enhancement.*

NEPA Determination

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order 216–6A and Companion Manual for NAO 216–6A) establishes that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. NOAA Administrative Order 216–6A and Companion Manual for NAO 216–6A were used to examine the issuance of Permit 14741 for its potential to impact the quality of the human environment. NMFS concluded that the issuance of Permit 14741 would not have a significant adverse effect, individually or cumulatively, on the human environment and does not involve any extraordinary circumstances listed in the Companion Manual for NAO 216–6A. Further, it was determined that the Program may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement, in accordance with the Companion Manual for NAO 216–6A. Specifically, this project fits under the categorical exclusion described in the Companion Manual for NAO 216–6A, B1, issuance of permits or permit modifications under section 10(a)(1)(A) of the ESA for take, import, or export of endangered species for scientific purposes or to enhance the propagation or survival of the affected species, or in accordance with the requirements of an ESA section 4(d) regulation for threatened species.

Public Comments

On June 4, 2018, NMFS provided notice of our receipt of the ESA Section 10(a)(1)(A) permit application and RRMP in the **Federal Register** (83 FR 25648), which also initiated a 30-day public comment period. NMFS reviewed all comments, conducted extensive literature reviews, consulted with fish culturists, and analyzed stocking data to address comments.

NMFS devised a suite of recommendations for the District to consider implementing to improve the Program. The Program modifications were added as an addendum to the RRMP.

Dated: February 10, 2020.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02995 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA042]

Fisheries of the Atlantic; Southeast Data, Assessment, and Review (SEDAR)

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

ACTION: Notice of SEDAR 65 Assessment Webinar I for Highly Migratory Species Atlantic Blacktip Shark.

SUMMARY: The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review workshop.

DATES: The SEDAR 65 Assessment Webinar I has been scheduled for March 26, 2020, from 9 a.m. to 11:30 a.m., EST.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/8955867858539392267*.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment webinar I are as follows:

- Introduce and discuss uncertainty analyses (alternative states of nature) and develop reference case model run(s) which are robust to the major uncertainties identified.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 10, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02968 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR093]

Marine Mammals; File No. 23203

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Environmental Institute of Houston at the University of Houston, Clear Lake (Responsible Party: George Guillen), 2700 Bay Area Blvd., Box 540, Houston, TX 77508–1002, has applied in due form for a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or email comments must be received on or before March 16, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23203 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific

reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to conduct research on common bottlenose dolphins in the bays, sounds, estuaries, and near-shore coastal waters of Texas in the northwestern Gulf of Mexico. The purpose of the research is to: (1) Develop and maintain photo-identification catalogs; (2) characterize fine-scale population structure and dynamics; (3) establish baseline patterns of distribution, habitat use, diet, and health; (4) estimate abundance for strategic stocks; (5) analyze dolphin behavior in relation to anthropogenic activities; and (6) identify potential risks to the population. Researchers would take up to 16,288 dolphins annually during vessel surveys for counts, photo-identification, behavioral observation and passive acoustic recordings. A subset of animals would also be biopsy sampled or observed for photogrammetry with an unmanned aircraft system. Up to 200 non-target cetaceans may be incidentally harassed and/or approached annually for counts and behavioral observation.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 11, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–03005 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA046]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) of the will hold a meeting.

DATES: The meeting will be held on Tuesday, March 10, 2020, starting at 1 p.m. and continue through 12:30 p.m. on Wednesday, March 11, 2020. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES:

Meeting address: The meeting will take place at the Royal Sonesta Harbor Place, 550 Light Street, Baltimore, MD 21202; telephone: (410) 234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make acceptable biological catch (ABC) recommendations for golden tilefish for the 2021 fishing year and interim recommendations for the 2022 fishing year based on information in the 2020 data update. The SSC will also review the most recent survey and fishery data and the previously recommended 2021 ABC for blueline tilefish. The SSC will also review and provide feedback on the most recent Mid-Atlantic State of the Ecosystem report and other Ecosystem Approach to Fisheries Management (EAFM) related activities. The SSC and staff from the NMFS Marine Recreational Information Program (MRIP) will have an open discussion and question and answer session regarding the recently implemented changes to the recreational data collection program with a focus on specific implications to Mid-Atlantic stocks. The SSC will discuss the 2020–2024 stock assessment schedule, recent changes to the Mid-Atlantic Council's risk policy, and receive an update from the *Illex* workgroup. In addition, the SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 11, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–03012 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA048]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 3, 2020 at 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Herring Committee will discuss goals and objectives and potential range of alternatives to consider in Framework

7, an action to protect spawning of Atlantic herring on Georges Bank. The Committee will have an initial discussion of Framework 8, an action considering herring fishery specifications for FY 2021–2023 and adjust measures in the Herring Fishery Management Plan that potentially inhibit the mackerel fishery from achieving optimum yield. They will also have an opportunity to provide input on the Council's five-year research priorities related to the herring resource and fishery. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: February 11, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–03013 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA041

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (GMFMC) will hold a meeting of its Ecosystem Technical Committee.

DATES: The meeting will convene on Monday, March 2, 2020, from 8:30 a.m. to 5 p.m., EST. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at Gulf of Mexico Fishery Management Council Office, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Natasha Mendez-Ferrer, Biologist, Gulf of Mexico Fishery Management Council; *natasha.mendez@gulfcouncil.org,* telephone: (813) 348–1630. The Council website is *www.gulfcouncil.org,* and, also has details on the meeting location, proposed agenda, webinar listen-in access, and other materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Councils' website when possible.)

Monday, March 2, 2020; 8:30 a.m.–5 p.m.

The meeting will begin with introduction of members, election of Chair and Vice Chair, and adoption of agenda. Council staff will review the committee's scope of work; followed by a presentation on NOAA's regional approach to ecosystem-based management and Mid-Atlantic recent Fishery Ecosystem Plan (FEP) efforts. The committee will hold a discussion on the regulatory authority of the Gulf Council in the context of ecosystem management; and, proposed FEP outline. Lastly, the Ecosystem Technical Committee will review any other business items, if any.

— Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the listen-in access by visiting *www.gulfcouncil.org* and clicking on the Technical Committee meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

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

Dated: February 10, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02971 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA044]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 3, 2020 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Herring Advisory Panel will discuss goals and objectives and potential range of alternatives to consider in Framework 7, an action to protect spawning of Atlantic herring on Georges Bank. The panel will have an initial discussion of Framework 8, an action considering herring fishery

specifications for FY 2021–23 and adjust measures in the Herring Fishery Management Plan that potentially inhibit the mackerel fishery from achieving optimum yield. The Advisory Panel will have an opportunity to provide input on the Council's five-year research priorities related to the herring resource and fishery. The Atlantic States Marine Fisheries Commission (ASMFC) will host a public hearing on Addendum III. Addendum III is considering revisions to the days out program and quota management system in the Atlantic Herring Interstate Fishery Management Plan to better manage the Area 1A (inshore Gulf of Maine) sub-annual catch limit (ACL) under low quota scenarios. Staff from ASMFC will provide a summary of the draft addendum and there will be an opportunity for public comments. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 10, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02951 Filed 2–13–20; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete a product and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: March 15, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product and services are proposed for deletion from the Procurement List:

Product

NSN—Product Name: MR 11056—Grocery Shopping Tote Bag, Laminated, Halloween, Trick or Treat, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Switchboard Operation
Mandatory for: Veterans Affairs Medical Center: 3601 South 6th Avenue, Washington, DC
Mandatory Source of Supply: Southern Arizona Association for the Visually Impaired deleted, Tucson, AZ
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs Medical Center, Omaha, NE
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Custodial Services
Mandatory for: Food and Drug Administration, 1114 Market Street (9th & 10th floors only), St. Louis, MO
Mandatory Source of Supply: MGI Services Corporation, St. Louis, MO
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PUBLIC BUILDINGS SERVICE

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Post Office, Bozeman, MT
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Federal Center: 620 Central Avenue, Alameda, CA
Mandatory Source of Supply: Rubicon Programs, Inc., Richmond, CA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: JWOD Staffing Services
Mandatory for: GSA, Nationwide
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Southeast Federal Center: Building at 49 L Street, SE, Washington, DC
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: PUBLIC BUILDINGS SERVICE, WPHCC—WEST O&M CONTRACTS BRANCH

Service Type: Custodial Services
Mandatory for: DLA Warren Depot, Warren, OH
Mandatory Source of Supply: VGS, Inc., Cleveland, OH
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA STRATEGIC MATERIALS

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration, Clinton, MD
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: 271 Hedges Street Scouten, Mansfield, OH
Contracting Activity: DEPT OF THE ARMY, W6QM MICC FT MCCOY (RC)

Service Type: Janitorial/Custodial Service
Mandatory for: Social Security Administration District Office Building, Montclair, New Jersey
Mandatory Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA PBS R2 ACQUISITION MANAGEMENT DIVISION

Service Type: Janitorial/Custodial
Mandatory for: Fort McPherson: USARC Headquarters, Atlanta, GA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT SAM HOUSTON

Service Type: Litter Pickup
Mandatory for: Robins Air Force Base, Robins AFB, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

Service Type: Vehicle Retrofitting Srvc limited to FPI surplus
Mandatory for: Good Vocations, Inc., Macon, GA
Mandatory Source of Supply: Good Vocations, Inc., Macon, GA
Contracting Activity: BUREAU OF CUSTOMS AND BORDER

PROTECTION, SBI ACQUISITION OFFICE

Service Type: Administrative Service
Mandatory for: Federal Office Building: 225 W King Street, Martinsburg, WV
Mandatory Source of Supply: Job Squad, Inc., Bridgeport, WV
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Administrative Support, Supply and Warehousing Service
Mandatory for: Orlando Naval Training Center, Orlando, FL
Contracting Activity: DEPT OF THE NAVY, NAVAL AIR WARFARE CENTER

Service Type: Grounds Maintenance
Mandatory for: Fort Gillem: SE Army Reserve Intelligence Center, Fort Gillem, GA
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve Center: 1011 George Boulevard, Akron, OH
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve, SGT George Lenkalis USARC, West Hazleton, PA
Mandatory Source of Supply: Portco, Inc., Portsmouth, VA
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA

Service Type: Janitorial/Grounds Maintenance
Mandatory for: Tucson Air Operations, Tucson, AZ
Mandatory Source of Supply: J.P. Industries, Inc., Tucson, AZ
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CONTRACTING DIVISION

Service Type: Facility Support Services
Mandatory for: Social Security Administration: Southeastern Program Service Center, Birmingham, AL
Mandatory Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL
Contracting Activity: SOCIAL SECURITY ADMINISTRATION, REGION 04—SOUTHEAST PROGRAM SERVICE CENTER

Service Type: Demilitarization of Military Hardware
Mandatory for: Robins Air Force Base, Robins AFB, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

Service Type: Operation of Postal Service Center
Mandatory for: Shaw Air Force Base, Shaw AFB, SC
Contracting Activity: DEPT OF THE AIR FORCE, FA4803 20 CONS LGCA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–02979 Filed 2–13–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* March 5, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

On 6/22/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Defense Threat Reduction Agency's (DTRA) Administrative Support Service, contract. The Federal customer has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the DTRA will refer its business elsewhere, this addition must be effective on March 5, 2020, ensuring timely execution for a March 6, 2020 start date while still allowing 21 days for comments. Pursuant to its own regulation 41 CFR 51–2.4, the Committee has been in contact with one of the affected parties, the incumbent of the expiring contract since June 2019, and determined that no severe adverse impact exists. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on November 22, 2019, and did not receive comments from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne Program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Administrative Support Service
Mandatory for: Defense Threat Reduction Agency (DTRA), DTRA Headquarters, Fort Belvoir, VA
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: DEFENSE THREAT REDUCTION AGENCY (DTRA), DEFENSE THREAT REDUCTION

AGENCY

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–02980 Filed 2–13–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* March 15, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

On 1/10/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Operation of Postal Service Center, Fort Riley, KS
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT RILEY

Service Type: Janitorial/Custodial
Mandatory for: Department of Veterans Affairs, VA Outpatient Clinic, 104 Alex Lane, Charleston, WV
Mandatory Source of Supply: Goodwill Industries of Kanawha Valley, Charleston, WV
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 581–HUNTINGTON

Service Type: Administrative Services
Mandatory for: Office of the U.S. Trade Representative, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: EXECUTIVE OFFICE OF THE PRESIDENT, EXECUTIVE OFFICE OF THE PRESIDENT

Service Type: Central Facility Management
Mandatory for: Social Security Administration: Trust Fund Building, Chambersburg, PA
Mandatory Source of Supply: Goodwill Services, Inc., Harrisburg, PA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: National Park Service: Gateway National Recreational Area, Staten Island, NY
Mandatory Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Veterans Outreach Center: 954 Penn Avenue, Pittsburgh, PA
Mandatory Source of Supply: ACHIEVA Support, Pittsburgh, PA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Cutting and Assembly
Mandatory for: Robins Air Force Base, Robins AFB, GA
Mandatory Source of Supply: Middle Georgia Diversified Industries, Inc., Dublin, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

Service Type: Duplication of Official Use Documents
Mandatory for: Government Printing Office: 710 North Capitol & H Street NW, Washington, DC
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: Government Printing Office

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–02981 Filed 2–13–20; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0101, Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on collections of information provided for by Commission regulation Part 48, Registration of Foreign Boards of Trade.

DATES: Comments must be submitted on or before April 14, 2020.

ADDRESSES: You may submit comments, identified by ''Registration of Foreign Boards of Trade'' or ''OMB Control No. 3038–0101'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5492; email: *dandresen@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* 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 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, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Registration of Foreign Boards of Trade (OMB Control No. 3038–0101). This is a request for extension of a currently approved information collection.

Abstract: Section 738 of the Dodd-Frank Act amended section 4(b)(1) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring foreign boards of trade (FBOT) that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Pursuant to this authorization, the CFTC adopted a final rule requiring FBOTs that wish to permit trading by direct access to provide certain information to the Commission in applications for registration and, once registered, to provide certain information to meet quarterly and annual reporting requirements. The rule establishes reporting and/or recordkeeping requirements that are required by Part 48 of the Commission's regulations and are necessary to ensure that FBOTs registered to provide for trading by direct access meet statutory and regulatory requirements on an initial and ongoing basis.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

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

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

Burden Statement

Collection 3038–0101—Registration of Foreign Boards of Trade (17 CFR Part 48)

The estimate of the burden for this collection for registered FBOTs remains the same. The respondent burden for this collection is estimated to range from two to eight hours per response for submission of required reports. These estimates include the time to locate, compile, validate, and verify and disclose and to ensure such information is maintained. The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents: 23.

Estimated Average Burden Hours per Respondent: 374.4 hours.

Estimated total annual burden on respondents: 8,612 hours.

Frequency of collection: When a reportable event occurs and quarterly and annually for required reports.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 10, 2020

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–02965 Filed 2–13–20; 8:45 am]

BILLING CODE P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; 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 Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold a meeting on Wednesday, March 4, 2020 from 7:40 a.m. to 3:00 p.m. The portion of the meeting from 7:40 a.m. to 1:00 p.m. will be closed to the public. The portion of the meeting from 1:10 p.m. to 3:00 p.m. will be open to the public.

ADDRESSES: The RFPB meeting address is the Pentagon, Room 3E863, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Alexander Sabol, (703) 681–0577 (Voice), 703–681–0002 (Facsimile), *alexander.j.sabol.civ@mail.mil* (Email). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Website: *http://rfpb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website and the **Federal Register**.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the

capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a meeting from 7:40 a.m. to 3:00 p.m. The portion of the meeting from 7:40 a.m. to 1:00 p.m. will be closed to the public and will consist of remarks to the RFPB from the following invited speakers: The Commander, United States Army Forces Command will discuss the Army's challenges facing our Nation and priorities for adapting the Army's force structure to include the Army Reserve Component's mission requirements; the Commander, United States Army North will discuss the readiness and use of the Army National Guard and Reserve within the Army North Command with increased emphasis on the homeland security missions for the Reserve Component; the Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness will discuss the goals of the Office of the Under Secretary of Defense for Personnel and Readiness; the Deputy Director, Army National Guard will discuss the National Guard's requirements to operate with the Border Patrol and the effects that the border security mission has on their military readiness; goals and updates on Reserve Components' personnel system reforms under consideration; the Commander, Air Mobility Command and the Commander, Air Combat Command will discuss the Air Mobility Command/Air Combat Command's goals, readiness objectives, and challenges for the ''Operational Reserve'' as part of the Total Force with the Active and Reserve Component mission effectiveness.

The portion of the meeting from 1:10 p.m. to 3:00 p.m. will be open to the public and will consist of briefings from the following: The Subcommittee on Enhancing DoD's Role in The Homeland will discuss the establishment of the Space Force Department with the DoD's legislative requirements, and the integration of Reserve Components into the Space Force; the Subcommittee on Supporting and Sustaining Reserve Component Personnel will present to the RFPB the subcommittee's review and make suggestions for future proposed recommendations to the Secretary of Defense concerning the Joint Credit proposal and the Services' MILTECH policy proposal; and the Subcommittee on Ensuring a Ready, Capable, Available, and Sustainable Operational Reserve will provide the subcommittee's review of and make suggestions for the Department's New Administration Transition Book for a future proposed RFPB recommendation to the Secretary of Defense.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 1:10 p.m. to 3:00 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Tuesday, March 3, 2020, as listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance at 12:30 p.m. to provide sufficient time to complete security screening to attend the beginning of the Open Meeting at 1:10 p.m. on March 4. To complete the security screening, please be prepared to present two forms of identification. One must be a picture identification card. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c), and 41 CFR 102–3.155, the DoD has determined that the portion of this meeting scheduled to occur from 7:40 a.m. to 1:00 p.m. will be closed to the public. Specifically, the Performing the Duties of the Under Secretary of Defense for Personnel and Readiness, in coordination with the Department of Defense FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates in accordance with the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's website.

Dated: February 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–02969 Filed 2–13–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 5, 2020; 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, or email: *Greg.Simonton@pppo.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of January 2020 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
  - Draft Recommendation 20–02, DOE Take Measures to Fully Communicate the 2018 Portsmouth Annual Site Environmental Report
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB,

Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and telephone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on February 11, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–03039 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, March 19, 2020; 9:00 a.m. to 5:00 p.m.

Friday, March 20, 2020; 8:30 a.m. to 11:30 a.m.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Drive, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Runkles; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–6529; email: *katie.runkles@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of this committee is to make recommendation to DOE-Office of Science with respect to the basic energy sciences research program.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- News from the Office of Science
- News from the Office of Basic Energy Sciences
- Neutron Subcommittee Update
- International Benchmarking Study Update
- Chemical Sciences, Geosciences and Biosciences Division COV Meeting Announcement
- Energy Frontier Research Centers/Hub COV Meeting Announcement
- Basic Research Needs Workshop on Transformative Manufacturing Update
- Public Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Runkles at *katie.runkles@science.doe.gov.* Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. Information about the committee can be found at: *https://science.osti.gov/bes/besac*.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Committee's website: *https://science.osti.gov/bes/besac*.

Signed in Washington, DC, on February 11, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–03038 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During December 2019

	FE Docket Nos.
REV LNG, LLC	19–138–LNG
CITADEL ENERGY MARKETING LLC	19–141–NG
MACQUARIE ENERGY LLC	19–139–NG
PASO NORTE GAS EXPORT, LLC	19–142–NG
SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY	19–144–NG
UNIPER TRADING CANADA LTD	19–145–NG
APPLIED LNG TECHNOLOGIES, LLC	19–149–NG
COMMONWEALTH LNG, LLC	12–152–LNG; 13–153–LNG
DIAMOND CAPITAL INTERNATIONAL, LLC	19–140–NG
SUMAS DRY KILNS INC	19–150–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and to vacate authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of

Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on February 9, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS

4471	12/19/19	19–138–LNG	Rev LNG, LLC	Order 4471 granting blanket authority to import/export LNG from/to Canada by truck.
4472	12/19/19	19–141–NG	Citadel Energy Marketing LLC.	Order 4472 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4473	12/19/19	19–139–NG	Macquarie Energy LLC	Order 4473 granting blanket authority to import/export natural gas from/to Canada/Mexico, to import/export LNG from/to Canada/Mexico by truck, and to import LNG from various international sources by vessel.
4474	12/19/19	19–142–NG	Paso Norte Gas Export, LLC.	Order 4474 granting blanket authority to export natural gas to Mexico.
4475	12/19/19	19–144–NG	Sierra Pacific Power Company d/b/a NV Energy.	Order 4475 granting blanket authority to import/export natural gas from/to Canada.
4476	12/19/19	19–145–NG	Uniper Trading Canada Ltd..	Order 4476 granting blanket authority to import/export natural gas from/to Canada.
4478	12/19/19	19–149–LNG	Applied LNG Technologies, LLC.	Order 4478 granting blanket authority to import/export LNG from/to Canada/Mexico by truck.
3211–A	12/19/19	12–152–LNG, 13–153–LNG.	Commonwealth LNG, LLC	Order 3211–A vacating long-term multi-contract authorization to export LNG by vessel from the proposed Waller Point LNG Terminal, in Cameron Parish, Louisiana, to Free Trade Agreement Nations, and withdrawing pending Non-Free Trade Agreement Nations Application.
4479	12/20/19	19–140–NG	Diamond Capital International, LLC.	Order 4479 granting blanket authority to import/export natural gas from/to Canada/Mexico, to import/export LNG from/to Canada/Mexico by truck, and to import LNG from various international sources by vessel.
4480	12/20/19	19–150–NG	Sumas Dry Kilns Inc.	Order 4480 granting blanket authority to import natural gas from Canada.

[FR Doc. 2020–03032 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 18–70–LNG]

Change In Control; Mexico Pacific Limited LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notification Regarding Change in Control (Notification) filed by Mexico Pacific Limited LLC (MPL) in the above-referenced docket on November 18, 2019, and in a Supplement filed on January 14, 2020. The Notification and Supplement describe changes in MPL's ownership. The Notification and Supplement were filed under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, March 2, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–6978, *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

The Notification states that, at the time MPL filed its application in this proceeding and through October 21, 2019, its membership interests were held by two entities: DKRW Energy Sonora Holding LLC and ACAP Sonora Energy LLC. MPL states that, by means of a transaction that closed effective as of October 22, 2019, its ownership has changed.

MPL states that it is now controlled by a consortium led by AVAIO Management LP (AVAIO Capital), which also includes funds managed by Tortoise Capital Advisors LLC. The three largest equity owners of MPL in terms of total ownership are AVAIO

MPL SPV, LP (51.72%), ACAP Sonora Energy LLC (19.53%), and DKRW Energy Partners LLC (16.09%). MPL states that two of these entities, AVAIO MPL SPV, LP and DKRW Energy Partners LLC, increased their ownership percentages by more than 10%, as shown in Exhibit A to both the Notification and Supplement.

Additional details can be found in DECP's Notification and Supplement, posted on the DOE/FE website at: *https://www.energy.gov/fe/mexico-pacific-limited-llc-mpl-fe-dkt-no-18-70-lng.*

DOE/FE Evaluation

DOE/FE will review MPL's Notification and Supplement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[1] Consistent with the CIC Procedures, this notice addresses MPL's authorization to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order No. 4312 (FE Docket No. 18–70–LNG).[2] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer MPL's Notification and Supplement.[3] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in MPL's Notification and Supplement. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov;* (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Mexico Pacific Limited LLC Change in Control in the title line. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

MPL's Notification and Supplement, and any filed protests, motions to intervene, notices of intervention, and comments, are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

MPL's Notification and Supplement, and any filed protests, motions to intervene, notices of intervention, and comments, will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on February 9, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–03033 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

[1] 79 FR 65541 (Nov. 5, 2014).

[2] MPL's Notification and Supplement also apply to its existing FTA authorization, but DOE/FE will respond to that portion of the documents separately pursuant to the CIC Procedures, 79 FR 65542.

[3] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

DEPARTMENT OF ENERGY

Revision of a Currently Approved Information Collection for the Weatherization Assistance Program

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). The information collection request, Weatherization Assistance Program, was previously approved on February 28, 2017 under OMB Control No. 1910–5127 and its current expiration date is February 29, 2020. The proposed collection will collect information on the status of Grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively, and expeditiously.

DATES: Comments regarding this collection must be received on or before March 16, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503; and to Christine Askew, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, Email: *Christine.Askew@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to:
Christine Askew, EE–5W,
U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–1290, Phone: (202) 586–8224, Fax: (202) 287–1992, Email: *Christine.Askew@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 respondents, including through the use of automated collection techniques or other forms of information technology. This information collection request contains: (1) *OMB No.:* 1910–5127; (2) *Information Collection Request Title:* ''Weatherization Assistance Program (WAP)''; (3) *Type of Review:* Revision of a Currently Approved Collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; per House Report 115–929, DOE will begin tracking the occurrence of window replacements, which supports the reduction of lead-based paint hazards in homes; (5) *Annual Estimated Number of Respondents:* 57; (6) *Annual Estimated Number of Total Responses:* 399; (7) *Annual Estimated Number of Burden Hours:* 1254; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $33,228.72.

Statutory Authority: Title V, National Historic Preservation Act of 1966, Pub. L. 89–665 as amended (16 U.S.C. 470 *et seq.*).

Signed in Washington, DC, February 5, 2020.

AnnaMaria Garcia,

Director, Weatherization and Intergovernmental Programs, Energy Efficiency and Renewable Energy.

[FR Doc. 2020–03015 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project—Rate Order No. WAPA–189

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order concerning firm power formula rate.

SUMMARY: The Assistant Secretary, Office of Electricity, confirms, approves, and places into effect, on an interim basis, the firm power formula rate for the Provo River Project (Provisional Formula Rate). The existing firm power formula rate under Rate Schedule Provo River Formula Rate PR–1 is set to expire on March 31, 2020. This rate action makes no change to the existing formula rate.

DATES: The Provisional Formula Rate under Rate Schedule Provo River Formula Rate PR–2 is effective on the first day of the first full billing period beginning on or after April 1, 2020, and will remain in effect through March 31, 2025, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Johnson, Colorado River Storage Project (CRSP) Manager, CRSP Management Center, Western Area Power Administration, 299 South Main Street, Suite 200, Salt Lake City, UT 84111, (801) 524–6372, email *johnsons@wapa.gov;* or Mr. Thomas Hackett, Rates Manager, CRSP Management Center, (801) 524–5503, or email: *CRSPMC-rate-adj@wapa.gov.*

SUPPLEMENTARY INFORMATION: On November 2, 2010, FERC confirmed, approved, and placed into effect the existing formula rate, which is set to expire on March 31, 2020.[1] The existing formula rate provides sufficient revenue to recover annual expenses, including interest expense, and repay capital investments within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Western Area Power Administration's (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to FERC. In Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10D, effective June 4, 2019, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary, Office of Electricity. This rate action is issued under the Redelegation Order and DOE's procedures for public participation in rate adjustments set forth at 10 CFR part 903.[2]

Following DOE's review of WAPA's proposal, I hereby confirm, approve, and place Rate Order No. WAPA–189, which provides the firm power formula rate for the Provo River Project, into effect on an interim basis. WAPA will submit Rate Order No. WAPA–189 to FERC for confirmation and approval on a final basis.

Dated: February 10, 2020.

Bruce J. Walker,

Assistant Secretary for Electricity.

Department of Energy

Assistant Secretary for Electricity

In the matter of: Western Area Power Administration Rate Adjustment for the Provo River Project, Firm Power Formula Rate

Rate Order No. WAPA–189

Order Confirming, Approving, and Placing the Firm Power Formula Rate for the Provo River Project Into Effect on an Interim Basis

The formula rate in Rate Order No. WAPA–189 is established pursuant to section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[3]

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Western Area Power Administration's (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10D, effective June 4, 2019, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. This rate action is issued under the Redelegation Order and DOE's procedures for public participation in rate adjustments set forth at 10 CFR part 903.[4]

[1] FERC approved consecutive 5-year rate extensions of the same formula rate in Docket Nos. EF10–5–000 (133 FERC ¶ 62,112 (2010)) and EF15–6–000 (151 FERC ¶ 62,223 (2015)), extending the rate through March 31, 2020.

[2] 50 FR 37,835 (September 18, 1985) and 84 FR 5347 (February 21, 2019).

[3] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

[4] 50 FR 37,835 (September 18, 1985) and 84 FR 5347 (February 21, 2019).

Acronyms, Terms, and Definitions

As used in this Rate Order, the following acronyms, terms, and definitions apply:

DOE Order RA 6120.2: An order outlining Power Marketing Administration financial reporting and ratemaking procedures.

Energy: Measured in terms of the work it is capable of doing over a period of time. Electric energy is expressed in kilowatt-hours.

Firm: A type of product and/or service always available at the time requested by a Customer.

Provisional Formula Rate: A formula rate confirmed, approved, and placed into effect on an interim basis by the Assistant Secretary for Electricity.

Revenue Requirement: The revenue required to recover annual expenses (such as operation and maintenance, transmission service expenses, interest, and deferred expenses) and repay Federal investments and other assigned costs.

Effective Date

The Provisional Formula Rate, under Rate Schedule Provo River Formula Rate PR–2, will take effect on the first day of the first full billing period beginning on or after April 1, 2020, and will remain in effect through March 31, 2025, pending approval by FERC on a final basis or until superseded.

Public Notice and Comment

WAPA followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing this formula rate.[5] Following are the steps WAPA took to involve interested parties in the rate process:

1. On July 17, 2019, a **Federal Register** notice (84 FR 34175) (Proposal FRN) announced the proposed continuation of the existing firm power formula rate and launched the 30-day public consultation and comment period to give the public an opportunity to comment on the proposed formula rate.

2. On July 19, 2019, WAPA emailed letters to preference customers and interested parties transmitting a copy of the Proposal FRN.

3. WAPA provided a website containing all dates, customer letters, presentations, FRNs, and other information about this rate process. The website is located at (*https://www.wapa.gov/regions/CRSP/rates/Pages/rate-order-189.aspx*).

4. During the 30-day consultation and comment period, which ended on August 16, 2019, WAPA did not receive any verbal or written comments.

Existing Firm Power Rate

WAPA markets the output of the PRP to the Utah Associated Municipal Power Systems, Utah Municipal Power Agency, and Heber Light and Power (Customers).[6] The Customers receive all marketable power generation from the PRP and pay the annual revenue requirement in 12 monthly installments based on the estimated operation, maintenance, interest, and replacement costs for the Deer Creek Power Plant. The payments do not depend upon the power and energy made available for sale each year. At the end of each fiscal year, WAPA reconciles estimates to actual expenses and includes any differences in the following fiscal year's revenue requirement.

Basis for Rate Development

WAPA is continuing use of its existing firm power formula rate. The Provisional Formula Rate, under Rate Schedule Provo River Formula Rate PR–2, will provide sufficient revenue to pay all annual costs, including interest expenses, and repay investments and irrigation aid within the allowable periods.

Certification of Rates

WAPA's Administrator certified that the Provisional Formula Rate, under Rate Schedule Provo River Formula Rate PR–2, is the lowest possible rate, consistent with sound business principles. The Provisional Formula Rate was developed following administrative policies and applicable laws.

Availability of Information

Information about this rate adjustment, including the power repayment study, letters, memorandums, and other supporting materials that were used to develop the Provisional Formula Rate, is available for inspection and copying at the Colorado River Storage Project Management Center, Western Area Power Administration, 299 South Main Street, Suite 200, Salt Lake City, Utah. Many of these documents are also available on WAPA's website at: *https://www.wapa.gov/regions/CRSP/rates/Pages/rate-order-189.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.[7] A copy of the categorical exclusion determination is available on WAPA's website at *https://www.wapa.gov/regions/CRSP/rates/Pages/rate-order-189.aspx.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Formula Rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above, and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–189. The rate will remain in effect on an interim basis until: (1) FERC confirms and approves it on a final basis; (2) a subsequent rate is confirmed and approved; or (3) such rate is superseded.

Dated: February 10, 2020.

Bruce J. Walker,

Assistant Secretary for Electricity

United States Department of Energy Western Area Power Administration

Colorado River Storage Project Management Center Provo River Project

Formula Rate

Effective

The first day of the first full billing period beginning on or after April 1, 2020, through March 31, 2025, or until superseded by another formula, whichever occurs earlier.

Available

Customers of the Provo River Project.

[5] The proposed action is a minor rate adjustment, as defined by 10 CFR 903.2(f).

[6] WAPA provides electric service to the Customers under contracts that will expire September 30, 2024. WAPA intends to execute new contracts and a new marketing plan to be effective October 1, 2024; however, these will be done in a separate public process and will not impact this rate action.

[7] The determination was done in compliance with the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Applicable

To preference customers under contract (Contractor) with WAPA.

Power Formula Rate

Rate Formula Provisions are contained in the service agreement. Service agreements currently are Contract Nos. 94–SLC–0253, 94–SLC–0254, and 07–SLC–0601, as supplemented.

Billing

Billing will be as specified in the service agreement.

Adjustment for Losses

Not applicable.

[FR Doc. 2020–03019 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9049–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed February 3, 2020, 10 a.m. EST through February 10, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200030, Draft, USAF, TX, F–35A Operational Beddown—Air Force Reserve Command, Comment Period Ends: 03/30/2020, Contact: Hamid Kamalpour 210–925–2738

EIS No. 20200031, Final, BLM, MT, Missoula Proposed Resource Management Plan and Final EIS, Review Period Ends: 03/16/2020, Contact: Maggie Ward 406–329–3914

EIS No. 20200032, Final, BLM, MT, Lewistown Proposed Resource Management Plan and Final EIS, Review Period Ends: 03/16/2020, Contact: Dan Brunkhorst 406–538–1981

EIS No. 20200033, Final, BLM, NV, Coeur Rochester and Packard Mines POA11 Project, Review Period Ends: 03/16/2020, Contact: Kathleen Rehberg 775–623–1500

EIS No. 20200034, Draft, USFS, NC, Nantahala and Pisgah NFs DEIS for the Proposed Land Management Plan, Comment Period Ends: 05/14/2020, Contact: Heather Luczak 828–257–4817

EIS No. 20200035, Final Supplement, TVA, TN, Update of TVA's Natural Resource Plan, Review Period Ends: 03/16/2020, Contact: Matthew Higdon 865–632–8051

EIS No. 20200036, Final, BLM, ID, Programmatic EIS for Fuel Breaks in the Great Basin, Review Period Ends: 03/16/2020, Contact: Ammon Wilhelm 208–373–3824

EIS No. 20200037, Final, BLM, ID, Four Rivers Field Office Proposed Resource Management Plan and Final Environmental Impact Statement, Review Period Ends: 03/16/2020, Contact: Brent Ralston 208–384–3300

EIS No. 20200038, Final, FRA, MS, Port Bienville Railroad Combined Final Environmental Impact Statement and Record of Decision, Contact: Kevin Wright 202–493–0845

Under 23 U.S.C. 139(n)(2), FRA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Dated: February 10, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–03027 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0901; FRL–10005–26–OAR]

Proposed Information Collection Request; Comment Request; Prevention of Significant Deterioration and Nonattainment New Source Review (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Prevention of Significant Deterioration and Nonattainment New Source Review'' (EPA ICR No. 1230.33, OMB Control No. 2060–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the ICR, which is currently approved through October 31, 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.

DATES: Comments must be submitted on or before April 14, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0901, online using *www.regulations.gov* (our preferred method) by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ben Garwood, Air Quality Policy Division, Office of Air Quality Planning and Standards, C504–03, U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–1358; fax number: (919) 541–4028; email address: *garwood.ben@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and

clarity of the information to be collected; and (iv) 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. The 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. At that time, the EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR is for activities related to the implementation of the EPA's New Source Review (NSR) program, for the time period between November 1, 2020 and October 31, 2023, and renews the previous ICR. Title I, part C of the Clean Air Act (CAA or the Act)—''Prevention of Significant Deterioration,'' and part D—''Plan Requirements for Nonattainment Areas,'' require all states to adopt preconstruction review programs for new or modified stationary sources of air pollution. In addition, the provisions of section 110 of the Act include a requirement for states to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards are achieved and maintained. Tribes may choose to develop implementation plans to address these requirements.

Implementing regulations for these three programs are promulgated at 40 CFR 49.101 through 49.105; 40 CFR 49.151 through 49.173; 40 CFR 51.160 through 51.166; 40 CFR part 51, Appendix S; and 40 CFR 52.21 and 52.24. In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

State, local, tribal, or federal reviewing authorities review permit applications and provide for public review of proposed projects and issue permits based on their consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the state and local programs for their effectiveness. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal, state, and local environmental agencies to adequately review the permit applications and thereby properly administer and manage the NSR programs.

Information that is collected is handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). *See* also section 114(c) of the Act.

Form numbers: 5900–246, 5900–247, 5900–248, 5900–340, 5900–341, 5900–342, 5900–343, 5900–344, 5900–367, 5900–368, 5900–369, 5900–370, 5900–371, 5900–372, 5900–390, and 5900–391.

Respondents/affected entities: Entities potentially affected by this action are those which must apply for and obtain a preconstruction permit under part C or D or section 110(a)(2)(C) of title I of the Act. In addition, state, local, and tribal reviewing authorities that must review permit applications and issue permits are affected entities.

Respondent's obligation to respond: Mandatory (*see* 40 CFR part 49, subpart C; 40 CFR part 51, subpart I; 40 CFR part 52, subpart A; 40 CFR part 124, subparts A and C).

Estimated number of respondents: 73,516 (total); 73,393 industrial facilities and 123 state, local, and tribal reviewing authorities.

Frequency of response: On occasion, as necessary.

Total estimated burden: 5,516,675 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $455,409,456 (per year). This includes $3,847,266 annually in outsourced start-up costs for preconstruction monitoring.

Changes in estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB because the estimated number of permits of each type has not changed. There is a slight increase in estimated costs as labor costs have been updated from 2016 to 2019 labor rates.

Dated: February 10, 2020.

Scott Mathias,

Acting Director, Air Quality Policy Division.

[FR Doc. 2020–02983 Filed 2–13–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0862; FRS 16494]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0862.

Title: Handling Confidential Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents and Responses: 2,400 respondents; 2,400 responses.

Estimated Time per Response: 1–2 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 5 U.S.C. 552(b)(4), 18 U.S.C. 1905, and 47 U.S.C. 154(i).

Frequency of Response: On occasion reporting requirement; recordkeeping and third party disclosure requirements.

Total Annual Burden: 4,300 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On August 4, 1998, the FCC released a *Report and Order* (R&O), Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, CG Docket No. 96–55. The R&O included a Model Protective Order (MPO) that is used, when appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection. The party granted access to the confidential information materials must keep a written record of all copies made and provide this record to the submitted of the confidential materials upon request. This approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to materials. In addition, the FCC amended 47 CFR 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. This listing of types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02997 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0737; FRS 16490]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), 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 14, 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 of 1995 (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: 3060–0737.

Title: Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 4.5 hours.

Frequency of Response: Annual and on occasion reporting requirement; Third party disclosure.

Obligation to Respond: Voluntary.

Total Annual Burden: 4,500 hours.

Total Annual Cost: None.

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 Impact Assessment: No impact(s).

Needs and Uses: Section 64.1501(b) of the Commission's rules defines a presubscription or comparable arrangement as a contractual agreement in which an information service provider makes specified disclosures to consumers when offering ''presubscribed'' information services.

The disclosures are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into contracts to subscribe to them.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02996 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16497]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of re-establishment of a matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this notice announces the re-establishment of a computer matching program the Federal Communications Commission (FCC or Commission or Agency) and the Universal Service Administrative Company (USAC) will conduct with the Department of Housing and Urban Development (HUD). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before March 16, 2020. This computer matching program will commence on March 16, 2020, unless written comments are received that require a contrary determination, and will conclude on September 16, 2021.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or to *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (National Verifier), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

Participating Agency

The Department of Housing and Urban Development—HUD Inventory Management System/PIH Information Center (IMS/PIC).

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7.

Categories of Individuals

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, State of residence; Lifeline applicant or subscriber's first or last name; date of birth; and last four digits of Social Security Number.

The National Verifier will transfer these data elements to HUD, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38686 (Aug. 15, 2017) and became effective on September 14, 2017.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02998 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0391; FRS 16489]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or 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 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 PRA comments should be submitted on or before April 14, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0391.

Title: Parts 54 and 36, Program to Monitor the Impacts of the Universal Service Support Mechanisms.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 65 respondents; 260 responses.

Estimated Time per Response: 227 minutes (3.783 hours).

Frequency of Response: Quarterly reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254, and 410.

Total Annual Burden: 984 hours.

Total Annual Cost(s): No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The data requested are regarded as non-proprietary. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459.

Needs and Uses: The monitoring program is necessary for the Commission, the Federal-State Joint Board on Universal Service, Congress and the general public to assess the impact of the universal service support mechanisms. This information collection has become a valuable tool to review network usage and growth data and the advancement of universal service. The Commission is reporting a 124 hour increase in the total hour burden based on updated information from the National Exchange Carrier Association [NECA] regarding the number of respondents/responses.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02994 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0110, FRS 16486]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 16, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0110.

Title: FCC Form 2100, Application for Renewal of Broadcast Station License, LMS Schedule 303–S.

Form Number: FCC 2100, LMS Schedule 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondent and Responses: 5,126 respondents, 5,126 responses.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Estimated Time per Response: 1.2–12 hours.

Frequency of Response: Every eight-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 13,554 hours.

Total Annual Costs: $5,786.268.

Obligation of Response: Required to obtain or retain benefits. The statutory authority for the collection is contained Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Licensing Management System (LMS) Form Schedule 303–S is used in applying for renewal of license for commercial or noncommercial AM, FM, TV, FM translator, TV translator, Class A TV, or Low Power TV, and Low Power FM broadcast station licenses. Licensees of broadcast stations must apply for renewal of their licenses every eight years. The Commission is revising this collection to reflect the adoption of a Report and Order (''R&O'') in MB Docket No. 17–105 and 12–202, FCC 19–67, In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative, adopted and released on July 10, 2019. The R&O modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. Among other revisions, the R&O revises the children's television programming rules to expand the Core Programming hours to 6:00 a.m. to 10:00 p.m.; modify the safe harbor processing guidelines for determining compliance with the children's programming rules; requires that broadcast stations air the substantial majority of their Core Programming on their primary program streams, but permit broadcast stations to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream; eliminates the additional processing guideline applicable to stations that multicast; and modify the rules governing preemption of Core Programming. In addition, the R&O eliminates the requirements that the reports include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to air during the next reporting period; eliminating the requirement to identify the program guide publishers who were sent information regarding the licensee's Core Programs; and streamlining the form by eliminating certain fields. The R&O also eliminates the requirement to publicize the Children's Television Programming Reports.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02985 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0027, OMB 3060–0652 and OMB 3060–0932; FRS 16484]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or 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 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 PRA comments should be submitted on or before April 14, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; Form 2100, Schedule A—Application for Media Bureau Video Service Authorization; 47 Sections 73.3700(b)(1) and (b)(2) and Section 73.3800, Post Auction Licensing; Form 2100, Schedule 301–FM—Commercial FM Station Construction Permit Application.

Form No.: FCC Form 2100, Schedule A, FCC Form 301, FCC Form 2100, Schedule 301–FM.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 3,090 respondents and 6,526 responses.

Estimated Time per Response: 1–6.25 hours.

Frequency of Response: One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 15,317 hours.

Annual Cost Burden: $62,444,288.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 301 is used to apply for authority to construct a new commercial AM or FM broadcast station and to make changes to existing facilities of such a station. It may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees. In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels. All applicants using this one-step process must demonstrate that a suitable site exists that would comply with allotment standards with respect to minimum distance separation and principal community coverage and that would be suitable for tower construction. For applicants seeking a community of license change through this one-step process, the proposed facility must be mutually exclusive with the applicant's existing facility, and the new facility must comply with the Commission's standards with respect to minimum distance separation and principal community coverage. Applicants availing themselves of this procedure must also attach an exhibit demonstrating that the proposed community of license change comports with the fair, efficient, and equitable distribution of radio service, pursuant to Section 307(b) of the Communications Act of 1934, as amended (the Act).

FCC Form 301 also accommodates commercial FM applicants applying in a Threshold Qualifications Window (TQ Window) for a Tribal Allotment. A commercial FM applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add that particular Tribal Allotment for which it is applying. Additionally, a petitioner seeking to add a new Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rulemaking. The collection also accommodates applicants applying in a TQ Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the ''threshold qualifications'' procedures.

Similarly, to receive authorization for commencement of Digital Television (DTV) operations, commercial broadcast licensees must file FCC Form 2100, Schedule A for a construction permit. The application may be filed any time after receiving the initial DTV allotment and before mid-point in the applicant's construction period. The Commission will consider the application as a minor change in facilities. Applicants do not have to provide full legal or financial qualifications information.

In the first phase of the ''Licensing and Management System'' roll-out, Form 2100, Schedule A replaced FCC Form 301 only for the filing of full-service digital television construction permits. Subsequently, the Commission received OMB approval for FM Auxiliary Stations to transition from CDBS to LMS using Form 2100, Schedule 301–FM. FCC Form 301 is still being used through CDBS to apply for authority to construct a new full-service commercial AM or FM commercial broadcast station and to make changes to the existing facilities of such stations.

This collection also includes the third-party disclosure requirement of 47 CFR 73.3580. This rule requires applicants to provide local public notice, in a newspaper of general circulation published in a community in which a station is located, of requests for new or major changes in facilities and for changes of a station's community of license by AM and non-reserved band FM permittees and licensees. The local notice must be completed within 30 days of tendering the application and must be published at least twice a week for two consecutive weeks in a three-week period. A copy of the notice and the application must be placed in the station's public inspection file, pursuant to Section 73.3526.

OMB Control Number: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service-General Information, Section 76.1603, Customer Service-Rate and Service Changes and Section 76.1619, Information and Subscriber Bills.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 4,113 respondents; 1,109,246 responses.

Estimated Time per Response: 0.0166 to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 41,796 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission requires that the various disclosure and notifications contained in this collection as a means of consumer protection to ensure that subscribers and franchising authorities are aware of cable operators' business practices, current rates, rate changes for programming, service and equipment, and channel line-up changes. Permitting the use of email modernizes the Commission's rules regarding notices required to be provided by MVPDs.

OMB Control No.: 3060–0932.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule E (Former FCC Form 301–CA); 47 CFR Sections 73.3700(b)(1)(i)–(v) and (vii), (b)(2)(i) and (ii); 47 CFR Section 74.793(d).

Form No.: FCC Form 2100, Schedule E (Application for Media Bureau Audio and Video Service Authorization) (Former FCC Form 301–CA).

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 745 respondents and 745 responses.

Estimated Time per Response: 2.25 hours–6 hours (for a total of 8.25 hours).

Frequency of Response: One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act) and the Community Broadcasters Protection Act of 1999.

Total Annual Burden: 6,146 hours.

Annual Cost Burden: $4,035,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 2100, Schedule E (formerly FCC Form 301–CA) is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. FCC Form 2100, Schedule E requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions on the FCC Form 2100, Schedule E provide additional information regarding Commission rules and policies. FCC Form 2100, Schedule E is presented primarily in a ''Yes/No'' certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the ''Yes'' certification when they are certain that the response is correct. A ''No'' response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. FCC Form 2100, Schedule E filings made to implement post-auction channel changes will be considered minor change applications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02984 Filed 2–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20–03]

Appraisal Subcommittee; Notice of Adoption of Grants Handbook

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of adoption of Grants Handbook.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) is providing notice of its adoption of the Grants Handbook (Handbook). The Handbook is the official repository of the policies and procedures for the administration of grants made by the ASC as authorized by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. The ASC adopted the Handbook in the open session ASC Special Meeting held December 12, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Abbott, Grants Director, at *mark@asc.gov,* or Alice M. Ritter, General Counsel, at *alice@asc.gov,* ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The ASC is authorized to grant funds to the Appraisal Foundation under Title XI, section 1109(b)(4). The ASC may ''make grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualifications Boards.'' [1] The ASC is also authorized to grant funds to State appraiser certifying and licensing agencies under Title XI section 1109(b)(5), which provides that the ASC may ''make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the [ASC], to support the efforts of such agencies to comply with [Title XI] . . . .'' [2]

The Handbook as adopted by the ASC is available to the public and can be found at: *https://www.asc.gov/Documents/GrantsFundingCorrespondence/ASC%20Grants%20Handbook.pdf* on the ASC's website (*asc.gov*). The ASC is also adopting the Office of Management and Budget's uniform guidance located in 2 CFR part 200, commonly referred to as the ''super circular.'' This guidance consolidates existing federal regulations and includes discussion of awards processes, procurement rules, indirect costs, internal controls, time and effort documentation, and single audit procedures.

* * * * *

By the Appraisal Subcommittee.

Dated: February 11, 2020.

James R. Park,

Executive Director.

[FR Doc. 2020–03021 Filed 2–13–20; 8:45 am]

BILLING CODE 6700–01–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 March 2, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Castle Creek Capital Partners VI, LP; Castle Creek Capital VI LLC; Castle Creek Advisors IV LLC; JME Advisory Corporation; Pietrzak Advisory Corporation; Scavuzzo Advisory Corporation; Volk Advisory Corporation; Rana Advisory Corporation; John Eggemeyer; John Pietrzak; Anthony Scavuzzo; David Volk; and Sundeep Rana, all of Rancho Santa Fe, California;* as a group acting in concert to acquire 17.92 percent of the voting shares of Riverview Financial Corporation, Harrisburg, Pennsylvania, and thereby indirectly acquire 17.92 percent of the voting shares of Riverview Bank, Marysville, Pennsylvania.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Heather L.H. Miller Revocable Trust, Heather L.H. Miller, trustee, and Heidi A. Loverude Revocable Trust, Heidi A. Loverude, trustee, both of Urbandale, Iowa;* to become members of the Hill Family Control Group and retain voting shares of Freedom Holdings Company, and thereby indirectly retain voting shares of Freedom Financial Bank, both of West Des Moines, Iowa.

Board of Governors of the Federal Reserve System, February 11, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–03028 Filed 2–13–20; 8:45 am]

BILLING CODE P

[1] Title XI § 1109(b)(4), 12 U.S.C. 3338(b)(4).

[2] Title XI § 1109(b)(5), 12 U.S.C. 3338(b)(5).

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 17, 2020.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *HB Holdings, MHC, Haverhill, Massachusetts;* to become a mutual bank holding company upon the conversion by Haverhill Bank, Haverhill, Massachusetts, from mutual to stock form.

Board of Governors of the Federal Reserve System, February 11, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–03029 Filed 2–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP20–002, Natural Experiments of the Impact of Population-Targeted Policies To Prevent Type 2 Diabetes and Diabetes Complications; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP20–002, Natural Experiments of the Impact of Population-Targeted Policies To Prevent Type 2 Diabetes and Diabetes Complications; April 7–9, 2020; 10:00 a.m.–6:00 p.m., (EDT), Teleconference, which was published in the **Federal Register** on Friday, January 10, 2020, Volume 85, Number 7, pages 1316–1317.

The meeting is being amended to change the date and time to April 7–8, 2020, from 11:00 a.m.–6:00 p.m., EDT.

The meeting is closed to the public.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–03018 Filed 2–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of Requirements and Registration for the 2020 Million Hearts Hypertension Control Challenge

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces the launch of the 2020 Million Hearts Hypertension Control Challenge.

DATES: The Challenge will accept applications from February 21, 2020 through April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Division for Heart Disease and Stroke Prevention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy NE, Mailstop MS–S107–1, Chamblee, GA 30341, Telephone: 770–488–2424, Email: *millionhearts@cdc.gov;* subject line of email: Million Hearts Hypertension Control Challenge; Attention: Mary George.

SUPPLEMENTARY INFORMATION:

Background

Million Hearts is a national initiative to prevent one million heart attacks and strokes by 2022. In order to prevent one million cardiovascular events (*e.g.,* heart attacks and strokes), we need to decrease smoking, sodium consumption and physical inactivity by 20%; improve performance on quality of care measures for appropriate aspirin use, blood pressure control, cholesterol management, and smoking cessation to 80%; and improve outcomes for priority populations disproportionately burdened by cardiovascular disease. Over the last six years, we have seen tremendous progress by providers and health care systems that focus on improving their performance in controlling patients' blood pressure. Getting to 80% blood pressure control would mean that 10 million more Americans with hypertension would have their blood pressure under control, and be at substantially lower risk for strokes, heart attacks, kidney failure, and other related cardiovascular events. For more information about the initiative, visit *https://millionhearts.hhs.gov/*. Million Hearts is a registered trademark of the Department of Health and Human Services.

The challenge is an important way to call attention to the need for improved hypertension control, provides a powerful motivation and target for clinicians, and will improve understanding of successful implementation strategies at the health system level. It will identify clinicians, clinical practices, and health systems that have exceptional rates of

hypertension control and recognize them as 2020 Million Hearts Hypertension Control Champions. To support improved quality of care delivered to patients with hypertension, Million Hearts will document the systems, strategies, processes, and staffing that contribute to the exceptional blood pressure control rates achieved by Champions.

Subject of Challenge Competition: The challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act).

Applicants for the 2020 Million Hearts Hypertension Control Challenge will be asked to provide two hypertension control rates for the practice's or health system's hypertensive population: a current rate for the most recent 12-month reporting period (*e.g.,* 1/1/2019–12/31/2019) and a previous rate for the 12-month period immediately preceding the most recent reporting period (*e.g.,* 1/1/2018–12/31/2018). Applicants will also be asked to provide the prevalence of hypertension in their population (more details provided below), describe some population characteristics (such as urban/rural location, percent minority, percent enrolled in Medicaid, percent with no health insurance, and percent whose primary language is not English) and strategies used by the practice or health system that support improvements in blood pressure control. A copy of the application form will be available on the Challenge website for the duration of the Challenge.

Eligibility Rules for Participating in the Competition

To be eligible for recognition as a Million Hearts Hypertension Control Champion under this challenge, an individual or entity —

(1) Shall have completed the application form in its entirety to participate in the competition under the rules developed by HHS/CDC;

(2) Shall have complied with all eligibility requirements and satisfy the requirements in one of the following subparts:

a. Be a U.S. licensed clinician (*i.e.,* MD, DO, nurse practitioner, or physician assistant), practicing in any U.S. setting, who provides ongoing care for adult patients with hypertension. The individual must be a citizen or permanent resident of the U.S.;

b. Be a U.S. incorporated clinical practice, defined as any practice with two or more U.S. licensed clinicians who by formal arrangement share responsibility for a common panel of patients, practice at the same physical location or street address, and provide continuing medical care for adult patients with hypertension;

c. Be a health system, incorporated in and maintaining a primary place of business in the U.S., that provides continuing medical care for adult patients with hypertension. We encourage large health systems (those that are comprised of a large number of geographically dispersed clinics and/or have multiple hospital locations) to consider having one or a few of the highest performing clinics or regional affiliates apply individually instead of the health system applying as a whole;

(3) Must treat all adult patients with hypertension in the practice, not a selected subgroup of patients;

(4) Must have a data management system (electronic or paper) that allows HHS/CDC or their contractor to verify data submitted;

(5) Must treat a minimum of 500 adult patients annually and have a hypertension control rate (blood pressure <140 mm Hg systolic and <90 mm Hg diastolic) of at least *80%;*

(6) May not be a Federal entity or Federal employee acting within the scope of their employment;

(7) An HHS employee must not work on their application(s) during assigned duty hours;

(8) Shall not be an employee of or contractor at CDC;

(9) Must agree to participate in a data validation process to be conducted by a reputable independent contractor. Data will be kept confidential by the contractor to the extent applicable law allows and will be shared with the CDC, in aggregate form only (*e.g.,* the hypertension control rate for the practice not individual patients' hypertension values);

(10) Must agree to sign, without revisions, a Business Associate Agreement with the contractor conducting the data validation.

(11) Must have a written policy in place about conducting periodic background checks on all providers and taking appropriate action based on the results of the check. CDC's contractor may also request to review the policy and any supporting information deemed necessary. In addition, a health system background check will be conducted by CDC or a CDC contractor that includes a search for The Joint Commission sanctions and current investigations for serious institutional misconduct (*e.g.,* attorney general investigation). Eligibility status, based upon the above-referenced written policy, appropriate action, and background check, will be determined at the discretion of the CDC consistent with CDC's public health mission.

(12) Must agree to be recognized if selected and agree to participate in an interview to develop a success story that describes the systems and processes that support hypertension control among patients. Champions will be recognized on the Million Hearts website. Strategies used by Champions that support hypertension control may be written into a success story, placed on the Million Hearts website, used in press releases, publications, and attributed to Champions.

In addition to meeting the requirements listed in parts 1–12 above, to be eligible for recognition in the challenge, an individual or entity also must comply with the conditions or requirements set forth in each of the following paragraphs in this section.

Federal funds may not be used to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge.

Individual applicants and individuals in a group practice must be free from convictions for or pending investigations of criminal and health care fraud offenses such as felony health care fraud, patient abuse or neglect; felony convictions for other health care-related fraud, theft, or other financial misconduct; and felony convictions relating to unlawful manufacture, distribution, prescribing, or dispensing of controlled substances as verified through the Office of the Inspector General List of Excluded Individuals and Organizations at *http://oig.hhs.gov/exclusions/background.asp.*

Individual applicants must be free from serious sanctions, such as those for misuse or mis-prescribing of prescription medications. Eligibility status of individual applicants with serious sanctions will be determined at the discretion of CDC. CDC or CDC's contractor may perform background checks on individual clinicians and medical practices.

Champions previously recognized through the 2013, 2014, 2015, 2017, 2018, and 2019 Million Hearts Hypertension Control Challenges retain their designation as a ''Champion'' and are not eligible to be named a Champion in the 2020 challenge.

An individual or organization shall not be disqualified from the 2020 Million Hearts Hypertension Control Challenge for utilizing Federal facilities or consulting with Federal employees during a competition so long as the facilities and Federal employees are made available to all individuals and

organizations participating in the competition on an equal basis.

By participating in this challenge, an individual or organization agrees to assume any and all risks related to participating in the challenge. Individuals or organizations also agree to waive claims against the Federal Government and its related entities, except in the case of willful misconduct, when participating in the challenge, including claims for injury; death; damage; or loss of property, money, or profits, and including those risks caused by negligence or other causes.

By participating in this challenge, individuals and organizations agree to protect the Federal Government against third party claims for damages arising from or related to challenge activities.

Individuals or organizations are not required to hold liability insurance related to participation in this challenge.

No cash prize will be awarded. Champions will receive national recognition.

Registration Process for Participants

To participate and submit an application, interested parties should go to *https://millionhearts.hhs.gov* or *https://www.challenge.gov.* On this site, applicants will find the application form and the rules and guidelines for participating. Information required of the applicants on the application form includes:

- The size of the applicant's adult primary care patient population, a summary of known patient demographics (*e.g.,* age distribution), and any noteworthy patient population characteristics (such as urban/rural location, percent minority, percent enrolled in Medicaid, percent with no health insurance, and percent whose primary language is not English).
- The number of the applicant's adult primary care patients, ages 18–85, who were seen during the measurement year and had a hypertension diagnosis (*i.e.* hypertension prevalence).
- The applicant's current hypertension control rate for their hypertensive population ages 18–85 during the measurement year is required. In determining the hypertension control rate for the 2020 Million Hearts Hypertension Control Challenge, CDC defines ''hypertension control'' as a blood pressure reading <140 mmHg systolic and <90 mmHg diastolic among patients ages 18–85 with a diagnosis of hypertension.
- The hypertension control rate should be for the provider's or health system's entire adult hypertensive patient population ages 18–85, and not limited to a sample. The provider's or health system's hypertensive population ages 18–85 should include only patients in primary care or in cardiology care in the case of a cardiology clinic. Patients seen only in dental care or behavioral health care should not be included. Examples of ineligible data submissions include hypertension control rates that are limited to treatment cohorts from research studies or pilot studies, patients limited to a specific age range (such as 18–35 only), or patients enrolled in limited scale quality improvement projects.
- Completion of a checklist of sustainable clinic systems or processes that support hypertension control. These may include provider or patient incentives, dashboards, staffing characteristics, electronic record keeping systems, reminder or alert systems, clinician reporting, service modifications, etc.

The estimated burden for completing the application form is 30 minutes.

Amount of the Prize

Up to 35 of the highest scoring clinical practices or health systems will be recognized as Million Hearts Hypertension Control Champions. No cash prize will be awarded. Champions will receive national recognition through the Million Hearts initiative.

Basis Upon Which Champions Will Be Selected

The application will be scored based on two hypertension control rates: one for your most recent 12-month reporting period ending not earlier than December 31, 2019, and consistency with a previous rate for the 12-month period beginning 1 year before the current period.

Phase 1 includes verification of the hypertension prevalence and blood pressure control rate data submitted and a background check. For applicants whose Phase 1 data is verified as accurate and who pass the background check without concerns, phase 2 consists of a medical chart review. The medical chart review will verify the diagnosis of hypertension during the reporting year as well as blood pressure being controlled to <140 mmHg systolic and <90 mmHg diastolic. The estimated time for the data verification and validation is two hours.

A CDC-sponsored panel of three to five experts consisting of CDC staff will review the applications that pass phase 2 to select Champions. Final selection of Champions will consider all the information from the application form, the background check, data verification and medical chart validation, and final verified hypertension control rate. In the event of tied scores based on the hypertension control rate at any point in the selection process, geographic location may be considered to ensure a broad distribution of champions. Selected Champions will be notified by phone or email.

Some Champions may participate in a post-challenge telephone interview. The interview will include questions about the strategies employed by the individual practice or organization to achieve high rates of hypertension control, including barriers and facilitators for those strategies. The interview will focus on systems and processes and should not require preparation time by the Champion. The estimated time for the interview is one hour, which includes time to review the interview protocol with the interviewer, respond to the interview questions, and review a summary about the Champion's practices. The summary may be written as a success story and will be posted on the Million Hearts website.

Additional Information

Applications received from applicants will be stored in a password protected file on a secure server. The Challenge website will not include confidential or proprietary information about individual applicants, as described further below. The database of information submitted by applicants will not be posted on the website. Information collected from applicants will include general details, such as the business name, address, and contact information of the applicant. This type of information is generally publicly available. The application will collect and store only aggregate clinical data through the application process; no individually identifiable patient data will be collected or stored. Confidential or propriety data, clearly marked as such, will be secured to the full extent allowable by law.

Information for selected Champions, such as the provider, practice, or health system's name, location, hypertension control rate, and clinic practices that support hypertension control may be shared through press releases, publications, the challenge website, and Million Hearts and CDC resources.

Summary data on the types of systems and processes that all applicants use to control hypertension may be shared in documents or other communication products that describe generally used practices for successful hypertension control. HHS/CDC will use the summary data only as described.

Compliance With Rules and Contacting Contest Winners

Finalists and the Champions must comply with all terms and conditions of these Official Rules and being designated as a Million Hearts Hypertension Control Champion is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email or telephone after the date of the judging.

Privacy

If Contestants choose to provide CDC with personal information by registering or filling out the application form through the Challenge.gov website, that information is used to respond to Contestants in matters regarding their application, announcements of applicants, finalists, and winners of the Challenge.

General Conditions

CDC reserves the right to cancel, suspend, and/or modify the Challenge, or any part of it, for any reason, at HHS/CDC's sole discretion.

Award Approving Official: Robert R. Redfield, MD, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

Participation in this Contest constitutes a contestants' full and unconditional agreement to abide by the Contest's Official Rules found at *https://www.Challenge.gov* and *https://millionhearts.hhs.gov/.*

Authority: 15 U.S.C. 3719.

Dated: February 11, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–02987 Filed 2–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10710]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 14, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10710 Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number) collection; *Title of Information Collection:* Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation); *Use:* Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing

transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. The Centers for Medicare and Medicaid Services (CMS) will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

CMS will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. CMS may also utilize observational techniques to collect this information.

Form Number: CMS–10710 (OMB control number: 0938-New); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; Private Sector (business or other for-profits, not-for-profit institutions), State, Local or Tribal governments; Federal government; and Universities; *Number of Respondents:* 1,001,750; *Number of Responses:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview; *Total Annual Hours:* 51,175. (For questions regarding this collection contact Aaron Lartey at 410–786–7866).

Dated: February 11, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–03046 Filed 2–13–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5585]

Bridging for Drug-Device and Biologic-Device Combination Products; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability, extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability that appeared in the **Federal Register** of December 19, 2019. In the notice of availability, FDA requested comments on the draft guidance for industry entitled ''Bridging for Drug-Device and Biologic-Device Combination Products.'' The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice of availability published December 19, 2019 (84 FR 69749). Submit either electronic or written comments by April 20, 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 20, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 20, 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–2019–D–5585 for ''Bridging for Drug-Device and Biologic-Device Combination Products.'' 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: Robert Berlin, Center for Drug Evaluation and Research, Office of New Drugs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6373, Silver Spring, MD, 20993, 301–796–8828; Irene Chan, Center for Drug Evaluation and Research, Office of New Drugs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4420, Silver Spring, MD, 20993, 301–796–3962; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; Andrew Yeatts, Center for Devices and Radiological Health, Food and Drug Administration 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002, 301–796–4539; or Patricia Love, Office of Special Medical Programs, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5144, Silver Spring, MD 20993–0002, 301–796–8933.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 2019, FDA published a notice of availability with a 60-day comment period to request comments on the draft guidance for industry entitled ''Bridging for Drug-Device and Biologic-Device Combination Products.''

The Agency has received requests for an extension of the comment period for the notice of availability. Each request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice of availability. FDA has considered the requests and is extending the comment period for the notice of availability for 60 days, until April 20, 2020. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without compromising the timely publication of the final version of the guidance.

Dated: February 11, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03023 Filed 2–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5608]

Wockhardt Limited, et al.; Withdrawal of Approval of 28 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 28 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040732 ..	Phenytoin Sodium Capsules, 100 milligrams (mg) (Extended)	Wockhardt Limited, c/o Morton Grove Pharmaceuticals, Inc., 6451 Main St., Morton Grove, IL 60053.
ANDA 065230 ..	Ceftriaxone for Injection, Equivalent to (EQ) 250 mg base/vial; EQ 500 mg base/vial; EQ 1 gram (g) base/vial; EQ 2 g base/vial.	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 065231 ..	Ceftriaxone for Injection, EQ 1 g base/vial; EQ 2 g base/vial Piggy Back.	Do.
ANDA 065290 ..	Cefotaxime Sodium for Injection, EQ 500 mg base/vial; EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 065292 ..	Cefotaxime Sodium for Injection, EQ 10 g base/vial Pharmacy Bulk Package.	Do.
ANDA 065293 ..	Cefotaxime Sodium for Injection, EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 065312 ..	Cefoxitin for Injection, EQ 10 g base/vial Pharmacy Bulk Package.	Do.
ANDA 065313 ..	Cefoxitin for Injection, EQ 1 g base/vial; EQ 2 g base/vial	Do.
ANDA 065369 ..	Cefepime Hydrochloride (HCl) for Injection, EQ 500 mg base/vial; EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 065483 ..	Cefuroxime Sodium for Injection, EQ 750 mg base/vial; EQ 1.5 g base/vial.	Do.

Application No.	Drug	Applicant
ANDA 065484 ..	Cefuroxime Sodium for Injection, EQ 7.5 g base/vial Pharmacy Bulk Package.	Do.
ANDA 065503 ..	Cefuroxime Sodium for Injection, EQ 1.5 g base/vial	Do.
ANDA 075250 ..	Prednisolone Sodium Phosphate Oral Solution, EQ 15 mg base/5 milliliters (mL).	Bausch Health US, LLC, 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
ANDA 075618 ..	Acetaminophen, Butalbital, Caffeine, and Codeine Phosphate Capsules, 325 mg, 50 mg, 40 mg, and 30 mg.	Hikma Pharmaceuticals USA Inc., 1809 Wilson Rd., Columbus, OH 43228.
ANDA 090375 ..	Ampicillin and Sulbactam for Injection, EQ 1 g base/vial and EQ 500 mg base/vial; EQ 2 g base/vial and EQ 1 g base/vial.	Hospira, Inc.
ANDA 090646 ..	Ampicillin and Sulbactam for Injection, EQ 10 g base/vial and EQ 5 g base/vial.	Do.
ANDA 090653 ..	Ampicillin and Sulbactam for Injection, EQ 1 g base/vial and EQ 500 mg base/vial; EQ 2 g base/vial and EQ 1 g base/vial.	Do.
ANDA 090825 ..	Imipenem and Cilastatin for Injection, EQ 250 mg base/vial and 250 mg base/vial; EQ 500 mg base/vial and 500 mg/vial.	Do.
ANDA 090940 ..	Meropenem for Injection, 500 mg/vial, and 1 g/vial	Do.
ANDA 091007 ..	Imipenem and Cilastatin for Injection, EQ 500 mg base/vial and 500 mg/vial.	Do.
ANDA 202268 ..	Cefepime HCl for Injection, EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 202563 ..	Ceftriaxone for Injection, EQ 1 g base/vial; EQ 2 g base/vial ..	Do.
ANDA 202864 ..	Ampicillin Sodium for Injection, EQ 250 mg base/vial; EQ 500 mg base/vial; EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 202865 ..	Ampicillin Sodium for Injection, EQ 10 g base/vial Pharmacy Bulk Package.	Do.
ANDA 203132 ..	Cefotaxime Sodium for Injection, EQ 1 g base/vial; EQ 2 g base/vial.	Do.
ANDA 204879 ..	Pyridoxine HCl Injection, 100 mg/mL	Mylan Institutional, LLC, 4901 Hiawatha Dr., Rockford, IL 61103.
ANDA 206062 ..	Doxorubicin HCl for Injection, USP, 20 mg/vial	Hisun Pharmaceutical Hangzhou Co., LTD, 200 Crossing Blvd., 2nd Floor, Bridgewater, NJ 08807.
ANDA 206195 ..	Daunorubicin HCl for Injection, EQ 20 mg base/vial	Do.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of March 16, 2020. Approval of each entire application is withdrawn, including any strengths or products inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on March 16, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: February 11, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03025 Filed 2–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1398]

Mitigation Strategies To Protect Food Against Intentional Adulteration; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a supplemental draft guidance for industry entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' This supplemental draft guidance document, when finalized, will help food facilities that manufacture, process, pack, or hold food, and that are required to register under the Federal Food, Drug, and Cosmetic Act (FD&C Act) comply with the requirements of our regulation entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration.''

DATES: Submit either electronic or written comments on the draft guidance by June 15, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1398 for ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' 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 Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ryan Newkirk, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–3712, *ryan.newkirk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. FSMA enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur.

FSMA added to the FD&C Act several new sections that reference intentional adulteration. For example, section 418 of the FD&C Act (21 U.S.C. 350g) addresses intentional adulteration in the context of facilities that manufacture, process, pack, or hold food, and that are required to register under section 415 (21 U.S.C. 350d). Section 420 of the FD&C Act (21 U.S.C. 350i) addresses intentional adulteration in the context of high-risk foods and exempts farms except for farms that produce milk.

We are announcing the availability of a supplemental draft guidance for industry entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' This multi-chapter supplemental draft guidance for industry is intended to help food facilities required to comply develop and implement some of the components of a food defense plan, and meet other requirements under 21 CFR part 121. We are announcing the availability of the following chapters and appendices:

- Chapter 5—Mitigation Strategies Management Components: Food Defense Corrective Actions
- Chapter 6—Mitigation Strategies Management Components: Food Defense Verification
- Chapter 7—Reanalysis
- Chapter 9—Records
- Appendix 2—Mitigation Strategies in the Food Defense Mitigation Strategies Database
- Appendix 3—Determination of Status as a Very Small Business or Small Business Under Part 121: Mitigation Strategies to Protect Food Against Intentional Adulteration

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on food defense measures against intentional adulteration for the regulation ''Mitigation Strategies to Protect Food Against Intentional Adulteration.'' 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.

III. Paperwork Reduction Act of 1995

This draft 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. 3501–3520). The collections of information in 21 CFR part 121 have been approved under OMB control number 0910–0812.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: February 10, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02986 Filed 2–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—D Training and Workforce Development Subcommittee Meeting.

Date: March 19, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Conference Room Cabinet, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN.12F, Bethesda, MD 20892, (301) 594–2886, *tracy.koretsky@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02999 Filed 2–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2020–0042]

Consolidation of Redundant Coast Guard Boat Stations

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: We are requesting your comments on the planned consolidation of redundant Coast Guard boat stations. Many stations were established at a time when boats lacked engines and were powered by oars and paddles. With modern boat operating speeds and improved direction finding technology, many calls for Coast Guard assistance can be responded to by multiple units significantly faster than when these boat stations were first established. The combination of significantly improved response times, along with an overall reduction in rescue calls due to boating safety improvements throughout the nation, has resulted in a number of boat stations becoming redundant. This consolidation will result in a more robust response system by increasing staffing levels and capacity at select nearby boat stations. Such a consolidation creates synergy and more opportunities for boat operators to properly train instead of missing training opportunities while standing ready to respond to calls that do not come.

DATES: Written comments and related material may be submitted to the Coast Guard personnel specified. Your comments and related material must reach the Coast Guard on or before April 14, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0042 using the Federal rulemaking portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, please call or email Todd Aikins, Coast Guard Office of Boat Forces, 202–372–2463, *todd.r.aikins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security

II. Background and Purpose

In October of 2017, the Government Accountability Office issued report GAO–18–9, titled ''Actions Needed to Close Stations Identified as Overlapping and Unnecessarily Duplicative.'' This GAO report recommended the consolidation of eighteen boat stations. Due to environmental and operational factors, the Coast Guard is not considering all eighteen boat stations identified in the GAO report for consolidation. Instead, we anticipate consolidating five stations, with implementation notionally scheduled for fiscal year 2021. These stations have been identified because there are other units nearby capable of responding to cases in these areas, and because these five stations respond to a low number of cases. We do not anticipate any adverse effect on Coast Guard response capability. We expect an improvement to the proficiency of boat operators as well as a less complicated response system.

III. Discussion

Station Oxford and Stations-Small Fishers Island, Shark River, Roosevelt Inlet, and Salem have been identified for consolidation with neighboring stations.

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal 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. In your submission, please include the docket number for this notice and provide a reason for each suggestion or recommendation.

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 submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

Dated: February 11, 2020.

Matthew W. Sibley,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Capability.

[FR Doc. 2020–03079 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0047]

Towing Safety Advisory Committee; March 2020 Teleconference

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee teleconference meeting.

SUMMARY: The Towing Safety Advisory Committee will meet via teleconference, to discuss the two current tasks of the Committee. The Committee is expected to receive the final reports from the Subcommittee on Load Line Exemption for River Barges on Lakes Erie and Ontario.

DATES:

Meeting: The full Committee will meet by teleconference on Tuesday, March 10, 2020, from 1 p.m. until 3 p.m. Eastern Standard Time. Please note that this meeting may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the teleconference, submit your written comments no later than March 3, 2020.

ADDRESSES: To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on March 3, 2020, to obtain the needed information. The number of teleconference lines is limited and will be available on a first-come, first-served basis.

Instructions: You are free to submit comments at any time, including orally at the teleconference, but if you want Committee members to review your comments before the teleconference, please submit your comments no later than March 3, 2020. We are particularly interested in comments on the issue in the ''Agenda'' section below. You must include the words ''Department of Homeland Security'' and the docket number [USCG–2020–0047]. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more information about privacy and the docket, review the Privacy and Security Notice for the Federal Docket Management at *http://www.regulations.gov/privacyNotice.* Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2020–0047 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew D. Layman, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1421, fax 202–372–8382 or *Matthew.D.Layman@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters related to shallow-draft inland and coastal waterway navigation and towing safety. It was established by Public Law 96–380 in 1980 and was an active committee on December 3, 2018, the day before the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115–282) was enacted.

Agenda

The agenda for the March 10, 2020, teleconference meeting is as follows:

(1) Final report from the Subcommittee on ''Recommendations on Load Line Exemption for River Barges on Lakes Erie and Ontario (Task 17–02)''

(2) Additional tasking for the Subcommittee working on ''Recommendations on the Implementation of 46 Code of Federal Regulations Subchapter M—Inspection of Towing Vessels (Task 16–01)''

(3) Update on the National Towing Safety Advisory Committee and the December 4, 2020 termination date for the Towing Safety Advisory Committee.

(4) Public Comment period.

A copy of all meeting documentation will be available at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-Environmental-Standards/vfos/TSAC/.*

During the March 10, 2020 teleconference, a public comment period will be held from approximately 2:45 p.m. to 3 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may start before 2:45 p.m. if all other agenda items have been covered and may end before 3 p.m. if all of those wishing to comment have done so. Please contact Mr. Matthew D. Layman, listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Notice of Future 2020 Towing Safety Advisory Committee Meetings

To receive automatic email notices of future Towing Safety Advisory Committee meetings in 2020, go to the online docket, USCG–2020–0047 (*http://www.regulations.gov/#!docketDetail;D=USCG-2020-0047*), and select the sign-up-for-email-alerts option. We plan to use the same docket number for all Towing Safety Advisory Committee meeting notices in 2020, so when the next meeting notice is published you will receive an email alert from *http://www.regulations.gov* when the notice appears in this docket, in addition to notices of other items being added to the docket.

Dated: February 6, 2020.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2020–03030 Filed 2–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7029–N–01]

60-Day Notice of Proposed Information Collection: Evaluation of the Supportive Services Demonstration

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 14, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the Supportive Services Demonstration.

OMB Approval Number: 2528–0321.

Type of Request: Revision.

Form Number: N/A.

Description of the need for the information and proposed use: This request is for the clearance of additional data collection for the evaluation of HUD's Supportive Services Demonstration (SSD), also referred to as Integrated Wellness in Supportive Housing (IWISH). The SSD is a three-year demonstration sponsored by HUD to test the impact of a new model of housing-based supportive services on the healthcare utilization and housing stability of low-income older adults. The goal of the SSD model is to help older adults in HUD-assisted housing to age in place successfully. The SSD model funds a full-time Resident Wellness Director (RWD) and part-time Wellness Nurse (WN) to work in HUD-assisted housing developments that either predominantly or exclusively serve households headed by people aged 62 or over. These services are not typically available in HUD-assisted housing developments for this population and are anticipated to positively impact outcomes.

Eligible HUD-assisted properties applied for the demonstration and were randomly assigned to one of three groups: A ''treatment group'' that received grant funding to hire a RWD and WN and implement the SSD model (40 properties); an ''active control'' group that did not receive grant funding but received a stipend to participate in the evaluation (40 properties); and a ''passive control'' group that received neither grant funding nor a stipend (44 properties). The random assignment permits an evaluation that quantifies the impact of the SSD model by comparing outcomes at the 40 treatment group properties to outcomes at the 84 properties in the active and passive control groups.

Under contract with HUD's Office of Policy Development and Research, Abt Associates Inc. is conducting a two-part evaluation—a process study to describe the implementation of the demonstration and an impact study to measure the impact of the SSD model on residents' use of healthcare services and housing stability. The evaluation features analysis of administrative data and primary data collection. The following primary data collection activities have already received OMB approval: Questionnaires with staff from the treatment and active control properties, site visits and in-depth interviews with staff from the treatment and active control properties, and focus groups with residents of the treatment and active control properties and with caregivers of residents of the treatment properties. This request is for a final round of data collection through: (1) Interviews with RWD at the 40 treatment group properties; (2) interviews with WN at the 40 treatment group properties; (3) interviews with Service Coordinators at the 40 active control properties; and (4) interviews with representatives of the 28 organizations that own or manage the 40 treatment properties. The purpose of these activities is to collect data from multiple perspectives about implementation experience with the demonstration, the strengths and weakness of the model, and how resident wellness activities compare across treatment and control properties. This information is necessary to complete the study of the demonstration's implementation—providing input from key stakeholders as of the end of the demonstration. The new information will complement the research already collected at the start and mid-point of the demonstration and will offer stakeholders a final opportunity to provide their input on the demonstration.

Respondents: Staff working at the properties in the study's treatment and active control groups and representatives of the organizations that own or manage the treatment group properties.

Estimated Number of Respondents: 156.

Estimated Time per Response: 1.5 hours (up to 1 hour for the interview and up to 0.5 hours for preparation).

Frequency of Response: 1 time.

Estimated Total Annual Burden Hours: 234.

Estimated Total Annual Cost: $10,639.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Interviews with Resident Wellness Directors	54	1	1	1.5	81	$36.93	$2,991
Interviews with Wellness Nurses	42	1	1	1.5	63	57.12	3,599
Interviews with Service Coordinators	40	1	1	1.5	60	36.93	2,216
Interviews with owner organizations	20	1	1	1.5	30	61.11	1,833
Total	156				234		10,639

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A 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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 3, 2020.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2020–03059 Filed 2–13–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7029–N–02]

60-Day Notice of Proposed Information Collection: Strategies for Removing the Regulatory Impediments to the Financing and Siting of Factory-Built Housing in American Communities

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 14, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Strategies for Removing the Regulatory Impediments to the Financing and Siting of Factory-Built Housing in American Communities.

OMB Approval Number: N/A.

Type of Request (*i.e.,* new, revision or extension of currently approved collection): New collection.

Form Number: N/A.

Description of the need for the information and proposed use: To assess the cost-effectiveness of factory-built housing as a potential affordable housing option in urban and suburban communities, HUD seeks to better understand the regulatory barriers preventing or limiting the use of factory-built housing. This study is framed by the general research question: What are the main drivers or barriers to the financing, siting and development of factory-built housing systems in various communities? A significant portion of the work of this study will involve identifying the types of barriers, their potential impact (or stringency), and their use in various communities. This process will involve research on several different communities in order to develop a typology of different barriers, catalog the community contexts where different barriers are more prevalent, and develop opportunity cost estimates of different barriers in different contexts. Information will be collected online and by telephone from local land use planning officials and manufacturers and dealers of factory-built housing to help determine the extent to which regulatory barriers limit the development of factory-built housing systems as an affordable housing option.

Members of affected public: This study will involve collecting information from two primary groups (1) Local land use planning officials (2) Manufacturers and dealers of factory-built housing.

Estimated Number of Respondents: 125. The objective of this study is to conduct in-depth telephone interviews with local land use planning officials on regulatory barriers to factory-built housing from a sample of 30 communities, for a total of 30 completed interviews. The study team anticipates contacting multiple individuals in the land use planning department from each sampled community to ascertain the targeted respondent. Therefore, the total estimated number of community respondents is estimated at 120 (*i.e.,* 4 persons per community). In-depth interviews will also be conducted with 5 manufacturers or dealers of factory-built housing.

Estimated Time per Response: 0.36 hours. The estimated time per response will vary depending on the respondent category (*e.g.,* informant vs. respondent) and may range from 5 to 45 minutes. In-depth interviews will not exceed 45 minutes. Across all study respondents, the average estimated time per response is 0.36 hours.

Frequency of Response: Once.

Estimated Total Annual Burden Hours: 45 hours.

Estimated Total Annual Cost: The only cost to respondents is that of their time estimated to be $1,740.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701Z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Outreach Efforts	90	1	90	0.21	19	$36.65	$696
In-Depth Interviews	30	1	30	0.75	22	36.65	806
In-Depth Interviews (Manufacturers/Dealers)	5	1	5	0.75	4	59.56	238
Total	125	1	125	0.36	45	38.67	1,740

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A 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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 3, 2020.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2020–03063 Filed 2–13–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2019–N173]

Sport Fishing and Boating Partnership Council; Call for Nominations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Call for nominations.

SUMMARY: The U.S. Department of the Interior is seeking nominations for individuals to be considered for membership on the Sport Fishing and Boating Partnership Council (Council).

DATES: Nominations can be submitted by email or mail. Email submissions must be dated March 6, 2020 and mailed submissions must be postmarked.

ADDRESSES: Please address your nomination letters to Ms. Aurelia Skipwith, Director, U.S. Fish and Wildlife Service. Submit your nomination letters via email, U.S. mail, or hand-delivery to Linda Friar, Designated Federal Officer; Sport Fishing and Boating Partnership Council; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Mailstop 3C016A–FAC; Falls Church, VA 22041–3803, *linda_friar@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Friar, at the above address, via email at *linda_friar@fws.gov,* or by telephone at (703) 358–2056.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary, through the Director, U.S. Fish and Wildlife Service, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.). The Council functions solely as an advisory body. Four current members' terms expire April 1, 2020.

Council Duties

The Council's duties and responsibilities, where applicable, are as follows:

a. Providing advice that will assist the Secretary in carrying out the authorities of the Fish and Wildlife Act of 1956.

b. Fulfilling responsibilities established by Executive Order 12962:

(1) Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support.

(2) Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources.

c. Recommending policies or programs to increase public awareness and support for the Sport Fish Restoration and Boating Trust Fund.

d. Recommending policies or programs that foster conservation and ethics in recreational fishing and boating.

e. Recommending policies or programs to stimulate angler and boater participation in the conservation and restoration of aquatic resources through outreach and education.

f. Advising how the Secretary can foster communication and coordination among government, industry, anglers, boaters, and the public.

g. Providing recommendations for implementation of Secretary's Order 3347—Conservation Stewardship and Outdoor Recreation, and Secretary's Order 3356—Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories.

h. Providing recommendations for implementation of regulatory reform initiatives and policies specified in section 2 of Executive Order 13777—Reducing Regulation and Controlling Regulatory Costs; Executive Order 12866—Regulatory Planning and Review, as amended; and section 6 of Executive Order 13563—Improving Regulation and Regulatory Review.

Council Makeup

The Director of the U.S. Fish and Wildlife Service, and the President of the Association of Fish and Wildlife Agencies are ex officio members. The Council may consist of no more than 18 members and up to 16 alternates appointed by the Secretary for a term not to exceed 3 years. Appointees will be selected from among, but not limited to, the following national interest groups:

a. State fish and wildlife resource management agencies (two members—one a Director of a coastal State, and one a Director of an inland State);

b. Saltwater and freshwater recreational fishing organizations;

c. Recreational boating organizations;

d. Recreational fishing and boating industries;

e. Recreational fishery resources conservation organizations;

f. Tribal resource management organizations;

g. Aquatic resource outreach and education organizations; and

h. The tourism industry.

Nomination Method and Eligibility

Members will be senior-level representatives of recreational fishing, boating, and aquatic resources conservation organizations, and must have the ability to represent their designated constituencies. Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior to make an informed decision regarding the candidate's suitability to serve on the Council. Current members whose terms are expiring April 1, 2020 are eligible to be renominated and reappointed to the Council. Any nominee may also submit the name and resume of a person on their organization's staff who they would like to be considered as their alternate.

Public Disclosure: Before including your address, phone number, email address, or other personal identifying information in your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

David Hoskins,

Assistant Director, Fish and Aquatic Conservation, USFWS.

[FR Doc. 2020–03020 Filed 2–13–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAKA02000.L16100000.DS0000. LXSS043L0000.241A]

Notice of Availability of the Record of Decision and Final Environmental Impact Statement for the Haines Amendment to the Ring of Fire Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) and Approved Haines Amendment to the Ring of Fire Resource Management Plan (RMP) for the BLM-managed public lands in the Haines area of Alaska. The State Director signed the ROD on February 7, 2020, which constitutes the BLM's final decision and makes the ROD effective immediately.

ADDRESSES: The ROD is available on the BLM ePlanning website at *https://go.usa.gov/xpuEW.* Click on the Documents and Reports link to find the electronic version of these materials. Hard copies of the ROD are available for public inspection at the following locations:

- BLM Glennallen Field Office, Milepost 186.5 Glenn Highway, Glennallen, Alaska 99588; BLM Alaska Public Information Center, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513;
- Haines Borough Public Library, 111 3rd Avenue Haines, Alaska 99827;
- Municipality of Skagway Borough, 700 Spring Street, Skagway, Alaska 99840;
- BLM Anchorage District Office, 4700 BLM Road, Anchorage, Alaska 99507; and
- Alaska Resources Library and Information Services, 3211 Providence Drive, Suite 111, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Bruce Loranger, BLM Anchorage District Office, telephone: 907–267–1221, email: *bloranger@blm.gov.* People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Haines planning area is located in Southeast Alaska, bounded by the Canadian Border to the north and west, Glacier Bay National Park to the southwest, and the Tongass National Forest to the south and east. This planning area consists mainly of steep and remote mountainous terrain, with bedrock and glaciers that restrict road and trail access. Of the approximately 920,000 total acres within the planning area, the BLM manages approximately 317,000 acres. The size of the planning area has changed since signing of the Ring of Fire RMP Record of Decision (ROD) in 2008 due to the conveyance of several sections of BLM-managed lands to the State of Alaska.

The purpose of this planning effort was to identify which designations, associated management practices, and implementation actions best fulfill the resource and multiple-use needs within the Haines planning area. It also evaluated an Area of Critical Environmental Concern, as required by the Ring of Fire RMP ROD. In addition, this planning effort considered the results of a multi-year, BLM-funded study of goat and bear habitat in the Haines area by the Alaska Department of Fish and Game, completed in 2017. This amendment revises the applicable portions of the Ring of Fire RMP and provides a plan which is consistent with evolving law, regulations, and policy.

The BLM prepared an EIS in accordance with the National Environmental Policy Act of 1969 to analyze the direct, indirect, and cumulative environmental impacts associated with the proposed action and the alternatives. The ROD approves the Agency Preferred Alternative identified in the Final EIS. The BLM issued the ROD based on compliance with relevant laws, regulations, policies, and plans, including those guiding agency decisions that may have an impact on resources and their values, services, and functions.

On Oct. 7, 2019, the Notice of Availability (NOA) for the Haines Amendment to the Ring of Fire RMP and Final EIS was published in the **Federal Register**. The publication of the NOA initiated a 30-day protest period for the proposed land-use-planning decision. NOA publication also initiated a simultaneous 60-day review by the Governor of Alaska to identify inconsistencies with State or local plans, policies, or programs.

At the close of the protest period three protests (of which two were found to have standing) were received. These protests were resolved by the BLM Director; individual protest response letters were sent to all protesting parties. Protest resolution is contained in the Director's Protest Summary Report, which is available online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.* The Alaska Governor's review found that the RMP Amendment is consistent with state plans, policies, and programs.

(*Authority:* 16 U.S.C. 3120(a); 40 CFR 1506.6(b))

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020–03010 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB010–L16100000–DQ0000]

Notice of Availability of the Missoula Proposed Resource Management Plan and Associated Final Environmental Impact Statement, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Missoula Field Office has prepared a Proposed Resource Management Plan (RMP) with an associated Final Environmental Impact Statement (EIS) for BLM public lands and resources managed by the Missoula Field Office, and by this notice is announcing the opening of the protest period.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP. To ensure that protests will be considered, the BLM must receive any protests on the Proposed RMP on or before the 30th day following the date the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**.

ADDRESSES: Copies of the Proposed RMP and Final EIS are available at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804, or may be viewed online at: *https://go.usa.gov/xmyyG.*

All protests on the Proposed RMP must be in writing and submitted by any of the following methods:

Website: https://go.usa.gov/xmyyG.

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Maggie Ward, RMP Project Manager, Missoula Field Office, telephone: (406) 329–3914, and at the mailing address and website listed earlier. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Ward during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Missoula Proposed RMP provides a single, comprehensive land use plan that guides management of BLM lands on approximately 163,000 acres of BLM-managed public lands and 267,000 acres of Federal mineral estate in western Montana in Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders counties. Over 99 percent of the BLM-managed public lands are in Granite, Missoula and Powell counties. The planning area is currently managed under the Garnet Resource Area RMP (1986). This planning effort would update management guidance from the Garnet Resource Area RMP, as amended, and create a new Missoula RMP.

The Proposed RMP/Final EIS evaluates three alternatives in detail. Alternative A is the No Action Alternative, which is a continuation of current management in the existing Garnet Resource Area RMP (1986).

The agency Proposed Plan alternative is Alternative B, with a few modifications, including the addition of three Backcountry Conservation Areas (BCAs) and one Research Natural Area (RNA). Alternative B focuses on active forest management and allows for the broadest range of management tools to provide forest products and meet forest management objectives. Alternative B provides for moving forest vegetative communities to the natural range of variability to provide for priority wildlife habitat and sustainable forest products at a greater rate with increased forest treatments. Alternative B allows more lands to be available for livestock grazing as a management tool. The Proposed Plan focuses on recreation opportunities, including some Special Recreation Management Areas and Backcountry Conservation Areas.

Alternative C emphasizes priority areas for wildlife habitat and vegetation, while allowing for modest development of forest resources. Alternative C aims to move forested ecosystems towards the natural range of variability with an emphasis on natural processes and less active management (lower amounts of forest treatments). Alternative C focuses on wildlife-dependent recreation.

The Missoula Draft RMP/Draft EIS public comment period began on May 17, 2019, and ended on August 15, 2019. The BLM held one public open house meeting in Missoula, Montana, during the public comment period on the Draft RMP/Draft EIS. The BLM considered and incorporated in the proposed plan, as appropriate, comments received from the public, cooperating agencies and internal BLM review.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6 and 43 CFR 1610.2)

John Mehlhoff,

State Director.

[FR Doc. 2020–02880 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL060–L16100000–DQ0000]

Notice of Availability of the Lewistown Proposed Resource Management Plan and Associated Final Environmental Impact Statement, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Lewistown and Butte Field Offices have prepared a Proposed Resource Management Plan (RMP) with an associated Final Environmental Impact Statement (EIS) for BLM public lands and resources managed by the Lewistown Field Office, and a portion of the Butte Field Office in northern Lewis and Clark County, Montana, and by this notice are announcing the opening of the protest period.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP. To ensure that protests will be considered, the BLM must receive any protests on the Proposed RMP on or before the 30th day following the date the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**.

ADDRESSES: Copies of the Proposed RMP and Final EIS are available at the

Lewistown Field Office, 920 NE Main Street, Lewistown, MT 59457, or may be viewed online at: *https://go.usa.gov/xUPsP.*

All protests on the Proposed RMP must be in writing and submitted by any of the following methods:

Website: https://go.usa.gov/xUPsP.

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Dan Brunkhorst, RMP Project Manager, Lewistown Field Office, at telephone: (406) 538–1981, and at the mailing address and website listed earlier. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Brunkhorst during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Lewistown Proposed RMP provides a single, comprehensive land use plan that guides management of BLM lands on approximately 651,200 acres of BLM-managed public lands and 1,196,800 acres of Federal mineral estate in central Montana in Cascade, Fergus, Judith Basin, Meagher, Petroleum, Pondera, Teton, Chouteau, and Lewis and Clark counties. These lands and minerals are managed by two BLM offices located in Lewistown and Butte, Montana. The RMP will fulfill the needs and obligations set forth by NEPA, FLPMA, and BLM management policies. The RMP will reflect the changing needs of the planning area over the next several decades, and will replace the current Headwaters and Judith RMPs, as amended, that were developed in 1984 and 1994, respectively.

The Proposed RMP/Final EIS evaluates four alternatives in detail. Alternative A is the No Action Alternative, which is a continuation of current management direction in the existing Judith and Headwaters RMPs.

Alternative B emphasizes managing habitats for priority plant, wildlife, and fish species while providing modest development of resource uses. Alternative B emphasizes hunting, fishing, and other recreation through Backcountry Conservation Areas (BCAs) and management of lands with wilderness characteristics.

The agency Proposed Plan alternative is Alternative C with a few modifications, including the addition of two BCAs and two Areas of Critical Environmental Concerns (ACECs), and adjustments to oil and gas stipulations to be consistent with surrounding BLM field offices. Alternative C emphasizes resource uses on BLM-administered lands and mineral estate targeting social and economic outcomes while protecting land health. The Proposed Plan employs fewer special management designations for resource-use objectives, but does emphasize wildlife-dependent recreation through the allocation of two BCAs.

Alternative D emphasizes resource uses and a variety of management prescriptions (*e.g.,* recreation management areas, ACECs, Visual Resource Management, etc.) to address the use and conservation of natural and cultural resources, while sustaining and enhancing forest and range health across the landscape.

The Lewistown Draft RMP/Draft EIS public comment period began on May 17, 2019, and ended on August 15, 2019. The BLM held three public open house meetings in Winnett, Lewistown, and Great Falls, Montana, during the public comment period on the Draft RMP/Draft EIS. The BLM considered and incorporated in the proposed plan, as appropriate, comments received from the public, cooperating agencies and internal BLM review.

Before including your address, phone number, email address, or other personally identifiable information in your protest, be aware that your entire protest—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6 and 43 CFR 1610.2)

Theresa M. Hanley,

Acting State Director.

[FR Doc. 2020–02881 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000, L71220000.EU0000, LVTFK1999070, 20X, WYW165375]

Notice of Realty Action: Non-Competitive (Direct) Sale of Public Land in Big Horn County, Wyoming (Paint Rock)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a non-competitive (direct) sale of 58.54 acres of public land in Big Horn County, Wyoming, to Paint Rock Angus Ranch, Inc., for the purpose of resolving an inadvertent unauthorized use of public lands. The non-competitive, direct sale will be subject to the applicable provisions of the Federal Land Policy Management Act of 1976, as amended (FLPMA), and BLM regulations. The sale will be for no less than the appraised fair market value (FMV) of $40,000.

DATES: Submit written comments regarding the sale parcel and associated Environmental Assessment (EA) until March 30, 2020.

ADDRESSES: Mail written comments concerning this direct sale to Field Manager, BLM, Worland Field Office, 101 South 23rd Street, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Connie Craft, Realty Specialist, BLM, Worland Field Office, at the above address, telephone: 307–347–5233, email: *c75craft@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Craft. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following-described public land in Big Horn County, Wyoming, has been examined and found suitable for sale under the authority of Section 203 of the FLPMA:

Sixth Principal Meridian, Wyoming

T. 50 N., R. 90 W.,
Sec. 34, Parcel A;
Sec. 35, Parcel A.

The areas described aggregate 58.54 acres.

The sale is in conformance with the BLM Worland Approved Resource Management Plan (September 18, 2015), which identifies these parcels of public

land as suitable for disposal on page 104 and management action 6009. FLPMA Section 203 allows for the disposal of public lands if they meet the following disposal criteria: ''Such tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency.'' The subject parcels meet this criteria because the existing structures and the change in the character of the lands associated with agricultural ranching operations make the lands difficult to manage as public lands.

A parcel-specific EA, document numbered DOI–BLM–WY–R010–2019–0017–EA, was prepared in connection with this sale. A copy of the EA, Finding of No Significant Impact and Decision Record are available online at: *https://go.usa.gov/xmQfd.*

The parcels are not identified as access points for recreation in accordance with Secretary's Order 3373—Evaluating Public Access in Bureau of Land Management Public Land Disposals and Exchanges. There are no anticipated impacts from the BLM-managed public land disposal on recreational access to adjacent tracts of publicly accessible lands.

In accordance with 43 CFR 2710–0–6(c)(3)(iii) and 43 CFR 2711.3–3(a), a direct sale may be appropriate to resolve inadvertent, unauthorized use of the land or to protect existing equities in the land. In this case, a competitive sale is not appropriate because the subject lands contain improvements that directly support the adjoining ranch property, owned by Paint Rock Angus Ranch, Inc., rendering the land unusable by the public. The minimal acreage was considered to create a manageable boundary that included the lands needed to protect the existing irrigation improvements and resolve inadvertent unauthorized use. The public's interest is best served by resolving the inadvertent unauthorized use and receiving payment at FMV for the public lands.

Upon publication of this Notice in the **Federal Register**, the public lands described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. The temporary segregation will terminate upon, (1) Issuance of a conveyance document, (2) Publication in the **Federal Register** terminating the segregation, or (3) On February 14, 2022, unless extended by the BLM Wyoming State Director, in accordance with 43 CFR 2711.1–2(d).

Upon publication of this Notice, the BLM will no longer accept land use applications affecting these public lands, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 43 CFR 2886.15.

The conveyance document, if issued, will be subject to the following terms, conditions, and reservations:

1. A rights-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits in the lands so conveyed and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior, together with all necessary access and exit rights; and

3. All valid existing rights issued prior to conveyance.

The BLM will publish this Notice in the Basin Republican Rustler newspaper once each week for 3 consecutive weeks. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered.

Any adverse comments regarding the sale will be reviewed by the BLM Wyoming State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments, including names and street addresses of respondents, will be available for public review at the BLM Worland Field Office during regular business hours, except holidays.

(Authority: 43 CFR 2711)

Duane Spencer,

Acting State Director, Wyoming.

[FR Doc. 2020–03036 Filed 2–13–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Provider Enrollment Form

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Provider Enrollment Form,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 16, 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=202002-1240-001 (this link will only become active on the day following publication of this notice)* or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–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 sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Provider Enrollment

Form (Form OWCP–1168). The form requests profile information on providers that enroll in one or more of OWCP's benefit programs so its billing contractor can pay them for services rendered to beneficiaries using its automated bill processing system. In addition to the enrollment form information collection, the OWCP bill processing contractor currently collects electronic data interchange (EDI) information from the provider *only if* the provider chooses a data exchange submission method. Once the new OWCP–1168 form is in place, the existing EDI template will no longer be applicable. The current EDI template collects information that is duplicative to information collected on Form OWCP–1168, such as names, addresses, and NPI. Collecting EDI information with the enrollment information in one form will improve efficiency in collecting the information from providers, reduce the time required for processing by operational staff, and will significantly reduce errors associated with mismatching provider enrollments to their EDI information. This information collection will be submitted to OMB under the emergency processing request procedures, as outlined by 5 CFR part 1320 Section 13, to allow for implementation of the revisions to the Provider Enrollment Form as soon as possible, and to incorporate regulatory updates implementing the Black Lung benefits Act which becomes applicable on April 26, 2020. Once OMB has approved the emergency processing request, a separate 60-day **Federal Register** Notice will be published to again solicit public comments.

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 it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to 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 1240–0021.

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: Provider Enrollment Form.

OMB Control Number: 1240–0021.

Affected Public: Private Sector, Business or other for-profits.

Total Estimated Number of Respondents: 64,325.

Total Estimated Number of Responses: 64,325.

Total Estimated Annual Time Burden: 32,162.5 hours.

Total Estimated Annual Other Costs Burden: $37,309.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: February 7, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–02961 Filed 2–13–20; 8:45 am]

BILLING CODE 4510–CR–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comment on Considerations for Additional Measures of Poverty

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments.

SUMMARY: Office of Management and Budget (OMB) requests comment on the questions posed by the Interagency Technical Working Group on Evaluating Alternative Measures of Poverty (Working Group) to help inform the Working Group's recommendations on producing additional measures of poverty. The Working Group has developed a consensus interim report that details its considerations to date. The Working Group's interim report is summarized in the **SUPPLEMENTARY INFORMATION** section below and available in full on *www.regulations.gov.* The interim report outlines the history of poverty measurement in the U.S., describes the Working Group's considerations of an extended income-based poverty measure and a consumption-based poverty measure, and identifies other areas worthy of future research. It also identifies questions for public comment, toward the goal of helping to inform the remaining discussions of the Working Group, and meet their charge of identifying whether or not to recommend to the Chief Statistician of the United States that one or more new measures of poverty be developed and published. The Working Group's interim report reflects considerations to date, but does not reflect recommendations or decisions. This interim report and the Working Group's questions are being published to solicit input from the public.

DATES: To ensure consideration of comments on this Notice, comments must be provided in writing no later than 60 days from the publication date of this notice. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to send comments electronically (see **ADDRESSES**, below).

ADDRESSES: Written comments may be addressed to: Office of the Chief Statistician, OMB, email *US_Chief_Statistician@omb.eop.gov,* fax number (202) 395–7245. Comments may be sent via *www.regulations.gov*—a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''OMB–2019–0007'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Comments submitted in response to this notice may be made available to the public and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be

automatically captured and included as part of the comment that is placed in the public docket; however, *www.regulations.gov* does include the option of commenting anonymously. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Electronic Availability: **Federal Register** notices are available electronically at *www.federalregister.gov/.*

FOR FURTHER INFORMATION CONTACT: For information about this request for comments, contact Kerrie Leslie, OMB, 9215 New Executive Office Building, 725 17th St. NW, Washington, DC 20503, telephone (202) 395–1093.

SUPPLEMENTARY INFORMATION: Under the *Budget and Accounting Procedures Act* of 1950 (31 U.S.C. 1104(d)) and the *Paperwork Reduction Act* of 1995 (44 U.S.C. 3504(e)), OMB is issuing a request for comment on the questions posed by the Interagency Technical Working Group on Evaluating Alternative Measures of Poverty (Working Group).

In its role as coordinator of the Federal statistical system under the Paperwork Reduction Act, OMB, among other responsibilities, is required to ensure the system's efficiency and effectiveness. A key method used by OMB to achieve this responsibility is the promulgation, maintenance, and oversight of Government-wide principles, policies, standards, and guidance concerning the development, presentation, and dissemination of Federal statistical products. OMB's Office of the Chief Statistician, within the Office of Information and Regulatory Affairs (OIRA), relies on public comment and subject matter expertise across the Federal government to identify areas where existing OMB policies or guidance may be out of date, lacking clarity, or insufficient for efficient coordination of Federal statistics.

Accordingly, OMB is seeking public comment on questions (see DESIRED FOCUS OF COMMENTS, below) posed by the Working Group to help inform the Working Group's recommendations on producing additional measures of poverty.

I. Background

In 1964, President Johnson's ''War on Poverty'' increased public interest in poverty measures in the United States. That year, the Council of Economic Advisers proposed initial poverty definitions that defined approximately 20 percent of the population as poor and used an absolute standard for adjusting thresholds historically.[1] In 1965, the Office of Economic Opportunity adopted a set of now basic poverty definitions developed by economist and statistician Mollie Orshansky, which were based on the cost of nutritionally adequate diet and were similar to those of the Council of Economic Advisers, as a working definition of poverty for statistical planning.[2] In 1968, the Census Bureau published its first full report on the subject of poverty.[3] Since 1969, these poverty estimates have been based on absolute living standards with adjustments to the poverty thresholds based on increases in the Consumer Price Index.[4] In 1978, OMB issued Statistical Policy Directive No. 14 specifying the definition of poverty for statistical purposes.[5] (Issuance of Statistical Policy Directives is one way in which OMB coordinates the decentralized U.S. Federal statistical system. These Directives are issued when a system-wide need has been identified to ensure consistent statistical standards and guidelines are used across the decentralized system.) The official poverty measure (OPM), as defined in OMB Statistical Policy Directive No. 14, continues to be produced and updated every year.

In 1992, the National Academy of Sciences (NAS) convened a Panel on Poverty and Family Assistance to analyze statistical issues in measuring and understanding poverty, particularly in the context of changes in the U.S. society, economy, and public policy. NAS released a report entitled *Measuring Poverty: A New Approach* in 1995.

In 2009, OMB's Chief Statistician formed an Interagency Technical Working Group on Developing a Supplemental Poverty Measure (SPM Development Working Group). The SPM Development Working Group asked the Census Bureau and the Bureau of Labor Statistics to develop a Supplemental Poverty Measure (SPM) that could be used to improve understanding of the economic well-being of consumers, families, and households living in the U.S., and the impact of federal policies on poverty statistics. In 2010, the SPM Development Working Group issued a series of suggestions that included a resource measure that accounted for taxes and some in-kind benefits, with thresholds based on recent consumption patterns.

In November 2011, the Census Bureau released the first SPM report, providing SPM estimates for 2009 and 2010. At the same time, BLS released SPM thresholds for reference consumer units by household tenure (renters, owners with mortgages, and owners without mortgages). From 2011 to 2019, the Census Bureau has released the SPM report with estimates on an annual basis, with the most recent report (September 2019) containing 2018 estimates. BLS produced the SPM thresholds during this timeframe. The SPM does not replace the official poverty measure, and the SPM is not the measure used to estimate eligibility for government programs. Instead, the SPM is designed as an experimental measure that defines income thresholds and resources in a manner consistent with the 1995 NAS report. This purpose differs from that of the official poverty measure, and with differences in both the resource measure and thresholds, the two measures are not directly comparable.

Since the issuance of the first SPM, OMB convened a separate interagency technical working group (SPM Implementation Working Group) to advise on challenges and opportunities the Census Bureau and BLS identify concerning data sources, estimation, survey production, and processing activities for development, implementation, publication, and improvement of the SPM.

Currently, the SPM Implementation Working Group is reviewing potential changes to implement in 2021, the 10-year anniversary of the first SPM report. Potential changes to the SPM would be

[1] Council of Economic Advisers. 1964. ''The Problem of Poverty in America.'' In Economic Report of the President. Washington: U.S. Government Printing Office. Available at *https://fraser.stlouisfed.org/files/docs/publications/ERP/1964/ERP_1964.pdf.*

[2] U.S. Department of Health and Human Services. 2000. ''Reasons for Measuring Poverty in the United States in the Context of Public Policy—A Historical Review: 1916–1995. Office of the Assistant Secretary for Planning and Evaluation. June 1. Available at *https://aspe.hhs.gov/report/reasons-measuring-poverty-united-states-context-public-policy-historical-review-1916-1995.*

[3] U.S. Census Bureau. 1968. ''The Extent of Poverty in the United States: 1959 to 1966.'' Series P–60, No. 54. May 31. Available at *https://www2.census.gov/library/publications/1968/demographics/p60-54.pdf.*

[4] ''Definition of Poverty for Statistical Purposes.'' Exhibit L. Circular No. A–46. Available at *https://www.cia.gov/library/readingroom/docs/CIA-RDP86-00244R000300400009-1.pdf and* U.S. Census Bureau. 2017. ''Office of Management and Budget (OMB) in Statistical Policy Directive 14 (May 1978).'' Available at *https://www.census.gov/topics/income-poverty/poverty/about/history-of-the-poverty-measure/omb-stat-policy-14.html.*

[5] U.S. Census Bureau. 2017. ''Office of Management and Budget (OMB) in Statistical Policy Directive 14 (May 1978).'' Available at *https://www.census.gov/topics/income-poverty/poverty/about/history-of-the-poverty-measure/omb-stat-policy-14.html.*

presented and discussed at conferences and expert meetings and posted on the Census Bureau's SPM website (*www.census.gov/topics/income-poverty/supplemental-poverty-measure.html).* The SPM Implementation Working Group plans to announce any potential changes in Fall 2020 that would be implemented in the September 2021 SPM report.

As nearly a decade has passed since the SPM Development Working Group provided initial observations for the SPM, it is an opportune time to evaluate possible additional alternative measures of poverty distinct from the OPM and SPM. Recognizing the value of various poverty and well-being measures for informing the public and the Federal government, the Chief Statistician of the United States chartered the Interagency Technical Working Group on Evaluating Alternative Measures of Poverty (Working Group) in 2019. The Working Group's purpose is to evaluate possible alternative measures of poverty, how such measures might be constructed, and whether to publish those measures along with the measures currently being published. The Working Group includes career representatives from 11 Federal agencies and is chaired by OMB's Office of the Chief Statistician. Additional poverty measures recommended by the Working Group and ultimately produced by any government agency will not be intended to replace the OPM or the SPM. Additional poverty measures would not be intended for use to estimate eligibility for government programs. The OPM and the SPM would continue to be produced and updated every year.

The Working Group developed a consensus interim report detailing its considerations to date. The interim report is available on *www.regulations.gov* with docket number ''OMB–2019–0007''. A final report is planned to be delivered to the Chief Statistician of the U.S. by the end of Spring 2020 that details the Working Group's set of final recommendations with regard to producing and publishing alternative measure(s).

II. Considerations of the Working Group

In its interim report, the Working Group laid out considerations to date to evaluate, and potentially produce, additional alternative measures of poverty. OMB invites the public to read and offer comments on the approach described in the Working Group's interim report, which can be found at *www.regulations.gov.* OMB is especially interested in receiving comments on the set of questions posed by the Working Group outlined in the DESIRED FOCUS OF COMMENTS section below. A summary of the interim report follows:

Since the establishment of the U.S. official poverty measure (OPM) more than fifty years ago, there has been continuing research on poverty measurement. Alternative estimates of poverty have been published for more than three decades by the Census Bureau, and in 2011 the Census Bureau in cooperation with the Bureau of Labor Statistics (BLS) began publishing the Supplemental Poverty Measure (SPM). Existing and previous measures of poverty produced by the Federal government are income based and rely on surveys to capture the income data. Guidance issued by the Commission on Evidence-based Policymaking, National Academy of Sciences reports, and OMB have recommended combining administrative data with survey data to improve national statistics. In recent years, evidence has shown that there is survey misreporting of many income sources. Recognizing the changing landscape and that alternative statistics can provide useful information, the Chief Statistician of the United States formed the Interagency Technical Working Group on Evaluating Alternative Measures of Poverty (Working Group) to evaluate possible alternative measures of poverty, how such measures might be constructed, and whether to publish those measures along with current measures.

To provide context for the Working Group's discussions of alternative measures of poverty, the interim report discusses the history of poverty measurement in the U.S., including the development and implementation of the OPM and SPM. In addition, the Working Group identified some of the uses of the OPM and SPM, as well as noted some of the known concerns with each of the measures.

To date, the Working Group has primarily focused on single-dimensional poverty measurement. Single-dimensional poverty measures have two key parts: The resource measure (such as income or consumption) and the thresholds (the cutoffs to which the resource measure is compared). The primary focus of the Working Group's discussions have been on resource measures, leaving discussion of thresholds for future months.

The Working Group is considering both extended income-based and consumption-based resource measures, as well as identifying other areas worthy of future research by the Federal Statistical System. For an extended income resource measure, the Working Group is considering expanding beyond pre-tax cash income to include some in-kind transfers and account for taxes and tax credits, much like the SPM resource measure. In addition, the Working Group is considering whether and how to incorporate the value of health insurance benefits and implicit flows from non-financial assets (*e.g.,* vehicles, owner occupied housing, other properties). An extended income resource measure may also integrate administrative data with household survey income information, taking advantage of recent research on the use and the increased availability of potentially more accurate administrative data. The Working Group is considering other approaches for adjusting survey data for misreporting as well.

A consumption-based resource measure may more directly capture the resources available to a family if they record the consumption that was actually achieved. These measures begin by summing most categories of expenditures on goods and services. Certain categories of expenditures are often thought of as enhancing future consumption and are typically excluded, such as pension contributions and education expenses. Health expenditures are less uniformly excluded, since they have both substantial investment and immediate consumption features. A flow of consumption resources is also typically attributed to some owned durable goods, in particular vehicles and owner-occupied homes.

Any final recommendation ultimately made by the Working Group would also consider implementation issues with, as well as other advantages and limitations of, proposed measures. The Working Group has discussed many implementation issues to date, including the choice of survey data (for example, choosing between the Current Population Survey Annual Social and Economic Supplement or the American Community Survey) most appropriate for use in developing the measure, which would have an effect on the ability to produce estimates at different geographic levels, for example. In addition, the Working Group has identified some advantages and limitations of extended income- and consumption-based resource measures. For example, for an income-based resource measure, annual income will not capture the standard of living of individuals who draw upon savings or borrow to fund their consumption. However, an income-based resource measure captures a household's command over resources, and household income data are available in

more datasets than a household's expenditures.

While the Working Group has not discussed thresholds in depth, the Working Group acknowledges that poverty thresholds are a key component of a poverty measure. Individuals with resources that fall below the poverty threshold are counted as poor, and individuals with resources at or above the poverty threshold are not counted as poor. The Working Group has identified several key considerations for setting poverty thresholds, and plans to discuss each of those considerations in the coming months, as well as other concepts related to thresholds.

Finally, while the Working Group is focused on the extended income-based and consumption-based measures, the Working Group has also identified other topics worthy of further research by the Federal Statistical System. These topics include multi-dimensional poverty measurement and individual indicators of well-being, and populations such as those experiencing homelessness that are not included in the surveys on which the Working Group has focused.

Desired Focus of Comments

OMB is particularly interested in receiving comments on the questions posed by the Working Group. To be most useful to the Working Group in their ongoing deliberations and ultimately to OMB in reviewing the Working Group's final recommendations, responders should read the Working Group's interim report before addressing the posed questions. Responses should be concise, include citations if summarizing or depending on published work, and any links to related research. In addition, responses should clearly identify which question is being addressed.

Questions posed below are those the Working Group deemed most significant and relevant to the Working Group's remaining discussions. The questions have been sorted into broad categories for ease of review. In addition, a pointer to related discussion within the interim report follows each question. The Working Group's interim report titled ''Interim Report of the Interagency Technical Working Group on Alternative Poverty Measures'' is available as a supplemental document on *www.regulations.gov* in docket number ''OMB–2019–0007''.

Definitions

1. How should a sharing unit be defined? A sharing unit is meant to reflect the set of people sharing resources in a household. (See Adjusting for different sharing unit sizes.)

Resource Measures

2. What standards should the group use to determine which resource measures should be preferred? Specifically, to what extent should the group consider the following standards: (i) Association with other measures of material hardship, (ii) conceptual advantages, (iii) simplicity, (iv) feasibility (including data availability), (v) reproducibility? (See Advantages/Disadvantages of Income and Consumption Resource Measures. See also Multi-Dimensional Poverty Measurement and Individual Indicators of Well-Being.)

3. Should the value of health insurance be incorporated? And if so, how? (See Alternative versions of income measures with different values of health insurance.)

4. Should the value of education be incorporated? And if so, how? (See Treatment of Education.)

For a Potential Income Resource Measure

5. What income sources should be included (aside from health insurance, which is addressed by question 3)? If so, how? (See Income Measures Using the CPS ASEC and American Community Survey.)

6. What expenses, if any, should be subtracted from income? For example, how should medical out of pocket (MOOP) expenditures be treated in a new measure? Should other expenses such as childcare and commuting costs be subtracted? (See Income should be defined more broadly than pre-tax cash income currently used for the OPM.)

7. How should the Working Group address the problem of survey misreporting of income in household surveys? (See Correcting Survey Data for Misreporting and Improving Tax Estimates.)

For a Potential Consumption Resource Measure

8. What types of spending should be included as consumption (aside from spending on health care or insurance, which is addressed by question 3)? If so, how? (See Consumption Measures Using the Consumer Expenditure Interview Survey.)

9. How should vehicles and housing be included? (See Consumption Measures Using the Consumer Expenditure Interview Survey.)

10. How should the Working Group address the problem of survey misreporting of consumption in household surveys? Should the group consider using only those types of consumption that are reported with greater accuracy, while excluding less accurately measured types of consumption? What are the tradeoffs in using only well-measured consumption versus full consumption? (See Accounting for Expenditure Misreporting.)

Thresholds

11. How should the thresholds be set initially? (See Setting poverty thresholds in a baseline year.)

12. How should they be updated over time? (See Adjusting poverty thresholds over time.)

13. Should thresholds be adjusted for geographic areas? If so, how? (See Adjusting poverty thresholds across geographic areas.)

14. How should a sharing unit's size and composition be accounted for? (See Adjusting for different sharing unit sizes.)

Thank you for your thoughts on these and other important questions associated with the Working Group's discussion of Alternative Measures of Poverty. OMB and the Working Group look forward to your insights and feedback.

Paul J. Ray,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2020–02858 Filed 2–13–20; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–013)]

NASA Advisory Council; Human Explorations and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, March 3, 2020, 1:00 p.m.–6:00 p.m.; and Wednesday, March 4, 2020, 8:30 a.m.–4:00 p.m. All times listed are Eastern Time.

ADDRESSES: NASA Headquarters, Room 8Q40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Human Exploration and

Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll-free conference call number 1–800–593–9971 or toll number 1–517–308–9316, passcode: 4648477, to participate in the meeting on both days. The WebEx link is *https://nasaenterprise.webex.com;* the meeting number is 900 509 394, password is Exploration2020# (case sensitive) for both days.

The agenda for the meeting includes the following topics:

—Human Exploration and Operations Update
—Budget
—Advanced Exploration Systems
—Gateway
—Exploration Systems Development
—International Space Station

Commercial Crew Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship, passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone) title/position of the position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less 3 working days in advance.

Note: As a precaution, individuals returning from China will not allowed into NASA Headquarters until the 14 days of observation and self-care period has expired, and they are determined not to be infectious. Attendees to the NAC Human Explorations and Operations Committee meeting who are returning from China should only participate virtually through the provided dial-in audio and WebEx, until the 14 days of observation and self-care period has expired.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–02956 Filed 2–13–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–015)]

NASA Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, March 10, 2020, 8:30 a.m.–5:00 p.m.; and Wednesday, March 11, 2020, 8:30 a.m.–3:00 p.m. All times listed are Eastern Time.

ADDRESSES: NASA Headquarters, Room 6H41 (on Tuesday, March 10) and Room 5H41 (on Wednesday, March 11); 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–800–369–1949 or toll number 1–517–308–9360, passcode 4877306, for both days, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number is 903 089 345, password is WhbJkp?6 (case sensitive) for both days. The agenda for the meeting includes the following topics:

—Earth Science Division Update
—Earth Science Decadal Survey Implementation
—Earth Venture Class, Designated Observables (DO) Studies and Incubation Studies
—Research and Applications Cross-Benefits
—Commercial Data Buy.

The agenda will be posted on the ESAC web page: *https://science.nasa.gov/researchers/nac/science-advisory-committees/esac.*

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizens and Permanent Residents (green card holders) may provide full name and citizenship status no less than 3 working days in advance by contacting Ms. KarShelia Henderson via email at *khenderson@nasa.gov* or by fax at (202) 358–2779.

Note: As a precaution, individuals returning from China will not be allowed into NASA Headquarters until the 14 days of observation and self-care period has expired, and they are determined not to be infectious. Attendees to the Earth Science Advisory Committee meeting who are returning from China should only participate virtually through the provided dial-in audio and WebEx, until the 14 days of observation and self-care period has expired.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–02957 Filed 2–13–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–012)]

NASA Planetary Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, March 9, 2020, 8:30 a.m. to 5:00 p.m.; Tuesday, March 10, 2020, 8:30 a.m. to 5:00 p.m.; and Wednesday, March 11, 2020, 8:30 a.m. to 12:00 p.m. All times listed are Eastern Time.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 1–800–779–9966 or toll number 1–517–645–6359, passcode 5255996, on all three days, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number is 904 133 236 and the password is PAC@March91011 (case sensitive) on all three days.

The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Planetary Science Division Research and Analysis Program Update

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Ms. KarShelia Henderson, via email at *khenderson@nasa.gov* or by fax at (202) 358–2779.

Note: As a precaution, individuals returning from China will not be allowed into NASA Headquarters until the 14 days of observation and self-care period has expired, and they are determined not to be infectious. Attendees to the Planetary Science Advisory Committee meeting who are returning from China should only participate virtually through the provided dial-in audio and WebEx, until the 14 days of observation and self-care period has expired. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–02954 Filed 2–13–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–014)]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, March 5, 2020, 9:00 a.m.–5:00 p.m.; and Friday, March 6, 2020, 8:00 a.m.–5:00 p.m. All times listed are Eastern Time.

ADDRESSES: NASA Headquarters, Room 5H41, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: This is a revised and resubmitted **Federal Register** notice to add additional coronavirus-related information. See below. All other previously published information regarding this meeting remains the same.

Ref: **Federal Register**/Vol. 85, No. 24/Wednesday, February 5, 2020/Notices; page 6582.

The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll-free conference call number 1–877–922–4779 or toll number 1–312–470–7379, passcode 5276208, to participate in this meeting by telephone on both days. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number on March 5 is 903 962 989, password is ApAC356#; and the meeting number on March 6 is 908 705 648, password is ApAC356#.

The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Updates on Specific Astrophysics Missions
—Reports from the Program Analysis Groups
—Reports from Specific Research and Analysis Programs

The agenda will be posted on the Astrophysics Advisory Committee web page: *https://science.nasa.gov/researchers/nac/science-advisory-committees/apac.*

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with

U.S. citizens and Permanent Residents (green card holders) may provide full name and citizenship status no less than 3 working days in advance by contacting Ms. KarShelia Henderson via email at *khenderson@nasa.gov* or by fax at (202) 358–2779.

Note: As a precaution, individuals returning from China will not allowed into NASA Headquarters until the 14 days of observation and self-care period has expired, and they are determined not to be infectious. Attendees to the Astrophysics Advisory Committee meeting who are returning from China should only participate virtually through the provided dial-in audio and WebEx, until the 14 days of observation and self-care period has expired.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–02955 Filed 2–13–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Office of International Science and Engineering—PIRE: Hybrid Materials for Quantum Science and Engineering (HYBRID) (10749)—Reverse Site Visit.

Date and Time: March 13, 2020 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

Type of Meeting: Part-open.

Contact Person: Maija Kukla, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

Reverse Site Visit Agenda

PIRE (PI: Frolov)

NSF Room E3410

Date: March 13, 2020

8:00am Panelists arrive. Coffee/light refreshments available.

8:15am–8:45am Panel Orientation (CLOSED)

PIRE Rationale and Goals

Charge to Panel

8:45am PIs Arrive/Introductions

9:00am–11:00am PIRE Project Presentation

Overview of the Project and Project Management

Research Accomplishments and Impacts to Date

Benefits of International Partnerships

Integrating Research and Education

Educational Impact on Students

Research Plan and Future Activities to Achieve the Projects Goals

11:00am–11:30am Questions and Answers

12:00pm–1:30pm Working Lunch—Panel Discussion (CLOSED)

1:30pm–2:00pm Student recruitment

Diversity

Communication and Outreach

Evaluation and Assessment

Institutional Support

2:00pm–3:00pm Initial Feedback to the PIRE Project Team (CLOSED)

3:00pm PIRE Project Team is dismissed

3:00pm–4:30pm Panel Meets to Prepare Reverse Site Visit Report (CLOSED)

4:30pm–4:45pm Panel Meets with NSF Staff to Discuss the Report (CLOSED)

5:00pm End of Reverse Site Visit

[FR Doc. 2020–02959 Filed 2–13–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Office of International Science and Engineering—PIRE: High Temperature Ceramic Fibers: Polymer-Based Manufacturing, Nanostructure, and Performance (10749)—Reverse Site Visit.

Date and Time: March 12, 2020 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

Type of Meeting: Part-open.

Contact Person: Maija Kukla, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

Reverse Site Visit Agenda, PIRE (PI: Singh)

NSF Room E3410

Date: March 12, 2020

8:00 a.m. Panelists arrive. Coffee/light refreshments available.

8:15 a.m.–8:45 a.m. Panel Orientation (CLOSED)

PIRE Rationale and Goals

Charge to Panel

8:45 a.m. PIs Arrive/Introductions

9:00 a.m.–11:00 a.m. PIRE Project Presentation

Overview of the Project and Project Management
Research Accomplishments and Impacts to Date
Benefits of International Partnerships
Integrating Research and Education
Educational Impact on Students
Research Plan and Future Activities to Achieve the Projects Goals
11:00 a.m.–11:30 a.m. Questions and Answers
12:00 p.m.–1:30 p.m. Working Lunch—Panel Discussion (CLOSED)
1:30 p.m.–2:00 p.m. Student recruitment
Diversity
Communication and Outreach
Evaluation and Assessment
Institutional Support
2:00 p.m.–3:00 p.m. Initial Feedback to the PIRE Project Team (CLOSED)
3:00 p.m. PIRE Project Team is dismissed
3:00 p.m.–4:30 p.m. Panel Meets to Prepare Reverse Site Visit Report (CLOSED)
4:30 p.m.–4:45 p.m. Panel Meets with NSF Staff to Discuss the Report (CLOSED)
5:00 p.m. End of Reverse Site Visit

[FR Doc. 2020–02958 Filed 2–13–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 17, 24, March 2, 9, 16, 23, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of February 17, 2020

There are no meetings scheduled for the week of February 17, 2020.

Week of February 24, 2020—Tentative

Tuesday, February 25, 2020

9 a.m. Overview of Accident Tolerant Fuel Activities (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of March 2, 2020—Tentative

Thursday, March 5, 2020

10 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of March 9, 2020—Tentative

There are no meetings scheduled for the week of March 9, 2020.

Week of March 16, 2020—Tentative

There are no meetings scheduled for the week of March 16, 2020.

Week of March 23, 2020—Tentative

There are no meetings scheduled for the week of March 23, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 12th day of February 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–03186 Filed 2–12–20; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, February 19, 2020.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Litigation matters;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 12, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–03116 Filed 2–12–20; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10989]

60-Day Notice of Proposed Information Collection: Birth Affidavit

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork

Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *April 14, 2020.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to regulations.gov. You can search for the document by entering ''Docket Number: DOS–2019–0044'' in the search field, clicking the ''Comment Now'' button, and completing the comment form.
- *Email: PPTFormsOfficer@state.gov*.
- *Regular Mail:* Send written comments to: PPT Forms Officer, U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166–1199.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Birth Affidavit.
- *OMB Control Number:* 1405–0132.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO/CR).
- *Form Number:* DS–10.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 5,183.
- *Estimated Number of Responses:* 5,183.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 3,455 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Form DS–10, Birth Affidavit, is submitted in conjunction with an application for a U.S. passport, and is used by Passport Services to collect information for the purpose of establishing the U.S. nationality of a passport applicant who has not submitted an acceptable United States birth certificate with his/her passport application. The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq*, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Pursuant to 22 U.S.C. 212 and 22 CFR 51.2, only U.S. nationals may be issued a U.S. passport. Most passport applicants show U.S. nationality by providing a birth certificate showing the applicant was born in the United States. Some applicants, however, may have been born in the United States (and subject to its jurisdiction), but were never issued a birth certificate. Form DS–10 is a form affidavit for completion by a witness to the birth of such an applicant; it collects information relevant to establishing the identity of the affiant, and the birth circumstances of the passport applicant. If credible, the affidavit may permit the applicant to show U.S. nationality based on the applicant's birth in the United States, despite never having been issued a U.S. birth certificate. We use the information collected on the person completing the affidavit to confirm that individual's identity, which is relevant to confirming his or her relationship to the applicant and the likelihood that the affiant has actual knowledge of the circumstances of the applicant's birth.

Methodology

When needed, a form DS–10, Birth Affidavit is completed at the time a person applies for a U.S. passport.

Florence Fultz,

Acting Deputy Assistant Secretary for Passport Services.

[FR Doc. 2020–03040 Filed 2–13–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice:11034]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, State.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for penalties on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: The imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act described in this notice went into effect February 3, 2020.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: On February 3, 2020, the U.S. Government applied the measures authorized in Section 3 of the Iran, North Korea, and

Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Baoding Shimaotong Enterprises Services Company Limited (China) and any successor, sub-unit, or subsidiary thereof;

Dandong Zhensheng Trade Co., Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Gaobeidian Kaituo Precise Instrument Co. Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Luo Dingwen (Chinese individual);

Shenzhen Tojoin Communications Technology Co. Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Shenzhen Xiangu High-Tech Co., Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Wong Myong Son (individual in China);

Wuhan Sanjiang Import and Export Co., Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Kata'ib Sayyid al-Shuhada (KSS) (Iraq) and any successor, sub-unit, or subsidiary thereof;

Kumertau Aviation Production Enterprise (Russia) and any successor, sub-unit, or subsidiary thereof;

Instrument Building Design Bureau (KBP) Tula (Russia) and any successor, sub-unit, or subsidiary thereof;

Scientific Production Association Mashinostroyeniya (NPOM) (Russia) and any successor, sub-unit, or subsidiary thereof;

Eren Carbon Graphite Industrial Trading Company, Ltd. (Turkey) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the United States Government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the United States Government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government, except to the extent that the Secretary of State otherwise may determine;

3. No United States Government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Choo S. Kang,

Principal Deputy Assistant Secretary, International Security and Nonproliferation, Department of State.

[FR Doc. 2020–02993 Filed 2–13–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 11027]

60 Day Notice of Proposed Information Collection: Medical Clearance Update

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *April 14, 2020.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0003'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: Fieldke@state.gov.*
- *Regular Mail:* Send written comments to: Medical Director, Office of Medical Clearances, Bureau of Medical Services, 2401 E Street NW, SA–1, Room L–101, Washington, DC 20522–0101.
- *Fax:* 202–647–0292, Attention: Medical Clearance Director.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, should be sent to Karl Field, Director of Medical Clearances at 202–663–1591 or *Fieldke@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Medical Clearance Update.
- *OMB Control Number:* 1405–0131.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Medical Services (MED).
- *Form Number:* DS–3057.
- *Respondents:* Contractors and eligible family members.
- *Estimated Number of Respondents:* 7,205.
- *Estimated Number of Responses:* 7,205.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 3,603 hours.
- *Frequency:* As needed.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Form DS–3057 is designed to collect medical information to provide medical providers with current and adequate information to base decisions on whether contractors and eligible family

members will have sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members.

Methodology

The respondent will obtain the DS–3057 form from their human resources representative or download the form from a Department website. The respondent will complete and submit the form offline.

Karl Field,

Director of Medical Clearances.

[FR Doc. 2020–03037 Filed 2–13–20; 8:45 am]

BILLING CODE 4710–36–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36383]

3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC—Control Exemption—Carolina Coastal Railway, Inc.

3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR LLC, and Regional Rail Holdings, LLC (collectively, 3i RR), and Regional Rail, LLC (Regional Rail), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire from Douglas S. Golden the stock and control of the Carolina Coastal Railway, Inc. (CLNA), a Class III rail carrier that operates in North Carolina and South Carolina.[1] According to the verified notice, the proposed transaction will allow Regional Rail to acquire direct control, and 3i RR to acquire indirect control, of CLNA.[2]

According to the verified notice, 3i RR Holdings GP LLC controls 3i Holdings Partnership L.P., which controls 3i RR LLC, which controls Regional Rail Holdings, LLC, which controls Regional Rail. Regional Rail is a holding company that directly controls the following six Class III rail carriers: (1) East Penn Railroad, LLC, which operates in Delaware and Pennsylvania; (2) Middletown & New Jersey Railroad, LLC, which operates in New York; (3) Tyburn Railroad LLC, which operates in Pennsylvania; (4) the Florida Central Railroad LLC, which operates in Florida; (5) Florida Midland Railroad Company, Inc., which operates in Florida; and (6) Florida Northern Railroad Company, Inc., which operates in Florida (collectively, the Subsidiary Railroads).[3] 3i RR and Regional Rail certify that the proposed transaction does not involve an interchange commitment.

The verified notice states that: (1) CLNA does not connect with the Subsidiary Railroads; (2) the acquisition of control of CLNA is not intended to connect with any other railroads in 3i RR's corporate family; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is March 1, 2020, the effective date of the exemption (30 days after the verified notice was filed). The verified notice states that the parties intend to consummate the transaction on or after March 1, 2020.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than February 21, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36383, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: February 10, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk .

[FR Doc. 2020–03031 Filed 2–13–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36378]

The Mahoning Valley Railway Company—Acquisition and Operation—L.W.R., Inc. and OHI-Rail Corp.

The Mahoning Valley Railway Company (MVRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from L.W.R., Inc. (LRW) and OHI-Rail Corp. (OHI-Rail) and operate approximately 44.7 miles of the following lines of railroad in Carroll, Stark, Columbiana, Jefferson, and Harrison Counties, Ohio: (1) The Tuscarawas Industrial Track LC 40–2427, from milepost 0.0 at the point of connection to the Bayard siding in Bayard to milepost 2.9, located 175 feet west of Grant Street in Minerva, including an operating easement between mileposts 2.7 and 2.9; (2) the Piney Fork Industrial Track LC 40–2446, from milepost 40.9 in Minerva to milepost 43.5 including all track, facilities, and property comprising Minerva Yard; (3) the Horn Track, a short connecting track between the Tuscarawas Industrial Track and the Piney Fork Industrial Track, between Grant Street and Sandy Creek Bridge; (4) a continuous line of track from the Minerva Yard limits at milepost 43.50 in Minerva to Hopedale Junction at milepost 77.50; (5) the Wolf Run Branch LC 2449, beginning in Springfield Township (Phillips), Jefferson County, at milepost 0.0 and extending in a general southerly direction to its end at milepost 3.8; and (6) the Tuscarawas Secondary Track LC 2427 beginning in Minerva at a point approximately 175 feet west of milepost 2.7 and extending in a general westerly direction through Pekin to its ending in Pekin at milepost 4.3 (collectively, the Lines). According

[1] The verified notice states that CLNA operates generally between: (1) Chocowinity, N.C., and Raleigh, N.C.; (2) Phosphate Junction, N.C., and Plymouth, N.C.; (3) Rocky Mount, N.C., and Spring Hope, N.C.; (4) Belhaven, N.C., and Pinetown, N.C.; (5) Morehead City, N.C., and Radio Island, N.C.; and (6) Blacksburg, S.C., and Kings Creek, S.C.

[2] On January 31, 2020, 3i RR and Regional Rail filed a motion for protective order under 49 CFR 1104.14(b), which will be addressed in a separate decision.

[3] *See Regional Rail Holdings, LLC—Acquis. of Control Exemption—Regional Rail, LLC,* FD 35945 (STB served Aug. 7, 2015); *3i RR Holdings GP LLC—Control Exemption—Regional Rail Holdings, LLC,* FD 36289 (STB served Apr. 19, 2019); *3i RR Holdings GP LLC—Control Exemption—Fla. Cent. R.R.,* FD 36365 (STB served Nov. 22, 2019).

to MVRY, segments (1), (2), and (3) are owned by LWR and operated by OHI-Rail, and MVRY will acquire the segments by purchase, while segments (4), (5), and (6) are leased by OHI-Rail from the State of Ohio, Ohio Rail Development Commission, and MVRY will acquire the segments by assignment of the lease (Leased Lines).[1]

MVRY certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million annually. MVRY further certifies that the acquisition does not involve an interchange commitment.

Under 49 CFR 1150.42(b), a change in operator requires that notice be given to shippers. MVRY states that notice of the proposed transaction was provided to shippers on the Leased Lines on January 31, 2020.

The transaction may be consummated on or after March 1, 2020, the effective date of the exemption (30 days after the verified notice was filed).[2]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than February 21, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36378, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on MVRY's representative, Eric M. Hocky, Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 10, 2020.

[1] The verified notice states that MVRY is a subsidiary of Genesee & Wyoming Inc. (GWI). It further states that GWI, LWR, and OHI-Rail have executed an Asset Purchase Agreement (Agreement) for the Lines, and that, prior to consummating the acquisition, GWI will assign its rights and obligations under the Agreement to MVRY. As a result, MVRY states, GWI will not acquire the Lines and is not the applicant here.

[2] Because MVRY supplemented its verified notice on January 31, 2020, that date will be considered the filing date for the purpose of calculating the effective date of the exemption.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–03006 Filed 2–13–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

DATES: February 18, 2020 through March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 214–413–6523 (not a toll-free call).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. As a federal advisory committee, TAP is required to have a fairly balanced membership in terms of the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia and Puerto Rico, in addition to one member representing international taxpayers. For application purposes, ''international taxpayers'' are defined broadly to include U.S. citizens working, living, or doing business abroad or in a U.S. territory. Potential candidates must be U.S. citizens, not a current employee of any Bureau of the Treasury Department or have worked for any Bureau of the Treasury Department within the three years of December 1 of the current year and must pass a federal tax compliance check and a Federal Bureau of Investigation criminal background investigation. Applicants who practice before the IRS must be in good standing with the IRS (meaning not currently under suspension or disbarment). Federally-registered lobbyists cannot be members of the TAP. The IRS is seeking members or alternates in the following locations: Alabama, Alaska, Arizona, California, DC, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

TAP members are a diverse group of citizens who represent the interests of taxpayers, from their respective geographic locations as well as taxpayers overall. Members provide feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the federal tax system, by identifying grassroots taxpayer issues. Members should have good communication skills and be able to speak to taxpayers about TAP and its activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP website at *www.improveirs.org* for more information about TAP. Applications may be submitted online at *www.usajobs.gov.* For questions about TAP membership, call the TAP toll-free number, 1–888–912–1227 and select prompt 5. Callers who are outside of the U.S. should call 214–413–6523 (not a toll-free call).

The opening date for submitting applications is February 18, 2020 and the deadline for submitting applications is March 30, 2020. Interviews will be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2020. (*Note:* highly-ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Lisa Billups, Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW, TA:TAP Room 1509, Washington, DC 20224, or 214–413–6523 (not a toll-free call).

Dated: February 11, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–03043 Filed 2–13–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its fifteenth meeting on Thursday, February 27, 2020, in the Cash Room, Main Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220, beginning at 9:00 a.m. Eastern Time. The meeting will be open to the public and limited seating will be available.

DATES: The meeting will be held on Thursday, February 27, 2020, beginning at 9:00 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Main Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220. The meeting will be open to the public. A limited number of seats will be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting MUST contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5:00 p.m. Eastern Time on Tuesday, February 25, 2020, to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Melissa Avstreih, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the Committee's website, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the fifteenth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members include features of the financial system where increased transparency can further financial stability and strategies that can better align private-sector incentives to improve market discipline. For more information on the OFR and the Committee, please visit the OFR website at *http://www.financialresearch.gov.*

Dated: February 6, 2020.

Alex Pollock,

Principal Deputy Director, Research and Analysis and Data.

[FR Doc. 2020–03003 Filed 2–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will he held Wednesday, March 4, 2020, by teleconference. The meeting will begin at 1:00 p.m. and end at 1:30 p.m. EST. The meeting will be partially closed to the public from 1:10 p.m. to 1:30 p.m. EST for the discussion, examination, and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the committee meeting is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA Rehabilitation Research and Development program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members advise the Director, Rehabilitation Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects of Rehabilitation Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public who wish to attend the open portion of the teleconference session from 1:00 p.m. to 1:10 p.m. EST may dial 1 (800) 767–1750, participant code 95056.

Written comments from the public must be sent to Tiffany Asqueri,

Designated Federal Officer, Rehabilitation Research and Development Service, at Department of Veterans Affairs (10X2R), 810 Vermont Avenue NW, Washington, DC 20420, or email *Tiffany.Asqueri@va.gov* prior to the meeting. Those who plan to attend the open portion of the meeting must contact Ms. Asqueri at least five days before the meeting. For further information, please call Mrs. Asqueri at (202) 443–5757.

Dated: February 11, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–02990 Filed 2–13–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Health Services Research and Development Service Scientific Merit Review Board will he held March 12, 2020, by teleconference. The meeting will begin at 11:45 a.m. and end at 1:00 p.m. EST. The meeting will be partially closed to the public from 12:00 p.m. to 1:00 p.m. EST for the discussion, examination, and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the committee meeting is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure the high quality and mission relevance of VA's legislatively mandated Health Services Research and Development program.

Board members advise the Director, Health Services Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human subjects of Health Services Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public who wish to attend the open portion of the teleconference session from 11:45 a.m. to 12:00 p.m. EST may dial 1 (800) 767–1750, participant code 66422. Written comments from the public must be sent to Liza Catucci, Designated Federal Officer, Health Services Research and Development Service, at Department of Veterans Affairs (10X2H), 810 Vermont Avenue NW, Washington, DC 20420, or email *Liza.Catucci@va.gov* prior to the meeting. Those who plan to attend the open portion of the meeting must contact Ms. Catucci at least five days before the meeting. For further information, please call Ms. Catucci at (202) 443–5797.

Dated: February 11, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–02992 Filed 2–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0778]

Agency Information Collection Activity Under OMB Review: Disability Benefits Questionnaire (Group 3)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 16, 2020.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0778'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0778'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Disability Benefits Questionnaire (Group 3).

OMB Control Number: 2900–0778.

Type of Review: Reinstatement of a currently approved collection.

Abstract: VA Form 21–0960 series called Disability Benefits Questionnaire (Group 3) gathers necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. The Disability Benefit Questionnaires (Group 3) is comprised of 17 forms. Each DBQ title includes the names of the specific disability for which it gathers information. VAF 21–0960C–5, *Central Nervous System and Neuromuscular Diseases Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a central nervous system disease; VAF 21–0960C–8, *Headaches (Including Migraine Headaches) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of headaches; VAF 21–0960C–9, *Multiple Sclerosis (MS) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of multiple sclerosis; VAF 21–0960G–1, *Esophageal Disorders (including GERD, Hiatal Hernia, and Other Esophageal Disorders) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any esophageal disorders; VAF 21–0960G–2, *Gall Bladder and Pancreas Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any gall bladder and pancreas condition; VAF 21–0960G–3, *Intestinal Conditions (Other than Surgical or Infectious) Including Irritable Bowel*

Syndrome, Crohn's Disease, Ulcerative Colitis, and Diverticulitis Disability Benefits Questionnaire, gathers information related to the claimant's diagnosis of any intestinal conditions unrelated to surgery or infection; VAF 21–0960G–4, *Infectious Intestinal Disorders (including Bacterial and Parasitic Infections) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any infectious intestinal condition; VAF 21–0960G–5, *Hepatitis, Cirrhosis and other Liver Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any liver condition; VAF 21–0960G–6, *Peritoneal Adhesions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of peritoneal adhesions; VAF 21–0960G–7, *Stomach and Duodenum Conditions (Not Including GERD or Esophageal Disorders) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any stomach or duodenum conditions; VAF 21–0960G–8, *Intestinal Surgery (Bowel Resection, Colostomy, Ileostomy) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any surgical intestinal condition; VAF 21–0960H–2, *Rectum and Anus Conditions (Including Hemorrhoids) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any rectum or anus condition, which includes hemorrhoids; VAF 21–0960K–1, *Breast Conditions and Disorders Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a breast condition or disorder; VAF 21–0960K–2, *Gynecological Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a gynecological condition; VAF 21–0960L–2, *Sleep Apnea Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of sleep apnea; VAF 21–0960M–11, *Osteomyelitis Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of osteomyelitis; and VAF 21–0960N–1, *Ear Conditions (Including Vestibular and Infectious) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of an ear disease.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 234 on December 5, 2019, pages 66706 and 66707.

Affected Public: Individuals or Households.

Estimated Annual Burden: 77,500 hours

Estimated Average Burden per Respondent: 19.4 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 250,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–02977 Filed 2–13–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 31 February 14, 2020

Part II

Department of Energy

10 CFR Parts 430 and 431

Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE–2017–BT–STD–0062]

RIN 1904–AD38

Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy is updating and modernizing aspects of its current rulemaking method for considering new or revised energy conservation standards for consumer products and certain types of industrial equipment. The rule clarifies the process DOE will follow with respect to its application to these items, makes the specified rulemaking procedures binding on DOE, and revises certain provisions to bring consistency with existing statutory requirements. Other changes include expanding early opportunities for public input on the Appliance Program's priority setting and rulemaking activities, setting a significant energy savings threshold for updating standards, establishing a window between test procedure final rules and standards proposals, and delineating procedures for rulemaking under the separate direct final rule and negotiated rulemaking authorities.

DATES: The effective date of this rule is April 14, 2020.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0062.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7432. Email: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Final Rule

The United States Department of Energy (''DOE'' or, in context, ''the Department'') generally uses the procedures set forth in its ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (''Process Rule''), *see* 10 CFR part 430, subpart C, appendix A, when prescribing energy conservation standards for both consumer products and commercial equipment pursuant to the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163, codified at 42 U.S.C. 6291, *et seq.*), as amended (''EPCA''). In this document, DOE is updating and modernizing its Process Rule in the following major topics: (1) Requiring that the procedures outlined in the Process Rule are binding on the agency; (2) formalizing DOE's past practice of applying the Process Rule to both consumer products and commercial equipment; (3) clarifying the Process Rule's application with regard to equipment covered by ASHRAE Standard 90.1; (4) expanding the Process Rule to include test procedure rulemakings, as well as energy conservation standards rulemakings; (5) committing to both an ''early look'' process and other robust methods for early stakeholder input; (6) defining a significant energy savings threshold that must be met before DOE will update an energy conservation standard; (7) clarifying DOE's commitment to publish a test procedure six months before a related standards NOPR; (8) articulating DOE's authority under the Negotiated Rulemaking Act and EPCA's direct final rule (''DFR'') provision, while clarifying that negotiated rulemakings and DFRs are two separate processes with their own

sets of requirements; and (9) addressing other miscellaneous issues.

At this time DOE is not finalizing its prior proposal concerning the process by which DOE selects among alternative energy efficiency standards under EPCA (also known as the ''walk-down'' approach). In a separate but related action, DOE is publishing in this issue of the **Federal Register**, a proposed rule to amend this process, such that those standards achieve the ''maximum improvement in energy efficiency, or in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)). In response to the concerns and requests for further explanation related to the economically rational consumer mentioned in DOE's prior proposal, DOE is: (1) Clarifying how impacts are considered in determining economic justification through the seven factors specified in EPCA; and (2) explaining that the requirement to determine economic justification based on comparisons across the full range of trial standard levels (TSLs) is consistent with EPCA. This proposal will respond to public comments requesting further clarity on DOE's initial proposal that in making the determination of economic justification, DOE would choose one TSL over other feasible TSLs after considering all relevant factors, including, but not limited to, energy savings, efficacy, product features, and life-cycle costs.

DOE continues to contemplate additional topics regarding its process for undertaking appliance standards rulemakings that may lead to additional rulemaking proceedings to update the Process Rule. In particular, DOE continues to think about potential changes to its analytical methodologies and models for assessing the costs and benefits of appliance standards rulemakings.

II. Introduction

A. Authority

In overview, the Department of Energy's Process Rule was developed to guide implementation of the Appliance Standards Program, which is conducted pursuant to Title III, Part B [1] of the Energy Policy and Conservation Act (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), for consumer products, and Part C [2] for certain industrial equipment (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a).[3]

Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (''FTC'') is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment. (42 U.S.C. 6293 and 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c), 42 U.S.C. 6295(s), 42 U.S.C. 6314(a), and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.*

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6316(a)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B), 42 U.S.C. 6313(a)(6), and 42 U.S.C. 6316(a)), and comply with any other applicable statutory provisions.

B. Background on the Process Rule

DOE conducted a formal effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, state agencies, utilities, and other interested parties. The result was the publication of a final rule on July 15, 1996, titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.'' (61 FR 36974) This document was codified at 10 CFR part 430, subpart C, appendix A,[4] and became known colloquially as the ''Process Rule.''

The Process Rule was designed to provide guidance to stakeholders as to how DOE would implement its rulemaking responsibilities under EPCA for the Appliance Program. As part of this enhanced process, supplementing the traditional notice-and-comment rulemaking process under the Administrative Procedure Act [5] (APA), DOE has invited and promoted extensive stakeholder involvement in its energy conservation standards and test procedure rulemakings. An important legacy of the Process Rule has been both to educate and learn from the many stakeholders who participate in DOE's appliance rulemaking efforts. Some of the successes that have resulted from the Process Rule include: (1) Greater involvement from a wider variety of stakeholders in DOE's appliance rulemaking process; (2) improved technical analyses in support of the appliance rules due to enhanced input from stakeholders at an early stage of the rulemaking process; (3) improved solutions to issues and problems because of increased stakeholder involvement; and (4) more open dialogue and improved relationships between stakeholders and also between stakeholders and DOE.

While there have been many positive results from the Process Rule, DOE came to understand through the intervening years that the Appliance Program might benefit from additional improvements to the Process Rule, as reflected in this document. These amendments address: (1) Processes that may no longer track the current legal requirements of EPCA; (2) processes that do not take into account the maturation of DOE's appliance program to the point that modernization is necessary; (3) that in many instances DOE has not rigorously followed the Process Rule; (4) the need for regulatory reform to reduce the costs and burdens of rulemaking; and (5) the need to clarify that the Process Rule applies to commercial/industrial equipment. In evaluating and seeking to

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[4] This final rule that amends the Process Rule is a legislative rule and therefore subject to the notice and comment requirements in the APA. (5 U.S.C. 553) Accordingly, DOE has conducted a ''notice and comment'' proceeding as evidenced by two public meetings and webinars and a robust period for written comments.

[5] 5 U.S.C. 551 *et seq.*

expand the positive impacts of the Process Rule, as well as remedying the above-described negative developments, this final rule addresses the changed landscape of the rulemaking process under EPCA, and endeavors to modernize the Process Rule.[6]

On December 18, 2017, DOE issued an RFI (December 2017 RFI) to address potential improvements to the Process Rule so as to achieve meaningful burden reduction while continuing to achieve the Department's statutory obligations in the development of appliance energy conservation standards and test procedures. (82 FR 59992) Originally, the comment period for this RFI was scheduled to end on February 16, 2018. However, several stakeholders requested a 30-day extension to file comments.[7] Consequently, DOE extended the comment period until March 2, 2018. (83 FR 5374 (Feb. 7, 2018)) Subsequently, DOE posted a notice on its website on March 2, 2018, which stated that the comment period was further extended until March 5, 2018, due to a brief closure of the Federal government in the Washington, DC area.

To explore the issues in the December 2017 RFI, DOE convened a public meeting on January 9, 2018, which was attended by a wide range of stakeholders. The Department also simultaneously hosted a webinar, which was attended by approximately 150 additional persons.

After carefully reviewing the numerous public comments submitted on the December 2017 RFI and the issues raised at the January 2018 public meeting, DOE published a notice of proposed rulemaking (''NOPR'') regarding the Process Rule in the **Federal Register** on February 13, 2019. (84 FR 3910) This document responded to the RFI comments and proposed amendments to the Process Rule in a variety of areas, as discussed subsequently. Comments on the Process Rule NOPR were due by April 15, 2019.

To facilitate discussion of the issues in the February 2019 NOPR, DOE held a public meeting on March 21, 2019 in Washington, DC. The meeting was widely attended, both in person and via webinar. At the public meeting, numerous topics were discussed, including, but not limited to: (1) Making the Process Rule binding on DOE; (2) making the Process Rule applicable to both consumer products and commercial/industrial equipment; (3) explaining application of the Process Rule to ASHRAE equipment; (4) priority-setting; (5) the process for coverage determinations; (6) early assessment review for energy conservation standard and test procedure rulemakings; (7) consideration of a significant savings of energy threshold; (8) finalizing test procedures 180 days before issuance of a standards NOPR; (9) adoption of consensus standards as DOE test procedures; (10) direct final rules; (11) negotiated rulemakings; (12) analytical methodologies and peer review; (13) potential changes to the ''walk-down approach'' for assessing standard levels; (14) cumulative regulatory burden; (15) retrospective reviews of energy savings and costs for past standards; (16) certification, compliance, and enforcement issues, and (17) any other issues or topics raised by stakeholders. However, due to the large number of matters to be addressed and the significant public interest, DOE determined it necessary to carry over the public meeting to a second day and to extend the public comment period, actions which were announced in a **Federal Register** notice published on April 2, 2019. (84 FR 12527) Accordingly, a continuation of the NOPR public meeting was held on April 11, 2019, and the comment period on the NOPR was extended to May 6, 2019.

Overall, DOE experienced a high level of engagement from stakeholders and the interested public regarding potential changes to the Process Rule. Such comments provided important input to DOE's final rule to modernize and refine the Process Rule. The issues raised in the NOPR public comments are addressed subsequently in this document. Through the amendments adopted in this final rule, DOE expects that its revised Process Rule will increase transparency, foster public engagement, and achieve meaningful burden reduction, while at the same time continuing to meet the Department's statutory obligations under EPCA.

Commenters who provided written comments in response to DOE's NOPR consisted of the following parties:

TABLE OF COMMENTERS

Commenter(s)	Affiliation	Acronym, identifier
A.O. Smith	Manufacturer	A.O. Smith.
Acuity Brands	Manufacturer	Acuity.
Air-Conditioning, Heating, and Refrigeration Institute	Manufacturer Trade Group	AHRI.
Alliance to Save Energy	Advocacy Group	ASE.
American Council for an Energy Efficient Economy	Advocacy Group	ACEEE.
American Efficient	Energy Efficiency Consultancy	AE.
American Gas Association	Utility Trade Group	AGA.
American Lighting Association	Manufacturer Trade Group	ALA.
American Public Gas Association	Utility Trade Group	APGA.
American Public Power Association	Utility Trade Group	APPA.
American Society of Heating, Refrigeration, and Air Conditioning Engineers.	Technical Society	ASHRAE.
Appliance Standards Awareness Project (Joint Comments filed with ACEEE, Consumer Federation of America, Consumer Reports, National Consumer Law Center, NRDC, and NEEA).	Advocacy Group	ASAP, et al.

[6] In November 2010, DOE also issued a statement intended to expedite its rulemaking process. The statement is currently available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf.* As reflected in this final rule, DOE has undertaken a thorough review of its Process Rule to determine the procedures it will follow in considering new or amended energy conservation standard and test procedures. As a result, this final rule supersedes those portions of the November 2010 statement pertaining to the elimination of these early rulemaking steps. DOE will revise its statement so as to conform to the amendments contained in this final rule.

[7] See letter dated January 29, 2018 from Air-Conditioning, Heating, and Refrigeration Institute (''AHRI''), the Association of Home Appliance Manufacturers (''AHAM''), and the National Electrical Manufacturers Association (''NEMA''), to John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Buildings Technologies Program. [EERE–2017_BT–STD–0096, No. 17, p. 1]

TABLE OF COMMENTERS—Continued

Commenter(s)	Affiliation	Acronym, identifier
Appliance Standards Awareness Project 2 (Joint Comments filed with ACEEE, the California Energy Commission, Consumer Federation of America, Consumer Reports, National Consumer Law Center (on behalf of its low-income clients), and NEEA).	Advocacy Groups	ASAP, et al. 2.
Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, New York, North Carolina, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York.	State, Local Governments	AG Joint Commenters.
Bradford White Corporation	Manufacturer	BWC.
Burnham Holdings, Inc. (dba U.S. Boiler Company)	Manufacturer	BHI.
California Energy Commission	State	CEC.
California Investor-Owned Utilities	Utilities	Cal-IOUs.
Connecticut Department of Energy & Environmental Protection	State	CT–DEEP.
Consumer Technology Association	Manufacturer Trade Group	CTA.
Earthjustice	Advocacy Group	Earthjustice.
GE Appliances	Manufacturer	GEA.
George Mason University—Antonin Scalia Law School, Administrative Law Clinic.	Academic Institution	GMU Law.
George Washington University—Regulatory Studies Center	Academic Institution	GWU.
Hearth Products and Barbecue Association	Manufacturer Trade Group	HPBA.
Ingersoll Rand	Manufacturer	Ingersoll Rand.
Joint Industry Commenters	Manufacturer Trade Groups	Joint Commenters.
Lennox International	Manufacturer	Lennox.
Lutron	Manufacturer	Lutron.
Manufactured Housing Association for Regulatory Reform	Manufacturer Trade Group	MHARR.
Manufactured Housing Institute	Manufacturer Trade Group	MHI.
New Buildings Institute	Advocacy Group	NBI.
New York University School of Law—Institute for Policy Integrity.	Academic Institution	NYU Law.
North American Association of Food Equipment Manufacturers	Manufacturer Trade Group	NAFEM.
National Electrical Manufacturers Association	Manufacturer Trade Group	NEMA.
National Propane Gas Association	Utility Trade Group	NPGA.
Natural Resources Defense Council	Advocacy Group	NRDC.
Northwest Power and Conservation Council	Interstate Compact	NPCC.
Northwest Energy Efficiency Alliance	Advocacy Group	NEEA.
Rheem	Manufacturer	Rheem.
Robert Bosch, LLC	Manufacturer	Bosch.
Samsung	Manufacturer	Samsung.
Sierra Club	Advocacy Group	Sierra Club.
Signify	Manufacturer	Signify.
Southern Co.	Utility	Southern.
Spire, Inc.	Utility	Spire.
Steinberg, Linda	None	Steinberg.
United Cool Air	Manufacturer	UCA.
Zero Zone	Manufacturer	Zero Zone.

C. General Comments on DOE's Process Rule Proposal

As explained in further detail in section II.B of this final rule, DOE's Process Rule was originally designed to provide guidance to stakeholders as to how DOE would implement its rulemaking responsibilities under EPCA for the Appliance Standards Program, including extensive opportunities for stakeholder involvement in energy conservation standards and test procedure proceedings. While many benefits arose from the 1996 Process Rule, DOE determined that further improvements are possible since circumstances have changed since it was developed 25 years ago, as reflected in the agency's proposal. DOE's intent in proposing an updated Process Rule was to increase transparency and public engagement and achieve meaningful burden reduction, while at the same time continuing to meet DOE's statutory obligations under EPCA. (84 FR 3910, 3911–3912 (Feb. 13, 2019)) Not surprisingly, DOE's proposal was met with a wide variety of viewpoints. The paragraphs that follow summarize these stakeholder comments,[8] followed by DOE's response.

A number of commenters expressed general support for DOE's Process Rule proposal. (Zero Zone, No. 102 at p. 1; Rheem, No. 101 at pp. 1–2; APGA, No. 106 at p. 2; BWC, No. 103 at p. 1) More specifically, AHRI praised DOE's responsiveness to stakeholder comments and adherence to the statutory principles of EPCA that it believes the agency had previously set aside. (AHRI, April 11, 2019 Public

[8] When submitting their own individual comments, a number of organizations also explicitly signaled their endorsement of the comments prepared by others. Specifically, the ALA stated that it supports the detailed comments provided by the Joint Commenters. (ALA, No. 104 at p. 1) GEA expressed support for the comments of the Joint Commenters and incorporated them by reference into its own comments. (GEA, No. 125 at p. 1) NEMA stated that it supports the detailed Joint Comments of AHAM, AHRI, NEMA, and others. (NEMA, No. 107 at p. 2) Rheem supported the detailed comments provided by AHRI and the Joint Commenters. (Rheem, No. 101 at p. 1) NRDC stated that it signs onto and supports the comments submitted by the Appliance Standards Awareness Project and Earthjustice. (NRDC, No. 131 at p. 3)

Meeting Transcript at pp. 234) APGA stated that DOE's comprehensive and transparent proposal would improve the way the Department fulfills its responsibilities under EPCA. (APGA, No. 106 at p. 2) BWC suggested that DOE's proposed Process Rule changes have the potential to make the rulemaking process more objective and improve its execution. (BWC, No. 103 at p. 1)

According to GEA, the proposed Process Rule should help alleviate many unnecessary regulatory burdens on both the regulated community and the DOE. GEA suggested that the following portions of the proposed Process Rule are of particular importance: (1) That all processes in the rule are binding on DOE; (2) the proposed early assessment process; and (3) the requirement to demonstrate significant energy savings before a revised standard is set. (GEA, No. 125 at p. 2)

In their overall assessment, the Administrative Law Clinic at George Mason University's Antonin Scalia Law School (GM Law) found the proposed changes to DOE's Process Rule to be consistent with good regulatory principles and all governing law. GM Law supported the proposal as sound regulatory policy by promoting stakeholder input, predictability, and transparency. Furthermore, GM Law found DOE's proposal to comport with the D.C. Circuit's decision in *NRDC* v. *Herrington,* 768 F.2d 1355, 1372–73 (D.C. Cir. 1985), and it characterized other commenters' suggestions to the contrary as unfounded. (GM Law, No. 105 at pp. 1–2)

The Joint Commenters expressed support for DOE's proposal as representing the Department's renewed commitment to sound procedural practices that will increase regulatory efficiency, provide all interested stakeholders with a common understanding regarding DOE regulatory process, and ensure appropriate and reasonable investment of resources into DOE's important energy efficiency initiatives. Overall, the Joint Commenters offered support for the goal of EPCA's appliance efficiency program (*i.e.,* maximizing improvements in energy savings that are technologically feasible and economically justified). However, to succeed, these commenters stated that DOE should act on a consistent and predictable procedural basis and have an analytical structure that accounts for practical and technological realities, while ensuring regulatory transparency, consistency, and rationality. The Joint Commenters stated their belief that the proposed rule will provide greater certainty, transparency, and predictability in DOE's promulgation of test procedures and amended rules, a point echoed by Rheem. (Joint Commenters, No. 112 at p. 1; Rheem, No. 101 at pp. 1–2)

NEMA stated its understanding that the Process Rule NOPR did not add any steps to the rulemaking process, and added that concerns raised by certain other stakeholders about meeting deadlines can be addressed by appropriate project management solutions. (NEMA, No. 107 at p. 2)

Finally, while supporting the Process Rule proposal generally, Lennox expressed concern that the proposed Process Rule revisions may have weakened certain protections against regulations that are not economically justified. The commenter stated that in the prior version of the Process Rule, presumptions had existed against regulations such as those that: (1) Result in a negative return on investment for the industry or would significantly reduce the value of the industry; (2) would be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers; or (3) would have a significant adverse impact on the environment or energy security. Lennox argued that these presumptions against regulation have been eliminated in the revised Process Rule, which now only identifies these as ''considerations.'' (Compare ''Considerations in assessing economic justification'' in current Process Rule section 5(e)(3)(i)(A)–(C) versus proposed Process Rule section 7(e)(2)(i)(A)–(C)). Lennox recommended that these presumptions against regulation should be re-instituted and protections strengthened for avoiding these obviously deleterious impacts, because doing so provides valuable transparency and regulatory predictability regarding DOE decision-making. (Lennox, No. 133 at p. 8)

Other commenters opposed DOE's proposed Process Rule changes for a variety of reasons. For example, while ASE acknowledged that there are some improvements associated with the Process Rule NOPR, it stated that most of the proposed changes would likely complicate the program, add redundancy, remove flexibility, and make it more difficult to comply with statutory deadlines. More specifically, ASE expressed concerns that many of the proposed provisions of the Process Rule NOPR could have the effect of making it more difficult for DOE to follow the law, because they would likely slow the program down, remove flexibility to respond to stakeholders and make course corrections during rulemakings, and remove the prospect of negotiations leading to direct final rules. Instead, ASE stressed the need for a program that is transparent, predictable, robust, steady, and meets its statutory deadlines. (ASE, No. 108 at pp. 1–2)

The AGs Joint Comment opposed DOE's Process Rule proposal, arguing that it would unlawfully impede DOE's energy conservation standards rulemakings and frustrate the purpose of EPCA. Furthermore, the AGs Joint Comment stated that DOE's proposed revisions to the Process Rule are unnecessary, counterproductive, and likely to slow or halt energy efficiency rulemakings, while exposing DOE to frequent litigation. The AGs then argued that in its proposal, DOE has misinterpreted factors which EPCA requires DOE to consider and has favored elements of industry which oppose energy efficiency standards. These commenters also stated that DOE's allocation of resources to an unnecessary Process Rule NOPR, which introduces obstacles and new procedural hurdles to meeting EPCA's core statutory requirements in a timely manner, is contrary to the statute because it puts the agency further behind on its statutorily-mandated deadlines for energy conservation standards. The AGs Joint Comment also argued that the Process Rule NOPR proposes to add unnecessary procedural steps for the establishment of standards and adding administrative barriers which make it more difficult to complete the rulemaking process. These commenters found this to be particularly troubling when DOE is already behind on so many rulemakings. Consequently, the AGs recommended that DOE withdraw its proposal. (AGs Joint Comment, No. 111 at pp. 1–2, 4–5)

Overall, NRDC's comments opposed DOE's proposed revisions to the Process Rule as jeopardizing issuance of cost-effective energy conservation standards. NRDC stated that although all stakeholders agree that the standards process should be transparent, predictable, and flexible, DOE's proposal does not advance those goals. (NRDC, No. 131 at p. 2) Instead, NRDC stated that the proposed changes to the Process Rule, when considered together, would make it substantially more difficult for DOE to set standards. The commenter argued that DOE has not shown why additional steps are necessary, how they would improve the program, or how the extended process could be completed in the timeframe required by law, particularly in light of the number of statutorily-mandated

rulemaking deadlines that the Department has already missed. (NRDC, No. 131 at pp. 3–4) Along the same lines, the Cal-IOUs posed two key questions for DOE to address: (1) How will adopting these [proposed] Process Rule provisions help DOE meet EPCA requirements, specifically with respect to rulemaking timelines? (2) How do the provisions in the NOPR regarding industry test procedures help DOE independently assess the representativeness and enforceability of DOE test procedures? (Cal-IOUs, No. 124 at p. 2)

NRDC argued that it is premature and inappropriate for DOE to move forward with the Process Rule because its proposal was unclear on a number of key issues (*e.g.,* ordering and timeframe for various rulemaking steps, how DOE would comply with statutory deadlines, how test procedures would be established, details around the significant energy savings threshold, and changes to the ''walk-down'' methodology), thereby depriving NRDC and others an adequate opportunity to comment. (NRDC, No. 131 at p. 3) Similarly, PG&E argued that it is premature for DOE to move to a final rule, because the Process Rule NOPR poses too many unknowns and has sparked too much confusion, a situation which could lead to litigation. Instead, PG&E urged DOE to provide further clarification and an additional opportunity for stakeholders comment on the clarified proposal in order to allow for meaningful input. (PG&E, April 11, 2019 Public Meeting Transcript at p. 227)

Southern California Edison encouraged DOE to use its discretion to see what to improve, but it also stated that it does not want DOE to lose its flexibility. (Southern California Edison, April 11, 2019 Public Meeting Transcript at pp. 222–223) ACEEE stated that it was surprised that the revised Process Rule does not incorporate regulatory review requirements from Congress, and it also suggested that any general rulemaking timeline envisioned by DOE should include test procedures as well as standards. (ACEEE, March 21, 2019 Public Meeting Transcript at p. 143, 206)

In response, DOE appreciates the many comments expressing a deep interest in its Process Rule proposal, through which the Department strives to simultaneously increase transparency and predictability, foster public participation, reduce unnecessary burdens, and conserve scarce public and private resources, all while ensuring compliance with applicable statutory requirements. DOE acknowledges the many comments suggesting that the Department's Process Rule proposal makes substantial progress in advancing these objectives, gains which the agency seeks to fully realize through promulgation of this final rule. DOE proposed these changes to address identified shortfalls in its implementation of the Process Rule in recent years. Consequently, as NEMA pointed out, DOE did not add a host of cumbersome new steps to its rulemaking process, but it is instead adopting a narrowly tailored update to the Process Rule. In its only new procedural step, DOE has added an early assessment provision to gauge whether there are sufficiently changed circumstances to justify moving forward with an energy conservation standards or test procedure rulemaking. The early assessment process would add, at most, one brief additional comment period, but in cases where technologies and costs have not significantly changed since the last rulemaking, there is the potential to obviate the need for additional rulemaking, thereby allowing resources to be rapidly channeled to other rulemakings where economically justified and significant energy savings are possible. Otherwise, this final rule largely reflects a faithful implementation of provisions already in place, albeit with certain modifications intended to facilitate operation of the Appliance Standards Program and to address changes in the statute since the original Process Rule was promulgated.

For the reasons that follow, DOE finds the concerns raised by opponents of the Process Rule NOPR to be theoretical, and unpersuasive. DOE needs a clear and effective process to facilitate execution of its statutory mandate for energy conservation standards and test procedures under EPCA. Many commenters have expressed the need for updates to DOE's Process Rule, a position the agency has acknowledged and with which it agrees. For example, in recent years, DOE frequently failed to meet the Process Rule's guidance that ''[f]inal, modified test procedures will be issued prior to the NOPR on proposed standards.'' (*See* section 7(c) of 10 CFR part 430, subpart C, appendix A) There is general agreement that the preferred regulatory approach in this context is to have a final test procedure in place to inform the accompanying standard-setting rulemaking, but DOE has frequently deviated from the Process Rule and conducted test procedure and standards rulemakings concurrently. Likewise, while the Process Rule applied only to rulemakings for consumer products, there has been little opposition to DOE's past application of the Process Rule to covered commercial and industrial equipment. Moreover, DOE has gained significant rulemaking experience under the Appliance Standards Program over the past 25 years since the Process Rule was first adopted. Accordingly, amendments to the Process Rule present a natural and logical evolution of DOE's rulemaking process.

DOE likewise does not agree with comments that the Department's Process Rule proposal would complicate or add redundancy to the regulatory process. With the exception of the early assessment and associated comment period, the amended Process Rule reflected in this final rule contains the same basic elements found in the 1996 Process Rule. Take again, the example of ensuring that a test procedure change is finalized prior to issuance of an energy conservation standards NOPR, which was also a provision in the previous Process Rule. While some commenters might consider that a complication, others could rightly call that an important procedural safeguard. As explained in detail elsewhere in this document, the procedural changes to the Process Rule adopted in this final rule are intended to address identified problems, not to complicate or unnecessarily delay DOE's rulemaking process.

Although several commenters asserted that the proposed changes to DOE's Process Rule would negatively impact the agency's ability to complete rulemakings and meet statutory deadlines, DOE disagrees. DOE is cognizant of its legal obligations under EPCA, and the Department anticipates being able to fulfill the requirements of both the statute and the Process Rule. The amended Process Rule has the potential to streamline DOE's rulemaking through the use of the early assessment, which can better enable the Department to satisfy its statutory time constraints. By meeting its obligations within the allotted timeframes, DOE would not need commenters' recommended flexibility to waive the procedural safeguards of the Process Rule. Thus, commenters' arguments that DOE's Process Rule proposal would cause the Department to miss statutory deadlines and improperly delay rulemakings are speculative, at best.

In response to the AGs Joint Comment that DOE has misinterpreted the statute, the Department disagrees and has addressed specific claims to that effect at appropriate places elsewhere in this document. Regarding the AGs Joint Comment's assertion that the Process

Rule proposal has incorporated provisions favoring industry, DOE once again disagrees. In many ways, DOE has merely updated the Process Rule to better reflect its current practice, and in other areas, it has made modifications to faithfully meet the requirements of the statute, to increase public participation, and to institute procedural safeguards to the benefit of all stakeholders.

Regarding assertions of that commenters' confusion necessitates further proceedings, DOE notes that most commenters on the Process Rule NOPR did not make such claims in response to the agency's proposal. Instead, such confusion was limited to a small number of commenters who generally opposed DOE's proposal. DOE published a Process Rule RFI, convened an interactive public meeting on the RFI, published a Process Rule NOPR, convened two interactive public meetings on the NOPR, published a Notice of Data Availability (''NODA'') on the topic of its significant energy savings calculations, and accepted public comments through all of those mechanisms. In total, the Department has hosted three public meetings and solicited public comments for 197 days (*i.e.,* longer than 6 months) on potential changes to the Process Rule. DOE believes it articulated clearly the changes to the Process Rule that it was proposing and finds that there has been thorough discussion and opportunity for comment on virtually all the subjects mentioned by NRDC and PG&E.[9] In fact, the lengthy and detailed comments on all of the topics raised in the proposed Process Rule submitted by the very parties claiming confusion belie that assertion. DOE recognizes that it may never be possible to explain its proposals to the complete satisfaction of every stakeholder, but given its numerous publications and opportunities for public engagement on the Process Rule, as well as the detailed nature of the comments received, the agency has concluded that stakeholders were afforded an adequate opportunity to comment on the topics contained in this final rule.

Regarding comments that DOE's amended Process Rule would invite increased litigation, the Department believes the opposite to be true. By having a transparent process with increased opportunity for public input that operates on a predictable schedule (*e.g.,* completion of test procedure prior to proposing standards), DOE anticipates a decreased incidence of litigation. And rather than frustrating the purpose of EPCA, DOE believes that this Process Rule final rule advances the purpose of EPCA by having better and more efficient procedures in place that allow the Department to better target its resources to those rulemakings which are technologically feasible, economically justified, and save a significant amount of energy.

Regarding the particular point made by Lennox about the Process Rule's considerations in assessing economic justification, DOE notes that in reorganizing the regulatory text, it did not intend to make substantive changes in this area regarding the analysis of economic justification criteria, nor did it discuss such action in the NOPR. DOE maintained the substance of those criteria, but it deleted a clear statement of the consequences that would flow from situations implicating those criteria (*i.e.,* deleting language stating ''that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects''). Although DOE's streamlined version of the regulatory text was not proposing to change how those criteria are applied, the Department understands that the absence of the deleted language could be misinterpreted as indicating a substantive change in approach. Accordingly, DOE is reinserting the regulatory text language raised by Lennox in its comments.

In response to ACEEE's suggestion that DOE incorporate regulatory review requirements from Congress in its proposal, the agency believes that a detailed and comprehensive recitation of applicable statutory requirements in the Process Rule is unnecessary. Those statutory requirements are a given, so instead, DOE endeavored to focus on the procedures it will follow to meet those requirements. Regarding ACEEE's suggestion that any general rulemaking timeline envisioned by DOE should include test procedures as well as standards, DOE believes that the regulatory text of the Process Rule adequately addresses the topic of test procedures, and DOE has already made clear the key timing provision that any test procedure rulemaking is to be completed prior to publication of a standards NOPR. Consequently, DOE has determined that no further clarifications are required on these topics.

In sum, DOE has determined that the changes to the Process Rule adopted in this final rule will provide for a program that is transparent, predictable, robust, steady, and which meets its statutory deadlines, just as ASE suggested.

III. Discussion of Specific Revisions to the Process Rule

A. The Process Rule Will Be Binding on the Department of Energy

In the December 2017 RFI, DOE asked stakeholders whether DOE should make compliance with the Process Rule mandatory. (82 FR 59992, 59997) At the January 9, 2018, Process Rule public meeting, most stakeholders agreed that the Process Rule should be binding on the Department, that is, the Department should be held accountable for complying with its own procedures so that the public will have confidence in the transparency and fairness of DOE's regulatory process. Others recommended that any amended Process Rule retain flexibility for DOE so that the agency is not restricted in its ability to respond to the circumstances of each rulemaking and to avoid increased litigation risk.

Similarly, in response to the NOPR, most commenters support DOE's inclusion of a provision providing for the mandatory nature of the Process Rule to the Department to hold DOE accountable to its own procedures, thereby increasing public confidence in the fairness of the regulatory process. Those commenters are as follows: AHAM March 21, 2019 Public Meeting Transcript, No. 87, at pp. 68–69; AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at p.10; AGA, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 18–19; AGA, No. 114, at pp. 7–8; ALA, No. 104 at p. 2; APGA, March 21, 2019 Public Meeting Transcript, No. 87, at p. 14; APGA, No. 106 at p. 3; ASHRAE, No. 109 at p. 3; BWC, No. 103 at p. 1; CTA, No. 136 at p. 2; Danfoss, March 21, 2019 Public Meeting Transcript, No. 87, at p. 40; GEA, No. 125 at p. 2; GM Law, No. 105 at pp. 2, 4; GWU, No. 132 at p. 3; Joint Commenters, No. 112 at p. 2; Lennox, No. 133, at p. 2; Lutron, No. 137 at p. 2; NPCC, No. 94, at p. 4; NPGA, No. 110 at pp. 1–2; Rheem, No. 101 at p. 1; Southern Company, March 21, 2019 Public Meeting Transcript, No. 87, at p. 70; Southern Company, April 11, 2019 Public Meeting Transcript, No. 92, at p.233; Spire, March 21, 2019 Public Meeting Transcript, No. 87, at p. 37; Spire, No. 139, at p. 2; BHI, No. 135, at p. 1; and Westinghouse, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 72–75; CTA, No. 136 at p. 2) Specifically, APGA added that if DOE merely makes changes to the ''voluntary'' guidelines, there is no

[9] The one exception involved the proposed changes to the ''walk-down'' methodology. DOE agrees that that topic will require further study before making a decision to move forward.

change to the status quo in which there are no consequences for not following the Process Rule. (APGA, No. 106 at p. 3)

Conversely, also in response to the NOPR, other stakeholders oppose requiring that the Process Rule be mandatory to the Department for three reasons. First, commenters state that such a provision would deprive the Department of needed flexibility during the rulemaking process; second, commenters state that such a provision could lead to additional litigation, thereby causing delay in the rulemaking process, and third, commenters state that there may be cases where adherence to the Process Rule creates a conflict with the statute.

For those commenters concerned that the Department would lose flexibility during the rulemaking process, some recommended a ''limited or good cause exception'' that the Department could use in certain circumstances. For instance, A.O. Smith stated the a ''limited exception'' clause would grant the Department limited authority to deviate from its Process Rule under certain criteria such as: Consensus agreements; negotiated rulemakings; test procedure rulemakings addressing clarifications necessary to provide clarity to the market, reduce uncertainty, and provide a level playing field; and rulemakings completed to fix errors. A.O. Smith recommended that such criteria be proposed in a supplemental notice of proposed rulemaking. Furthermore, A.O. Smith explained that this limited exception would not be meant to circumvent the integrity of the rulemaking process but recognize circumstances where process deviations are necessary and expediting the process is reasonable. (A.O. Smith, No. 127, at p. 2)

Another commenter, ASE opposed making the Process Rule binding, because it would take away DOE's flexibility to respond to unforeseen developments during the rulemaking process and leave the Department vulnerable to lawsuits filed by stakeholders opposed to standards based upon real or perceived departures from procedure. ASE seemed to favor adoption of a ''good cause'' exception to the Process Rule to provide the agency with some flexibility. ASE also suggested that DOE consider documenting any deviations from the Process Rule for public comment throughout the rulemaking process, particularly but not limited to when a statutory deadline was set to be missed. (ASE, No. 108 at pp. 2–3)

Furthermore, ASAP, *et al.* states that making the Process Rule binding would take away important flexibility that benefits all stakeholders and increases the potential for litigation. ASAP stated that at a minimum, it should include a ''good cause'' exception as was included in DOE's draft NOPR provided to OIRA. However, any ''good cause exception'' should not be restricted but should provide DOE with the necessary flexibility to address specific situations that arise. (ASAP, et al., No. 126 at pp. 1–3) Other commenters, including ACEEE (ACEEE, No. 123, at p. 3) and CT–DEEP (CT–DEEP, No. 93, at p. 2) agreed that a ''good cause exception'' should be included in the Process Rule if it is a mandatory requirement. Earthjustice suggested that if the Process Rule is going to be binding, there should be a procedure to deviate from the Process Rule. (Earthjustice, March 21, 2019 Public Meeting Transcript, No. 87, at p. 76) Westinghouse took the position that the Process Rule should be mandatory but also that flexibility should be provided. (Westinghouse, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 72–75)

Several additional stakeholders voiced their concern that mandatory application of the Process Rule to the Department will generate additional litigation, which could create uncertainty in the market. (A.O. Smith, No. 127, at p. 2; ACEEE, No. 123, at p. 3; ASE, No. 108 at pp. 2;; ASAP, et al., No. 126 at pp. 1–2; AGs Joint Comment, No. 111 at pp. 5–6; CEC, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 232–233; CEC, No. 121, at pp. 2–3; Cal-IOUs, No. 124, at pp. 3–4; Earthjustice, No. 134, at p. 2) Earthjustice believes that a mandatory Process Rule gives new leverage for parties seeking judicial review. (Earthjustice, No. 134, at p. 2) Further, Energy Solutions added that DOE would lose its discretion with mandatory binding requirements and wouldn't be able to address ''one-off'' issues. (Energy Solutions, March 21, 2019 Public Meeting Transcript, No. 87, at p. 72)

More specifically, the AGs Joint Comment argued that such litigation would not only delay completion of the rulemaking process, but simultaneously. It would frustrate DOE's stated objectives of increasing predictability and consistency, and likely deprive consumers and businesses the full and timely benefits of energy and cost savings associated with standards. (AGs Joint Comment, No. 111 at pp. 5–6)

Another commenter, the CEC states that if DOE continues to move forward with a binding process rule, it should include provisions that allow for substantial compliance with the Process Rule. (CEC, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 232–233) In CEC's opinion, making the Process Rule binding will prevent DOE from responding quickly and effectively when it is in the interest of all stakeholders to do so and may make DOE more vulnerable to litigation challenges. (CEC, No. 121, at p. 2) Pointing to other instances where DOE needed to make modifications to its processes, the CEC noted that these changes brought about more effective means for gathering stakeholder input—*e.g.* shifting from using an ANOPR to other vehicles such as RFIs, Framework Documents, and NODAs. (CEC, No. 121, at p. 2) The CEC emphasized that DOE needs this flexibility to fit the appropriate process to the appliance standard or test procedure at issue. (CEC, No. 121, at p. 2) By making the Process Rule binding, the CEC asserted that DOE would be inviting stakeholders who are opposed to regulations to sue DOE for procedural violations that would not have changed the outcome of DOE's determination related to a given efficiency standard—which will in turn lead to delays in implementing the standard, lost energy savings to consumers, and regulatory uncertainty for manufacturers, distributors, and retailers. (CEC, No. 121, at pp. 2–3) To the contrary, the Joint Commenters disagree that binding DOE to the Process Rule will result in excessive litigation disrupting the goals of certainty and expediency. Most litigation stems from substantive defects caused by shortcutting the process and a binding process will reduce procedural litigation and result in better rules. (Joint Commenters, No. 112 at p. 2) AHRI also disagrees that a mandatory Process Rule would result in more litigation. (AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at p. 10)

Next, ASAP, *et al.,* the AG's Joint Comment, and Cal-IOUs raised the issue as to how to reconcile a mandatory Process Rule and DOE's adherence to the statutory requirements in EPCA. ASAP, et al. states that DOE compliance with the statute must take precedence over the Department's self-imposed restrictions in the Process Rule. (ASAP, et al., No. 126 at pp. 1–3) ASAP does not believe DOE is clear on how it would resolve a conflict between the Process Rule and the statute. (ASAP, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 53, 62–63) Moreover, the AGs Joint Comment stated strong opposition to making the Process Rule binding, as opposed to guidance, because that would preclude DOE from having the procedural flexibility to take a different course of

action when necessary to meet statutory requirements, and a rigid application of the Process Rule would jeopardize DOE's ability to meet its legal obligations under EPCA. The AGs Joint Comment opposed what it categorized as unnecessary and time-consuming procedural steps (*e.g.,* coverage determination or test procedure restart requirements) that could further jeopardize DOE meeting its EPCA mandates. The AGs Joint Comment argued that because DOE's proposal failed to address how the Process Rule could be made mandatory while meeting its statutory duties, it has failed to provide sufficient detail to allow for meaningful and informed comment, as required under the APA. (AGs Joint Comment, No. 111 at p. 6) The AGs Joint Comment stated that if DOE does proceed to make the Process Rule binding, it should include a good cause waiver, particularly for use in cases where the Process Rule requirements would conflict with the text or purposes of EPCA. (AGs Joint Comment, No. 111 at p. 7)

The Cal-IOUs argued that the 1996 Process Rule had intended to be used as guidance and urged that DOE be mindful of this approach with respect to any new provisions or the ''modernization'' of the Process Rule, particularly with respect to any conflict between it and EPCA. (Cal-IOUs, No. 124, at p. 3) Another commenter, PG&E stated that making the Process Rule mandatory will impose added burdens on DOE and stakeholders which could prevent DOE from meeting its statutory obligations. PG&E urged DOE to use its resources to first catch-up on rulemakings that are past due and finalize pre-publication or consensus term sheets before introducing new procedures that will limit agency discretion and create more regulatory burden. (PG&E, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 21–22; PG&E, April 11, 2019 Public Meeting Transcript, No. 92, at p. 228)

DOE has carefully considered all the comments on this matter and has determined that requiring mandatory compliance on the part of DOE with its own Process Rule would clearly promote a rulemaking environment that is both predictable and consistent (*i.e.,* one where all stakeholders know what to expect during the rulemaking process). In the past, DOE has been criticized by stakeholders for not following its Process Rule, and instead exercising its discretion on a case-by-case basis on procedural matters during the rulemaking process. Today, DOE is affirming language in the amended Process Rule to make clear that its provisions are binding on the agency. DOE believes that this approach will promote confidence, consistency, clarity, and transparency in the rulemaking process that some feel has been lacking in the past. Moreover, it has been the rare instance, if at all, where all parties in a rulemaking proceeding agreed that deviating from the Process Rule was advisable. Rather, it is DOE's experience that deviations from normal process has resulted in one or more parties raising issues that have slowed the regulatory process. Even on rulemaking matters DOE thought to be relatively simple and straight-forward, the same parties suggesting in comment that the Process Rule should provide for flexibility have sought more procedural steps and raised issues of DOE proceeding too quickly and without appropriate stakeholder interaction. Making the Process Rule binding on DOE should result in no party arguing that the process used by DOE was unfair or lacking. Furthermore, DOE believes that the argument that a binding Process Rule will generate increased litigation is highly speculative and, accordingly, is not an appropriate basis to reject the mandatory application of the amended Process Rule. Clearly, it is in the best interests of all stakeholders to work together during the rulemaking process so that DOE efforts to establish economically justified and technologically feasible energy conservation standards and promote meaningful burden reduction in the context of standards setting, compliance, and testing requirements can be achieved. And lastly, the amended Process Rule has been drafted to closely follow and implement EPCA. As such, following the Process Rule will mean that DOE will conduct its rulemaking activities to comply with all EPCA requirements.

After years of debate as to the nature of DOE's compliance with the current Process Rule, DOE believes it appropriate to increase public confidence in the fairness and predictability of the rulemaking process. Accordingly, DOE is adopting language in this final rule making the application of the Process Rule mandatory to the Department.

B. The Process Rule Will Apply to Both Consumer Products and Commercial Equipment

By its terms (and specifically by its title), the 1996 Process Rule applies only to consumer products. However, in practice, DOE has routinely followed the procedures set forth in the Process Rule when establishing standards for commercial equipment. In its December 2017 RFI, DOE requested comment as to whether the agency should amend the Process Rule to clarify that it is equally applicable to the consideration of standards for commercial equipment. (82 FR 59992, 59996) At the January 9, 2018, Process Rule public meeting, DOE also asked stakeholders how the agency should treat equipment covered by the American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'')/Illuminating Engineering Society of North America (''IESNA'') Standard 90.1 (''ASHRAE Standard 90.1''), if DOE were to amend the Process Rule to include commercial equipment. DOE pointed out that EPCA provides a separate set of procedural requirements and timelines for ASHRAE equipment that are different than those in the Process Rule. (DOE, January 9, 2018 Public Meeting Transcript at pp. 183–184)

Commenters agree with the principle that the Process Rule procedures should explicitly apply to both new and amended energy conservation standards for both covered consumer products and industrial and commercial covered equipment, but with modified provisions specific to ASHRAE equipment. (Acuity, No. 95, at p. 2; AHRI, March 21, 2019 Public Meeting Transcript, No. 87, at p. 87; ASE, No. 108 at p. 3; ACEEE, No. 123, at p. 1; AGA, No. 114, at pp. 8–9; ASAP, March 21, 2019 Public Meeting Transcript, No. 87, at p. 88; ASAP, et al., No. 126 at pp 1, 3; BWC, No. 103 at p. 1–2; CEC, No. 121, at p. 3; Edison Electric Institute, March 21, 2019 Public Meeting Transcript, No. 87, at p. 87; GM Law, No. 105 at p. 3; GWU, No. 132 at p. 3; Joint Commenters, No. 112 at p. 2; Lennox, No. 133, at p. 2; NAFEM, No. 122, at p. 2; NPCC, No. 94 at p. 4; NPGA, No. 110 at p.1; Cal-IOUs, No. 124, at p. 4; Rheem, No. 101 at p. 1; Spire, No. 139, at p. 24; BHI, No. 135, at p. 2) Only one commenter, the Cal-IOUs, supported expanding the scope of the Process Rule to include covered commercial and industrial equipment as long as the Process Rule is not binding. (Cal-IOUs, No. 124, at p. 4) This commenter did not explain the rationale for its position.

DOE agrees with commenters that a modernized Process Rule should apply to both consumer products and industrial and commercial equipment, and that the Process Rule must contain language that clarifies this coverage. Historically, DOE has applied the Process Rule to both consumer and industrial and commercial rulemakings. The final rule makes clear that this practice will continue. To promote a

consistent process that reduces the regulatory burden of the rulemaking process, DOE will apply the same procedures in the Process Rule to both consumer products and industrial and commercial equipment rulemakings, except as discussed in section III.C for ASHRAE equipment. The Joint Commenters clearly articulated the rationale for such a decision as follows, there are no cogent reasons for treating the rulemaking process for commercial equipment differently than for consumer products. The benefits of a well-defined, consistent process apply regardless of product or equipment type. ASHRAE equipment holds unique status in EPCA and therefore must be considered separately. (Joint Commenters, No. 112 at p. 2)

Accordingly, DOE has concluded that formally applying the Process Rule to commercial and industrial equipment will enhance the consideration of such equipment by ensuring that there is proper time and information before the agency prior to promulgation of new or amended regulations.

C. The Application of the Process Rule to ASHRAE Equipment

In the February 13, 2019 Process Rule NOPR, DOE explained its proposed approach as to how the agency should treat ASHRAE equipment subject to ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* in the event DOE were to amend the Process Rule so as to formally apply to commercial equipment. (84 FR 3910, 3914–3916) As statutory background, EPCA provides, in relevant part, that ASHRAE equipment is subject to unique statutory requirements and its own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, unless DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)); 84 FR 3910, 3914 (Feb. 13, 2019)

The Process Rule NOPR examined numerous topics, including the need to address ASHRAE equipment explicitly in the Process Rule, the level of deference to be accorded to ASHRAE (and the openness of that process), the ''clear and convincing evidence'' standard for establishing standard levels more stringent than those adopted in ASHRAE Standard 90.1, and DOE's interpretation of EPCA's ASHRAE trigger provisions (and related implementation). In response to the NOPR, several stakeholders expressed their views as to how DOE should handle ASHRAE equipment, including concerns regarding each of the topics raised in the NOPR. Each of these matters will be addressed in the paragraphs that follow, including public comments received and DOE's responses.

The Need for ASHRAE Equipment To Be Addressed Separately

In the Process Rule NOPR, DOE stated that it tentatively determined that the amended Process Rule will contain a new section that clearly delineates the procedure DOE will follow for evaluating amendments to ASHRAE Standard 90.1 and conducting related rulemakings. DOE noted that it would first reiterate its statutory obligations for ASHRAE equipment in this new section of the Process Rule. In the event that DOE determines that it is appropriate to conduct a rulemaking seeking to adopt standards for ASHRAE equipment more stringent than those in ASHRAE Standard 90.1, all of the Process Rule requirements would apply. However, for the typical situation wherein DOE is adopting the ASHRAE Standard 90.1 level(s), DOE would follow the EPCA statutory requirements rather than the Process Rule requirements. (84 FR 3910, 3915 (Feb. 13, 2019))

Many commenters supported (or did not object to) DOE's proposal to have the Process Rule separately and specifically address ASHRAE equipment. (AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 10, 95; Spire, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 100–101; Rheem, No. 101 at p. 1; NRDC, No. 131 at pp. 14–15; Spire, No. 139 at p. 5; BHI, No. 135 at p. 2) For example, ASHRAE expressed support for the clarification in DOE's proposal regarding the extent to which it would rely on ASHRAE Standard 90.1, an outcome which the commenter suggested would achieve the clear statutory intent of EPCA and would result in a less costly and burdensome rulemaking process. (ASHRAE, April 11, 2019 Public Meeting Transcript, No. 92 at pp. 224, 226) The CEC also supported the inclusion of a means to facilitate the adoption of ASHRAE 90.1 levels for commercial equipment. (CEC, No. 121 at p. 3) Similarly, the AGA expressed support for the Process Rule NOPR's proposal that in the event that DOE conducts a rulemaking to establish more-stringent standards for covered ASHRAE equipment, DOE would follow the procedures established in the Process Rule, while still complying with EPCA's ASHRAE-specific deadlines. AGA also agreed with the Department's proposal in the NOPR to add a section into the Process Rule to clearly define the process used to adopt ASHRAE 90.1 equipment standards and also define a mechanism when a more-stringent equipment efficiency standard over the ASHRAE level can be pursued. (AGA, No. 114 at p. 10) The Joint Commenters also supported the Department's proposed approach to rulemakings for ASHRAE equipment, agreeing that the Process Rule should apply to commercial equipment covered by ASHRAE 90.1 standards only in the case where standards rulemakings for ASHRAE equipment are prompted by a six-year review or where DOE proposes standard levels more stringent than those in ASHRAE Standard 90.1. (Joint Commenters, No. 112 at p. 2)

ASHRAE expressed support for DOE's inclusion of a new section in its proposed Process Rule that clearly delineates the procedure DOE will follow for evaluating amendments to ASHRAE Standard 90.1 and conducting related rulemakings with respect to equipment covered by ASHRAE Standard 90.1. ASHRAE lauded DOE's decision to follow EPCA's mandate and adopt the revised ASHRAE levels, except in very limited circumstances. It also agreed with DOE's assessment that adopting the amended ASHRAE Standard 90.1 levels as its regular practice will result in reduced regulatory burden on stakeholders and will promote consistency and simplicity when DOE is addressing ASHRAE equipment. (ASHRAE, No. 109 at pp. 2–3)

However, several parties sought clarification as to how DOE's proposal would alter the agency's historical treatment of ASHRAE equipment and expressed concern that the Department would deviate from the relevant statutory requirements. For example, Danfoss argued that the Process Rule

should not apply to ASHRAE equipment when DOE is adopting the standard levels in Standard 90.1 because the ASHRAE process already has requirements for fairness and transparency, but if DOE should decide that a more-stringent standard is warranted, then the Process Rule should apply. (Danfoss, March 21, 2019 Public Meeting Transcript, No. 87 at p. 40)

Lennox stated that the Process Rule should apply to commercial equipment except when it would conflict with special statutory provisions specific to commercial equipment rulemaking, such as provisions for adopting ASHRAE 90.1 industry standards. Although it found section 2 of the proposed Process Rule to be generally consistent with this principle, Lennox nonetheless urged DOE to clarify this point. For commercial equipment covered by ASHRAE Standard 90.1, Lennox noted that DOE must adopt the industry standard unless ''clear and convincing evidence'' dictates otherwise (*i.e.,* by supporting more-stringent standards). If DOE simply adopts ASHRAE 90.1 standards, Lennox stated that the additional provisions in the Process Rule are not necessary. However, Lennox suggested that additional Process Rule processes and transparency enhancements may apply to commercial equipment covered by ASHRAE 90.1 standards where: (1) Energy conservation standard rulemakings for such ASHRAE products are prompted by a six-year review or (2) DOE proposes standard levels over-and-above those in ASHRAE 90.1, albeit in either case subject to the ''clear and convincing evidence'' standard. Again, Lennox stated that although this structure is consistent with section 9 of the proposed Process Rule and DOE should clarify this in the final rule preamble. For instance, Lennox stated that in the ''very limited circumstances'' when DOE seeks to go beyond standards established by ASHRAE 90.1 for equipment covered by those standards, relevant Process Rule provisions may include many of those in Process Rule section 1 (Objectives) and sections 6 and 7 (which provide details on selecting standards, albeit these would apply only in those ''very limited circumstances'' when DOE considers going beyond ASHRAE standards and would be subject to the ''clear and convincing evidence'' standard). Lennox also argued for the potential continued applicability of section 8 (*e.g.,* finalizing a test procedure in advance of considering any amended energy conservation standard), sections 10 and 11 (on DFRs and negotiated rulemakings), and sections 13 to 17 (on engineering analyses, assessment of impacts on manufacturers and consumers, considering non-regulatory approaches, and cross-cutting analytical assumptions, all again subject to the ''clear and convincing evidence'' standard). Because of the potentially broader applicability of other Process Rule provisions beyond the ASHRAE-specific section 9, the Process Rule should include a clause whereby, or otherwise clarify, the Process Rule applies to ASHRAE equipment: (1) Except when doing so would conflict with the ASHRAE-specific provisions and (2) in the two limited circumstances mentioned above when DOE might go beyond ASHRAE-specified levels for ASHRAE products (albeit subject to the ''clear and convincing evidence'' standard). (Lennox, No. 133 at p. 3)

Bosch stated that the DOE proposal to adopt the revised ASHRAE levels for standards as its regular practice, except in limited circumstances, represents a significant change to the current rulemaking process, as DOE would be deferring a considerable portion of its rulemaking work to a non-governmental organization. Instead, Bosch countered that DOE has a clear and statutory obligation to conduct a full and sufficient evaluation of proposed ASHRAE amendments and not to simply defer to a separate industry standards organization. The commenter argued that instead of reducing regulatory burden, DOE's proposal to defer to ASHRAE would create new burdens for manufacturers by requiring companies to devote significant time and resources to engaging in the ASHRAE process. Also, Bosch stated that the proposal does not adequately address whether the levels set through the ASHRAE standards-setting process are sufficient or are updated within an appropriate period of time, unlike the six-year EPCA look-back review, thereby hindering regulatory certainty. Based upon the foregoing reasoning, Bosch requested that DOE reconsider this portion of its proposal. (Bosch, No. 113 at pp. 3–4) Along these same lines, the CA IOUs indicated that DOE's proposal with respect to deferring to industry standards—such as those promulgated by ASHRAE—would have the effect of the agency ignoring its statutory mandate to critically assess whether a given test procedure requires amending. (CA IOUs, No. 124 at p. 5) The AGs Joint Comment similarly argued that DOE's proposed modifications to its approach to regulating ASHRAE equipment amounts to an abdication of its duties to assess Standard 90.1 and engage in related rulemaking. (AGs Joint Comment, No. 111 at p. 12)

In contrast, the Joint Commenters expressed strong support for the expectation that DOE would adopt revised ASHRAE levels except in ''very limited circumstances,'' because they argued that historically, when DOE has exceeded the ASHRAE proposed levels, it has imposed disproportionate harm on industry segments in pursuit of inconsequential energy efficiency benefits. (Joint Commenters, No. 112 at p. 2)

Ingersoll Rand stated that it supports alignment of overlapping product energy efficiency requirements between ASHRAE Standard 90.1 and DOE appliance standards, in terms of both stringency and effective dates. However, Ingersoll Rand acknowledged that EPCA grants DOE some limited discretion when considering amending appliance standards under 42 U.S.C. 6313(a)(6)(A). Consequently, the commenter agreed with the Department's proposal that if standards established under ASHRAE Standard 90.1 are adopted by DOE, the rulemaking does not need to follow the Process Rule, but if the Department analyzes whether there is clear and convincing evidence to justify more-stringent standards, such rulemaking would need to abide by the Process Rule. However, Ingersoll Rand disagreed with the Department's interpretation that ASHRAE not acting to amend the energy efficiency requirements for DOE-covered products is tantamount to a decision that the existing standards remain in place. Ingersoll Rand stated that in this scenario, DOE has proposed to hold revisions to appliance standards under 42 U.S.C. 6313(a)(6)(C) to the same ''very high bar'' as if ASHRAE had revised the energy efficiency standards for these products in Standard 90.1. The commenter stated the while it expects ASHRAE to update these standards when it is economically justified and technologically feasible to do so, it is also conceivable that this process could be delayed for procedural reasons, given the nature of the ASHRAE consensus-based standards process. If the review of these standards is triggered by the 6-year-lookback provision at 42 U.S.C. 6313(a)(6)(C)(i), Ingersoll Rand encouraged DOE to consider standards for the appropriate equipment as it would any other standard under the Process Rule. Ingersoll Rand reasoned that such approach would ensure that any new appliance standards remain technologically feasible and economically justified per DOE's analysis (and including any ASHRAE analysis), without further delaying the

appropriate updates to these standards. (Ingersoll Rand, No. 118 at p. 2)

Other commenters were more skeptical of DOE's proposed approach to ASHRAE equipment in the Process Rule NOPR and raised a number of concerns. ACEEE commented that applying the full Process Rule to ASHRAE products is not workable. According to ACEEE, DOE's proposal states that all of the Process Rule requirements would apply to a decision to go beyond ASHRAE levels, but it does not explain how an analysis and public comment period on the ASHRAE levels followed by early assessment, framework, full analysis, draft rule, and final rule, including three additional public comment periods, would all be accomplished within the statutory limit of 30 months (*i.e.,* the statutory time limit for adopting more-stringent standards). ACEEE argued that ''the law (*i.e.,* EPCA) recognizes that substantial analysis and public input occur in the ASHRAE process, and the procedure for setting modified requirements should reflect that.'' (ACEEE, No. 123 at p. 2) The CA IOUs contended that EPCA prescribed a specific set of conditions for DOE to follow with regard to setting standards for ASHRAE equipment and commented that DOE is required to follow EPCA. (CA IOUs, No. 124 at p. 4–5)

Finally, ASAP sought clarification as to whether ASHRAE equipment would be subject to the early assessment process under the proposed Process Rule. (ASAP, April 11, 2019 Public Meeting Transcript, No. 92 at p. 196)

In response, DOE recognizes its specific obligations under EPCA vis-à-vis ASHRAE equipment and makes clear that it is continually striving to meet those obligations. And, the Department must have a process for doing so. As with other commercial equipment, DOE has applied the Process Rule to ASHRAE equipment to the extent permitted by statute, even though 10 CFR part 430, subpart C, Appendix A technically applies to ''consumer products.'' DOE has found the principles embodied in the Process Rule to be beneficial to both stakeholders and the agency, without distinction as to whether a consumer product or commercial/industrial equipment is at issue. After considering public comments, in this final rule, DOE has decided to make its existing practice more clear and transparent by explicitly addressing the applicability of the Process Rule to ASHRAE equipment and incorporating the key statutory timelines, as well as to clarify how DOE will conduct rulemakings for ASHRAE equipment. To the extent DOE can articulate a clear and rational process for implementing related statutory requirements, the agency anticipates that it would improve consistency across its ASHRAE rulemakings, thereby reducing burdens on manufacturers of such equipment and increasing benefits to consumers.

DOE also seeks to make clear that different procedures and timelines apply under EPCA, depending upon whether the Department is adopting the levels contained in ASHRAE Standard 90.1 or more-stringent standards. When ASHRAE 90.1 is amended with respect to the standard level or design requirements applicable under that standard to specific products enumerated in EPCA, DOE is ''triggered'' to adopt those measures as the uniform national standard (unless DOE finds clear and convincing evidence that adoption of more stringent levels for the product would result in significant additional energy savings and is technologically feasible and economically justified). When DOE determines to adopt the levels in ASHRAE Standard 90.1 as uniform national standards, it will generally follow the specific procedures and timelines set forth in the statute (*i.e.,* a truncated process under EPCA which directs DOE to adopt ASHRAE's consensus standards within 18 months). The other Process Rule procedures are generally not applicable to that specific case and will not be required. However, where DOE finds clear and convincing evidence to support more-stringent standards (as required either under EPCA's ASHRAE ''trigger'' or 6-year-lookback provisions), the statute's analytical requirements and longer 30-month timeline are more akin to DOE's typical rulemaking process, so DOE believes it appropriate to apply the Process Rule in such cases. DOE has made a clarification to this effect in the Process Rule's regulatory text (see sections 2 and 9).

Specifically in response to ASAP, DOE would not apply the early assessment process to ASHRAE trigger rulemakings because DOE must undertake such rulemaking pursuant to 42 U.S.C. 6313(a)(6)(A), so the early assessment's inquiry as to whether a rulemaking is necessary would not be relevant. Under the statutory process for ASHRAE, DOE is obligated to publish a NODA presenting potential energy savings from the ASHRAE action. DOE plans to use that vehicle to perform the early assessment for ASHRAE regarding whether there is potentially clear and convincing evidence to adopt a more stringent standard. In addition, DOE will conduct an early assessment for rulemakings for ASHRAE equipment that are initiated pursuant to the 6-year-lookback under 42 U.S.C. 6313(a)(6)(C), because in such cases, DOE is not statutorily obligated to adopt a level set by ASHRAE and may ultimately determine that no new standard is warranted.

DOE disputes ACEEE's assertion that applying the Process Rule to rulemakings that go beyond ASHRAE Standard 90.1 levels is unworkable, because DOE has been successfully applying most of those provisions to its ASHRAE rulemakings already. The only new step DOE has added to the rulemaking process through its revised Process Rule is the ''early assessment'' (applicable only to ASHRAE 6-year-lookback rulemakings, not ASHRAE ''trigger'' rulemakings). DOE sees no reason why through sound management principles and proper scheduling that it cannot satisfy the applicable provisions of the Process Rule while meeting relevant statutory deadlines. In contrast to ACEEE's view, DOE envisions this final rule's process improvements as increasing the opportunity for public input and strengthening rulemaking analyses.

DOE is not deferring its statutory duties for standard setting to an outside organization (*i.e.,* ASHRAE) through these Process Rule amendments. The Department is committed to undertaking the necessary review, consistent with the EPCA timelines, to determine whether more-stringent standards are appropriate, both under its ASHRAE trigger and 6-year-lookback authority, as it always has. DOE is making clear that in doing so, it must meet the statutory requirement that the more-stringent standard level be supported by clear and convincing evidence. EPCA's statutory structure demonstrates a strong Congressional preference for adoption of ASHRAE levels, except in extraordinary cases where a high evidentiary hurdle has been surmounted. In this way, Congress sought to ensure that more-stringent standards have objectively recognized benefits that unquestionably justify their costs. DOE simply intends for the Process Rule to reflect these statutory requirements, not deviate from them or inappropriately shift responsibility to ASHRAE. Consequently, DOE will continue to perform all necessary review and analyses consistent with its statutory obligations, and stakeholders should not incur any additional responsibilities in terms of either the DOE rulemaking or participation in the ASHRAE Standard 90.1 process.

Openness of/Deference to the ASHRAE Standards Development Process

In the Process Rule NOPR, the Department explained its tentative decision that going forward, DOE would anticipate adopting the revised ASHRAE levels as contemplated by EPCA, except in very limited circumstances. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) DOE reasoned that its commitment to adopting the amended ASHRAE Standard 90.1 levels as its regular practice would result in reducing the regulatory burden on stakeholders and would promote consistency and simplicity when addressing ASHRAE equipment. 84 FR 3910, 3915 (Feb. 13, 2019).

There was considerable difference of opinion as to the openness of the ASHRAE standards development process expressed by stakeholders both at the March 21, 2019 public meeting and in written comments on the Process Rule NOPR. At the March 21, 2019 public meeting, various stakeholders debated the level of access to participation in the ASHRAE process. (March 21, 2019 Public Meeting Transcript, No. 87 at pp. 99–108) Some commenters suggested that despite the technical expertise of ASHRAE Standard 90.1 committees, there are barriers to participation in that process in terms of time and money, which stand in contrast to the DOE regulatory process. For example, NEEA argued that although it does like certain aspects of the ASHRAE process, on balance, it has not found the ASHRAE process to be a viable pathway for bringing forth innovative proposals, as they are frequently blocked in committees. In contrast, NEEA believes that DOE has an open process which allows all interested stakeholders to make a meaningful contribution. Consequently, NEEA encouraged DOE to consider alternative processes when seeking to regulate ASHRAE equipment. (Northwest Energy Efficiency Alliance, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 105–106)

Such commenters suggested that while the ASHRAE process may appear to be open, the commenter expressed its view that the deck is often stacked against their meaningful participation. Along these lines, PG&E disagreed with DOE's proposed approach, asserting that ASHRAE is dominated by the manufacturers that will benefit by test procedures made by that organization. (PG&E, March 21, 2019 Public Meeting Transcript, No. 87 at p. 93) The CA IOUs indicated that ASHRAE decisions are based on a simple majority vote and that industry representative members are typically the most vocal and have the most influence over whatever test procedures (or standards) are ultimately adopted by ASHRAE. (CA IOUs, No. 124 at p. 5) PG&E added that ASHRAE ''enforcement'' requirements are less rigorous than DOE enforcement requirements in terms of the tolerances put around the requirements in an ASHRAE test procedure versus a DOE test procedure. (PG&E, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 93–94)

Energy Solutions stated that when there is an open ASHRAE Standard 90.1 process or when there is an opportunity for public review of related documents, DOE should notify stakeholders of the Appliance Standards Program so that interested parties will be better aware of such activities. (Energy Solutions, March 21, 2019 Public Meeting Transcript, No. 87 at p. 105)

Other stakeholders offered a vigorous defense of the openness, fairness, and transparency of the ASHRAE process. ASHRAE itself stated that it stands behind its standards development process and believes that the results generated by this process are robust. According to ASHRAE, all proposed changes to ASHRAE Standard 90.1 are open for public review, which allows interested parties to provide input into development of the standard and reach consensus, thereby ensuring publication of a document that has been rigorously examined, questioned, and defended. The organization defended its consensus process as ensuring buy-in and reflecting input from energy advocates, building owners, design professionals, utilities, manufacturers, and representatives from DOE, and other materially-affected and interested parties. ASHRAE refuted the criticism that DOE's use of privately-developed consensus standards such as ASHRAE's relies too heavily on industry, which may create potential conflicts of interest. With respect to this criticism, ASHRAE emphasized that one does not need to be an ASHRAE member to participate in the ASHRAE standards development process. In addition, the organization argued that the 47 voting members on the Standing Standards Project Committee (SSPC) 90.1 have broad representation, and of the 19 industry voting members, only nine come from industries that have a material interest in equipment covered by potential DOE regulations. (ASHRAE, No. 109 at pp. 2–3)

ASHRAE further pointed out that the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) has directed Federal agencies to adopt voluntary industry consensus standards unless inconsistent with the law or impracticable. According to ASHRAE, since 1998, the Executive Office of the President has supported this statute through issuing and re-issuing Office of Management and Budget (OMB) Circular A–119, which mandates that administrative agencies rely on consensus standards. ASHRAE concluded that EPCA and DOE's proposal are consistent with these directives. (ASHRAE, No. 109 at p. 3)

BWC expressed support for DOE's adoption of revised standard levels set by ASHRAE, as that organization is a consensus body that permits a variety of stakeholders to participate. (BWC, No. 103 at p. 2) Similarly, BHI expressed support for the Department's approach to rulemakings for ASHRAE Standard 90.1 equipment, as consistent with the statutory requirements of 42 U.S.C. 6313. BHI also recommended adding a clear statement to the Process Rule indicating that a DOE representative will attend all ASHRAE 90.1 committee meetings to: (1) Avoid unnecessary delays in publishing the analysis of the potential energy savings of the amended energy conservation standard, or (2) advocate for a more-stringent standard when the Department has clear and convincing evidence of significant additional conservation of energy that is technically feasible and technologically justified, or (3) avoid delays in publishing a no-new-standard notification if ASHRAE 90.1 is not amended. (BHI, No. 135 at p. 2)

AGA stated that national codes and standards activities conducted by organizations such as ASHRAE and the International Code Council, among others, are very important to the natural gas industry. In recent history, the commenter pointed out that DOE has become more involved in these non-governmental organizations, such as by participating in standards and code body proceedings as advocates of requirements and generally becoming more active in these types of organizations. Although AGA acknowledged that DOE's governing statute permits the Department to be involved in such organizations, it argued that such participation should be limited to the presentation of peer-reviewed research/analysis and the review of codes. For example, it is appropriate for DOE to evaluate and analyze codes, such as when the International Energy Conservation Code issues codes to improve energy efficiency in buildings, but such evaluations and related determinations may appear less than arm's length if the Department has had a role in creating the codes. In other words, AGA argued

that to maintain the independent nature of DOE's reviews of non-governmental codes and standards, it would be prudent for the Department to step back and not be intimately involved in the creation of codes and standards that it may be called on to evaluate. (AGA, No. 114 at p. 31)

As these comments reflect, commenters on DOE's Process Rule NOPR offered a variety of opinions about the ASHRAE Standard 90.1 review committee process. Although the technical expertise of the committee members was generally not questioned, there was considerable debate as to the openness, fairness, and transparency of the ASHRAE process. However, it is not DOE's place to judge that process, because in EPCA (*see* 42 U.S.C. 6313(a)(6)(A)), Congress clearly and explicitly assigned ASHRAE a role in that regulatory regime, as discussed previously. Consequently, DOE does not have authority to alter ASHRAE's statutory role, but instead must follow the relevant statutory requirements, as reflected in the Process Rule.

Specifically, under the statute, DOE must adopt the standard levels in ASHRAE Standard 90.1, unless DOE finds clear and convincing evidence that adoption of more stringent levels for the equipment would result in significant additional energy savings and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A) and (C)(i)) Similarly, DOE must adopt the test procedures for ASHRAE equipment specified in ASHRAE Standard 90.1, and DOE must update those test procedures each time the ASHRAE test procedures are amended, unless DOE has clear and convincing evidence to show that such test procedure amendments are not reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary) or are unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(4)) DOE notes that the statutory scheme, which directs DOE to adopt ASHRAE technical standards and test procedures unless further EPCA provisions command otherwise, comports with the requirements of the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119.

DOE understands Energy Solutions' desire for stakeholders of the Appliance Standards Program to be made aware of open ASHRAE Standard 90.1 matters or when there is an opportunity for public review of related documents, in order to more effectively participate in standard-setting for the ASHRAE equipment subject to DOE regulation. Although DOE participates in the ASHRAE committee process, it does not control that process and may not always be aware of the complete or up to date relevant information, so DOE does not find it feasible to assume responsibility for the messaging role suggested by Energy Solutions. However, DOE notes that ASHRAE's website offers interested parties the opportunity to subscribe to listservers to be automatically notified via email when activities and information related to various project committees are available. (Available at: *https://www.ashrae.org/technical-resources/standards-and-guidelines/options-to-stay-current.)* DOE believes that the availability of such listservers provides the notice of ongoing ASHRAE activities sought by Energy Solutions in its comment.

DOE agrees with AGA's cautionary statement that the Department must be careful to remain impartial in terms of its role in the ASHRAE committee process, particularly since DOE is statutorily obligated to adopt ASHRAE standards and test procedures, unless they fail to meet other applicable statutory requirements. DOE may serve a neutral role in ASHRAE proceedings (*e.g.,* analyzing or evaluating—but not creating—drafts of ASHRAE standards and test procedures, advising committee members as to the requirements and limitations imposed by EPCA), and will not inappropriately direct or coerce an outcome.

Finally, in response to BHI and as noted in the preceding paragraphs, DOE participates in the standards review process of the ASHRAE Standard 90.1 Committee. Although not required by the statute, such participation helps inform DOE's ASHRAE-related rulemakings for both standards and test procedures. As a result of its participation, the Department does not see a need to formally include such provisions in the Process Rule or to prescribe the appropriate participation of the DOE representative.

The ''Clear and Convincing Evidence'' Standard for ASHRAE Equipment

The Process Rule NOPR also tentatively took the position that for DOE to utilize its statutory authority to establish more-stringent standards than the amendments to ASHRAE Standard 90.1 pursuant to 42 U.S.C. 6313(a)(6)(A)(ii)(II), DOE will be required to meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold that is articulated in that subsection. The NOPR stated that when evaluating whether it can proceed with a rulemaking to potentially establish more-stringent standards from those adopted by ASHRAE, DOE will seek, from interested parties and the public, data and information to assist in making that determination, prior to publishing a proposed rule to adopt more-stringent standards. DOE's proposal further stated that ''clear and convincing evidence'' would exist only if: *Given the circumstances, facts, and data that exist for a particular ASHRAE amendment, DOE determines there is no substantial doubt that the more-stringent standard would result in a significant additional conservation of energy and is technologically feasible and economically justified.* In the Process Rule NOPR, DOE stated that this high bar would mean that only in extraordinary circumstances would DOE conduct a rulemaking to establish more-stringent standards for covered ASHRAE equipment. 84 FR 3910, 3915 (Feb. 13, 2019).

Although the ''clear and convincing evidence'' requirement is explicitly set forth in the statute, DOE's proposal in the Process Rule NOPR to clarify that evidentiary standard drew considerable discussion and debate. A number of commenters welcomed the clarification regarding what some had viewed as an opaque process with no indication that a higher evidentiary standard had been met. Other commenters were concerned about DOE's proposed clarifications regarding ''clear and convincing evidence'' and seemed to prefer the Department's prior approach of simply assessing the evidentiary basis for amended standards more stringent than the levels in ASHRAE Standard 90.1 on a case-by-case basis. Still other commenters posed follow-up questions to try to better understand how a ''clear and convincing evidence'' standard would be applied in this context. These comments are summarized and addressed in the following paragraphs.

As noted, a number of commenters supported the Process Rule NOPR's proposed clarification of the ''clear and convincing evidence'' standard in the context of DOE's rulemaking process for ASHRAE equipment. (AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at p. 12; Joint Commenters, No. 112 at pp. 2–3; NAFEM, No. 122 at p. 2; AGA, No. 114 at p. 10; ASHRAE, No. 109 at pp. 2–3) On this topic, AHRI stated that it agrees that a formal declaration of what ''clear and convincing evidence'' means and how it will be implemented increases certainty by increasing transparency and reflects the congressional intent expressed through EPCA. (AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at p. 12)

Similarly, ASHRAE expressed appreciation for DOE's position that it would only consider standards more stringent than the ASHRAE levels if such standards can meet a very high bar to demonstrate the ''clear and convincing'' evidence threshold mandated by EPCA. (ASHRAE, No. 109 at pp. 2–3) The AGA commented that the proposal makes it clear that DOE will adopt the action taken by ASHRAE except in those circumstances where the Department, pursuant to a defined process and parameters, determines a more-stringent standard is appropriate. (AGA, No. 114 at p. 10)

The Joint Commenters and NAFEM concurred with the definition of ''clear and convincing evidence'' proposed by DOE with one minor edit, suggesting to add the word ''specific'' before ''circumstances, facts, and data.'' NAFEM sought this addition to clarify that DOE cannot make a determination on its general understanding, but instead must base its determination upon specific information related to the equipment class standards subject to ASHRAE revision. In seeking to justify more stringent standards than the ASHRAE level, the Joint Commenters expressed a similar rationale in support of an evidentiary standard that requires demonstration of specific facts and evidence to support a higher standard or that an industry consensus test procedure is demonstrably unreasonable. (Joint Commenters, No. 112 at pp. 2–3; NAFEM, No. 122 at p. 2)

Although Spire agreed with the direction of DOE's approach, it suggested taking matters a step further. Rather than envisioning the possibility that ASHRAE Standard 90.1 levels and more-stringent DOE levels could each save a significant additional amount of energy and be technologically feasible and economically justified, Spire argued that the statute's use of a ''clear and convincing'' standard should be interpreted as a presumption that the industry consensus standards are going to be adequate, unless there is clear evidence that they are not, at which point such presumption is rebutted. (Spire, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 114–115) In its written comments, Spire reiterated its point by suggesting that DOE's approach to application of the ''clear and convincing'' standard should be modified to clarify that DOE would only go beyond the ASHRAE Standard 90.1 levels when DOE determines (supported by clear and convincing evidence) that ''only'' a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (Spire, No. 139, at p. 19)

In contrast to these viewpoints, another group of commenters disfavored DOE's proposed approach to applying the ''clear and convincing evidence'' standard in the ASHRAE context. A number of commenters challenged DOE's attempted clarification as a legal matter, characterizing it as an improper reinterpretation of the relevant statutory provision. For example, Earthjustice faulted DOE's Process Rule NOPR for assert[ing]—without substantiation—that the 'clear and convincing evidence' threshold is only met when 'there is no substantial doubt that the more stringent standard would result in a significant additional conservation of energy, is technologically feasible and economically justified.' 84 FR 3915. According to Earthjustice, the cited DOE language is a legal interpretation for the statutory requirement for ''clear and convincing evidence,'' but the NOPR is devoid of any statutory or case law authority supporting the proposition that evidence is only ''clear and convincing'' when it leaves ''no substantial doubt.'' The commenter argued that the NOPR's failure to provide a clear foundation (*e.g.,* discussing how the term ''clear and convincing'' has been interpreted in other contexts) deprives stakeholders a meaningful opportunity to comment on the claimed equivalency. For example, Earthjustice referenced a U.S. Court of Appeal for the District of Columbia Circuit case finding ''[t]he clear and convincing standard 'generally requires the trier of fact, in viewing each party's pile of evidence, to reach a firm conviction of the truth on the evidence about which he or she is certain.'" *Parsi* v. *Daioleslam,* 778 F.3d 116, 131 (DC Cir. 2015) (quoting *United States* v. *Montague,* 40 F.3d 1251, 1255 (DC Cir. 1994)). The commenter questioned whether one could arrive at a ''firm conviction'' while recognizing the existence of ''substantial doubt.'' Earthjustice argued that the Process Rule NOPR does not answer that question and leaves stakeholders uncertain as to the extent to which the proposed amendments to the Process Rule comply with EPCA. (Earthjustice, No. 134 at p. 2; Earthjustice, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 125–126)

The AGs Joint Comment also questioned DOE's effort in the NOPR to clarify what would constitute ''clear and convincing evidence,'' as would justify the adoption of more-stringent standards than those set forth in ASHRAE Standard 90.1. Specifically, in the NOPR DOE tried to clarify the matter by suggesting that there would be ''no substantial doubt'' on the part of the decision-maker that such standards are warranted. However, the AGs Joint Comment argued that such description is either the same as the statutory ''clear and convincing evidence'' standard (in which case it is purposeless and arbitrary) or more restrictive (in which case it would be contrary to EPCA and improperly cede authority to ASHRAE). (AGs Joint Comment, No. 111 at p. 13) On this same point, NRDC stated that in its assessment, DOE's statements about ''no substantial doubt'' and going beyond ASHRAE ''only in extraordinary circumstances'' appear to be more narrow and restrictive than Congress's intent. The commenter stated that it does not find DOE's attempts to define ''clean and convincing'' to be either necessary or helpful. NRDC also argued that DOE has failed to disclose where it got this definition and on which legal authorities it is relying, thereby frustrating the public's ability to meaningfully comment on the proposal. (NRDC, No. 131 at pp. 14–15) NRDC reminded DOE that it does not have the power to redefine ''clear and convincing'' so as to make it something closer to a ''beyond a reasonable doubt'' standard. (NRDC, March 21, 2019 Public Meeting Transcript, No. 87 at p. 121)

The CEC also opposed DOE's attempt to clarify the ''clear and convincing'' standard when pursuing standards more stringent than those contained in ASHRAE Standard 90.1. In the CEC's view, the ''clear and convincing'' standard has already been defined by case law, so further regulatory clarification is irrelevant. The CEC also argued that raising the evidentiary level to meet this standard—as it alleged that DOE has attempted to do—would leave significant, cost-effective, and technologically feasible energy savings on the table at a time when manufacturers are already redesigning equipment to meet ASHRAE 90.1. (CEC, No. 121 at p. 3)

The CA IOUs claimed that DOE's proposal to interpret the phrase ''clear and convincing'' to mean ''no substantial doubt'' ignores historical context for standard and test procedure improvements to the detriment of consumers. (CA IOUs, No. 124 at p. 4) The CA IOUs cited the 2016 commercial unitary air conditioners (CUAC) direct final rule [10] (DFR) as an example of how DOE properly applied the clear and convincing threshold previously. (CA IOUs, No. 124 at pp. 4–5)

[10] 81 FR 2420 (Jan. 15, 2016).

Other commenters focused on the potential practical effects of DOE's proposed clarification of the statute's clear and convincing evidence requirement in the context of ASHRAE equipment. For example, ACEEE criticized DOE's attempt to clarify the term ''clear and convincing,'' arguing that a new ''no substantial doubt'' criterion for ASHRAE products would add uncertainty. As the commenter correctly pointed out, Congress required ''clear and convincing evidence'' for the Department to go beyond ASHRAE levels for such equipment. ACEEE characterized DOE's change in terminology from a legal term of art to a financial term as more of a substitution for, than an interpretation of, congressional intent, which would introduce a new term that would need to be interpreted, and would likely be subject to litigation. If interpreted to be more stringent than the congressional requirement, ACEEE argued that it would prevent the Department from adopting standards or test procedures that best meet the legal requirements. Finally, ACEEE asserted that the Department has failed to demonstrate a problem with the legislative language as would justify the need to change it. (ACEEE, No. 123 at p. 4)

ASAP also questioned what it views as the leap from an evidentiary requirement of ''clear and convincing'' to ''no substantial doubt,'' and the commenter expressed concern that DOE would adopt ASHRAE Standard 90.1 levels without consideration of other alternatives, thereby eliminating the potential for negotiations and cooperation among stakeholders, a point with which NEEA agreed. According to ASAP, DOE's proposed language could make the process a ''one way street,'' which presumably means that ASHRAE would drive or monopolize DOE's standard-setting process. (ASAP, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 111–112, 115, 119; NEEA, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 116–7)

Instead, ASAP argued that there is no need to interpret the ''clear and convincing evidence'' threshold as part of the Process Rule, because DOE to date has appropriately interpreted that threshold. According to ASAP, DOE's proposal to consider levels beyond the ASHRAE levels only in ''extraordinary circumstances'' could sacrifice very large energy and economic savings, outcomes which the commenter does not believe reflects the intent of Congress. Even though DOE has adopted the ASHRAE levels in most cases over the past decade, ASAP, et al. offered concern that DOE's proposed changes are attempting to severely restrict the Department's ability to consider standards higher than the ASHRAE levels, as the agency has appropriately and effectively done in the past. (ASAP, *et al.,* No. 126 at pp. 2, 3–5)

CT–DEEP cautioned DOE from using the ''clear and convincing'' standard prescribed by EPCA with respect to setting standards higher than those contained in ASHRAE Standard 90.1 as a means ''to avoid the responsibility of evaluating the potential for more stringent standards by setting the bar at 'no substantial doubt that the more stringent standard would result in a significant additional conservation of energy.'" (CT–DEEP, No. 93 at p. 3)

NPCC disagreed with DOE''s application of the ''clear and convincing evidence'' standard with respect to establishing energy conservation standards more stringent than the ones adopted by ASHRAE, arguing that such approach would mean that DOE could only set more-stringent standards in extraordinary circumstances. Instead, NPCC urged DOE to use the seven existing EPCA criteria at 42 U.S.C. 6295(o) when determining whether to establish more-stringent standards for ASHRAE equipment, consistent with the approach to other products. (NPCC, No. 94 at p. 4; NPCC, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 122–123)

Finally and in contrast to the several commenters who sought to validate DOE's current process vis-à-vis ''clear and convincing evidence,'' the AGs Joint Comment asserted that DOE's proposed revision improperly applied the clear and convincing evidence standard and ASHRAE deference when it is conducting its six-year-lookback review under 42 U.S.C. 6313(a)(6)(C). Instead, these commenters suggested that a six-year-lookback analysis should be conducted using a preponderance of the evidence standard, arguing that DOE has misinterpreted the relevant provisions of EPCA and risks failing to promulgate standards when they are warranted under the statute. (AGs Joint Comment, No. 111 at pp. 13–14)

Similarly, Earthjustice argued that DOE has improperly applied the ''clear and convincing'' evidence requirement to instances where the statute only requires a showing of substantial evidence. Earthjustice asserted that ASHRAE's failure to amend the standards applicable to a type of covered equipment under ASHRAE/IES Standard 90.1 does not justify applying the ''clear and convincing'' standard to DOE's 6-year review obligation under 42 U.S.C. 6313(a)(6)(C), a result which it argues is foreclosed by the plain text of the statute. According to the commenter, EPCA explicitly requires that clear and convincing evidence support any determination to adopt a standard more stringent than an amended Standard 90.1 requirement (pursuant to 42 U.S.C. 6313(a)(6)(A)(ii)(II)), but the statute does not apply this unique standard outside of that context (*see* 42 U.S.C. 6306 (applying ''substantial evidence'' standard to other DOE rules)). Instead, Earthjustice argued that when DOE considers amending standards for equipment in the absence of ASHRAE action, EPCA requires that DOE apply the ''criteria'' imposed under 42 U.S.C. 6313(a)(6)(A) if determining that standards do not need to be amended and the ''criteria and procedures'' applicable under 42 U.S.C. 6313(a)(6)(B) if proposing amended standards. (42 U.S.C. 6313(a)(6)(C)(i)) Accordingly, the commenter reasoned that the ''criteria'' governing any determination not to amend the current standards for covered equipment are that adoption of a more-stringent standard for the equipment would not ''result in significant additional conservation of energy and [be] technologically feasible and economically justified'' (see 42 U.S.C. 6313(a)(6)(A)(ii)(II)). Under Earthjustice's theory, Congress's decision to withhold the procedures applicable under 42 U.S.C. 6313(a)(6)(A) from any determinations not to amend in the context of a 6-year review means the evidentiary burden applicable under 42 U.S.C. 6313(a)(6)(A) does not apply to 6-year reviews. (Earthjustice, No. 134, at pp. 2–3)

In response to these comments on the Process Rule NOPR, DOE emphasizes that in discussing the need for ''clear and convincing evidence'' in the context of more-stringent standard levels for ASHRAE equipment, the Department was simply explaining the existing requirements of the statute, rather than seeking to change or reinterpret those requirements. Specifically, EPCA provides that in order to adopt a more-stringent standard, DOE must determine, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE/IES Standard 90.1 for the product would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) The language of the statute makes clear that Congress intended to establish a high bar for DOE to go beyond the levels in ASHRAE

Standard 90.1, an intention clearly reflected by its decision to require a heightened evidentiary standard. Thus, the statute itself demonstrates that Congress intended for DOE to adopt the ASHRAE levels, except for in extraordinary circumstances where the ''clear and convincing evidence'' standard has been met. In the Process Rule NOPR, DOE summarized the relevant ASHRAE-related statutory requirements and sought to explain how it implements its legislative mandate. A number of commenters supported DOE's clarification efforts as promoting transparency, but others mistakenly believed that DOE was proposing substantive and inappropriate changes. However, given that DOE proposed no change to the existing statutory requirement, nor could it do so, commenters were not deprived of any opportunity to comment, contrary to what Earthjustice and NRDC suggest. Furthermore, by simply following the requirements of the statute regarding the need for clear and convincing evidence, DOE does not anticipate that there would be the basis for enhanced litigation risk or successful legal challenges.

In the Process Rule NOPR, DOE offered language to explain its understanding of Congress's clear and convincing evidence requirement and how the Department has implemented that requirement. Specifically, DOE stated that ''clear and convincing evidence'' would exist only if: *Given the circumstances, facts, and data that exist for a particular ASHRAE amendment, DOE determines there is no substantial doubt that the more-stringent standard would result in a significant additional conservation of energy and is technologically feasible and economically justified.* Rather than changing the definition in question, DOE has found this language consistent with how that term has historically been interpreted and defined in the civil context in Federal Circuit and District Courts throughout the United States. The Ninth Circuit Court of Appeals has defined the ''clear and convincing'' standard as requiring the evidence ''to be so clear as to leave no substantial doubt [and] sufficiently strong to command the unhesitating assent of every reasonable mind.'' *Ittella Foods, Inc.* v. *Zurich Ins. Co.,* 98 Fed. Appx. 689, 691 (9th Cir. 2004) (internal citations omitted). Similarly, the Eighth Circuit Court of Appeals has defined, ''clear and convincing evidence'' as ''leav[ing] no substantial doubt,'' *Hunt* v. *Pan American Energy,* 540 F.2d 894, 901 (8th Cir. 1976), and the Second Circuit Court of Appeals stated, ''[c]lear and convincing proof is highly probable and leaves no substantial doubt,'' *Dongguk University* v. *Yale University,* 734 F.3d 113, 123 (2d Cir. 2013) (internal citations omitted).[11] Further, the *Handbook of Federal Evidence,* which consists of materials designed to aid in understanding Federal evidentiary rules, also defines ''clear and convincing evidence'' in civil cases as requiring that ''evidence be so clear as to leave no substantial doubt'' and describes this standard of proof to only be sustained if the evidence induces a reasonable belief that the facts asserted are highly probably true. (*Handbook of Federal Evidence,* § 301:5 Burden of Persuasion, Incidence and Measure in Civil Cases (8th ed., 2018))

Regarding NRDC's argument that the ''clear and convincing evidence'' standard is a term of legal art, of which Congress was aware when they adopted the language, and that DOE does not have the power to redefine ''clear and convincing evidence'' to make it closer to ''beyond a reasonable doubt,'' as exhibited in the above paragraph, DOE is not redefining the standard, and DOE's provision for ''clear and convincing evidence'' is consistent with how it has been regularly defined in Federal Courts for many years. Accordingly, DOE agrees with NRDC that Congress was cognizant of the common law and accepted definition of ''clear and convincing evidence'' when implementing 42 U.S.C. 6313(a)(6)(A)(ii)(II); the definition of ''clear and convincing evidence'' as evidence that is so clear as to leave ''no substantial doubt'' can be traced to a 1899 California Supreme Court decision, decided far before 42 U.S.C. 6313(a)(6)(A)(ii)(II) was enacted. *Sheehan* v. *Sullivan,* 126 Cal. 189, 193 (1899) (defining clear and convincing evidence as clear, explicit, and unequivocal; so clear as to leave no substantial doubt). Again, this language has been reiterated by Federal Courts in the many years since.

Given DOE's commitment to meet its statutory duty to determine whether more-stringent standards are appropriate for ASHRAE equipment under either the ASHRAE trigger or the 6-year-lookback authority, the concerns expressed by CT–DEEP and ASAP that DOE will use the requirement for clear and convincing evidence to avoid its responsibility to consider whether the criteria for more-stringent standards have been met is unfounded. DOE will continue to evaluate the potential for more-stringent standards as a routine part of its ASHRAE rulemaking process. As part of that process, DOE will ensure that all three statutory criteria are met (*i.e.,* that there is clear and convincing evidence that a more stringent standard can achieve significant additional energy savings, technological feasibility, and economic justification); DOE cannot focus on only one factor (economic justification criteria), as NPCC suggested, because the statute is clear in terms of the criteria that must be considered. By following the requirements of the statute, there is no risk of forgone energy and economic savings as ASAP suggests, nor harm to consumers as the CEC asserts. Moreover, there should not be any impediments in the context of negotiated rulemakings, because DOE will always consider alternate standard levels, provided they comport with all applicable statutory requirements. In light of the tenets of the ASHRAE-related provisions Congress wrote into the statute, there is little incentive for gamesmanship on the part of ASHRAE, because if that organization fails to consider amended standards or only adopts weak standards, DOE's obligation to consider more-stringent standards will resolve that problem.

In terms of the technical modification suggested by the Joint Commenters and NAFEM—suggesting to add the word ''specific'' to the definition of ''clear and convincing evidence'' right before ''circumstances, facts, and data,'' DOE agrees with these commenters that the agency cannot make a determination on its general understanding, but instead

[11] Federal District Courts in circuits around the country have provided similar definitions of ''clear and convincing evidence'' in the civil context. *See Mandel* v. *Boston Phoenix, Inc.,* 492 F. Supp. 2d 26, 29 (D. Mass. 2007) (''The meaning of the term 'clear and convincing evidence'—evidence so clear as to leave no substantial doubt.''), *Jersey Const., Inc.* v. *Pennoni Assoc., Inc.,* 1993 WL 2999 (E.D. Pa. 1993) (citing *Joseph's* v. *Pizza Hut of America, Inc.,* 733 F. Supp. 222, 223–24 (W.D.Pa.1989), aff'd, 899 F.2d 1217 (3d Cir. 1990) (''Clear and convincing evidence is evidence that leaves no substantial doubt . . . establishes not only that the proposition at issue is probable, but also that it is highly probable.''), *Hanna Coal Co., Inc.* v. *I.R.S.,* 218 B.R. 825, 829 fn 2 (W.D. Va. 1997) (''Clear and convincing evidence leaves no substantial doubt in your mind. It is proof that establishes in your mind, not only [that] the proposition at issue is probable, but also that it is highly probable.''), *Gentry* v. *Hershey Co.,* 687 F. Supp. 2d 711, 724 (M.D. Tenn. 2010) (''Evidence is clear and convincing when it leaves no serious or substantial doubt about the correctness of the conclusions drawn.''), *Sala* v. *U.S.,* 552 F. Supp. 2d 1157, 1162 (D. Colo. 2007) (''Clear and convincing evidence leaves no substantial doubt in your mind. It is proof that establishes in your mind, not only [that] the proposition at issue is probable, but also that it is highly probable.''), *Tobinick* v. *Novella,* 108 F. Supp. 3d 1299, 1309 (S.D. Fla. 2015) (''The burden of proof by clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.'').

must base its determination upon specific information related to the equipment class standards subject to ASHRAE revision. Such specific circumstances, facts, and data are necessary to support a finding that a standard higher than that contained in ASHRAE Standard 90.1 is permitted or that an industry consensus test procedure is demonstrably unreasonable. Consequently, DOE is adding the word ''specific,'' as recommended by these commenters.

DOE does not agree with Spire's recommended interpretation of ''clear and convincing evidence'' so as to provide a presumption that the industry consensus standards are going to be adequate, unless there is clear evidence that they are not, at which point such presumption is rebutted. Again, Spire suggested that DOE's approach to application of the ''clear and convincing'' standard should be modified to clarify that DOE would only go beyond the ASHRAE Standard 90.1 levels when DOE determines (supported by clear and convincing evidence) that ''only'' a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. Although the statute presumes that ASHRAE Standard 90.1 levels are going to be adequate (given the requirement for DOE to adopt them when triggered), it also contemplates that a more-stringent standard, supported by clear and convincing evidence, could exist which would result in significant additional energy savings and be technologically feasible and economically justified. Spire would not only ask DOE to prove a negative, but also to reject a more-stringent standard that meets the statutory criteria on that basis. DOE finds no basis in the statute to support such a reading, and consequently, the Department declines to adopt Spire's suggested interpretation.

Finally, DOE would address the comments from the AGs Joint Comment and Earthjustice suggesting that the Department should not apply the ''clear and convincing evidence'' standard and ASHRAE deference when the agency is conducting a 6-year-lookback review rulemaking under 42 U.S.C. 6313(a)(6)(C), but instead use a preponderance of the evidence standard. Notwithstanding any past DOE statements to the contrary, the plain language of the statute does not support such a reading.

Under the 6-year-lookback, the statute provides that every six years, DOE shall conduct an evaluation of each class of covered equipment and shall publish either: (1) A notice of determination that standards for the product do not need to be amended, based on the criteria established under subparagraph (A) (42 U.S.C. 6313(a)(6)(A)) or (2) a notice of proposed rulemaking including new proposed standards based upon the criteria and procedures established under subparagraph (B) (42 U.S.C. 6313(a)(6)(B)). These commenters focus on the distinction that Congress directed DOE to subsection (A) when DOE makes a finding that no new standard is warranted (*i.e.,* the provision containing the ''clear and convincing evidence'' requirement), but directed the agency to subsection (B) when proposing to adopt more stringent standards, thereby presuming that an ordinary preponderance of evidence standard should apply. The commenters' interpretation is difficult to square with the statute on more than one level. First, it seems illogical that Congress would hold DOE to two different evidentiary standard levels that involve essentially the same standard-setting decision. Under the commenter's interpretation, DOE would issue a notice of determination that a product does not need to be amended when there is no clear and convincing evidence to support a more-stringent standard (applying the criteria of subparagraph (A)), but would be able to issue a proposed rule for those same more-stringent standards using the preponderance of the evidence standard. Such reading seems unworkable in practice. However, Congress arguably foreclosed that anomalous result when it directed that the proposed rule to amend the standard be based on the *criteria and procedures* established under subparagraph (B). (42 U.S.C 6313 (a)(6)(C)(i)(II)) In parsing the economic justification provisions of that subsection, the statute prominently states, ''In determining whether a standard is economically justified *for the purposes of subparagraph (A)(ii)(II),* the Secretary shall . . . determine whether the benefits of the standard exceed the burden of the proposed standard by to the maximum extent practicable, considering . . . .'' (42 U.S.C. 6313(a)(6)(B)(ii) (Emphasis added)) Thus, in determining whether it is appropriate to set a more-stringent standard, 42 U.S.C. 6313(a)(6)(B) clearly references 42 U.S.C. 6313(a)(6)(A)(ii)(II), which contained the ''clear and convincing evidence'' requirement. In other words, 42 U.S.C. 6313(a)(6)(C) references 42 U.S.C. 6313(a)(6)(B), which references 42 U.S.C. 6313(a)(6)(A). The explicit language of the statute furthers congressional intent that DOE should defer to ASHRAE in most cases when setting uniform national standards for covered equipment within that organization's purview. Consequently, DOE affirms its understanding that the statute's clear and convincing evidence requirement applies in the context of both ASHRAE trigger and 6-year-lookback rulemakings.

A handful of commenters raised other viewpoints regarding the ''clear and convincing evidence'' standard or questions regarding how DOE would implement its proposed clarifications. Among this group, Southern Company asked DOE to provide more specificity regarding what ''high standard for overriding ASHRAE'' means. (Southern Company, March 21, 2019 Public Meeting Transcript, No. 87 at p. 113) In response to this question, DOE refers back to the statutory scheme because the Department is not changing the standard for review regarding when it is appropriate to adopt levels more stringent than those set forth in ASHRAE Standard 90.1 as uniform national standards. Under 42 U.S.C. 6313(a)(6)(A)(ii)(II), EPCA makes clear that DOE may adopt more-stringent levels only where the Department determines, supported by clear and convincing evidence, that adoption of a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. As discussed previously, the case law makes clear that ''clear and convincing evidence'' is a level higher than a preponderance of the evidence, and as explained in the paragraphs immediately above, the statute applies this evidentiary requirement to both ASHRAE ''trigger'' and 6-year-lookback rulemakings. Thus, under the statutory scheme, DOE believes it reasonable to expect that in most cases, Federal standards will be set at a level corresponding to those in ASHRAE Standard 90.1.

Regarding ''clear and convincing'' evidence, Ingersoll Rand stated that it had in the past assumed that DOE would only consider alternative energy efficiency requirements if there were clear and convincing evidence that such standards would save a significant amount of energy, be technologically feasible, and be economically justified when compared to both the existing appliance standards and those contained in the updated version of ASHRAE Standard 90.1. As part of DOE's process under 42 U.S.C. 6313(a)(6), Ingersoll Rand reasoned that DOE should review the same analysis developed by the ASHRAE Standard

90.1 development committee to justify revisions to the energy efficiency requirements for these products. The commenter stated that it does not interpret the proposed definition for ''clear and convincing evidence'' as a departure from this process. (Ingersoll Rand, No. 118 at p. 2)

In response, DOE generally agrees with Ingersoll Rand, in that the Department thoroughly considers the existing uniform national standard (for both ASHRAE trigger and 6-year-lookback rulemakings) and the ASHRAE standard (for trigger rulemakings [12]). In conducting the comprehensive review and analysis in support of its rulemaking under the ASHRAE trigger, DOE would anticipate examining the work of the ASHRAE Standard 90.1 Committee, to the extent it is publicly available.

Spire commented that any evidence on which DOE relies in support of the adoption of an energy conservation standard—including ASHRAE equipment—must be made available for review and public comment during the rulemaking process and with adequate time to do so. (Spire, No. 97 at p. 9; Spire, No. 139 (Attachment C)) In response, DOE strives to make as much of the data underlying its appliance standards rulemakings publicly available to the greatest extent possible through posting of such information to the docket for that rulemaking. However, because it is frequently the case that some portion of the relevant data on which the agency makes its decision is proprietary in nature, DOE makes such data available in aggregated and anonymized form. DOE has determined that this approach is sufficient to allow interested stakeholders to understand the rationale for DOE's decision while appropriately protecting confidential information.

EEI argued that if DOE is going to revise ASHRAE equipment standards, it will publish a proposed rule for public comment, so even if the evidentiary bar is raised, there is still an open process with the opportunity for parties to suggest changes. (EEI, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 124–125) In response, DOE agrees with EEI's understanding that it is the Department's standard practice to issue a proposed rulemaking with an opportunity for public comment prior to adopting any new or revised Federal standards for covered ASHRAE equipment. However, DOE would once again clarify that it may not and is not changing the statute's ''clear and convincing evidence'' requirement for adopting levels more stringent than those contained in ASHRAE Standard 90.1 as uniform national standards.

Interpretations of the ASHRAE ''Trigger'' Provisions and Other ASHRAE Issues

The Process Rule NOPR also sought to address certain issues of statutory interpretation regarding EPCA's ASHRAE trigger provisions. Making clear that DOE will adopt the action taken by ASHRAE except in rare circumstances raises the question as to when DOE is triggered by ASHRAE action in amending Standard 90.1. In the February 13, 2019 Process Rule NOPR, DOE proposed to clarify its interpretation of the ASHRAE trigger provision in this context. For example, if ASHRAE acts to amend its standard at the equipment class level for air-cooled variable refrigerant flow (VRF) multi-split air conditioners greater than or equal to 135,000 Btu/h, is DOE triggered to consider amended standards: (1) Only for the specific equipment class(es) actually amended in ASHRAE Standard 90.1; (2) for the entire equipment category of VRF equipment, or (3) for the entire covered equipment type of small commercial package air conditioning and heating equipment? EPCA does not specifically define the term ''amended'' in the context of ASHRAE Standard 90.1. (84 FR 3910, 3915) Although the statute is not entirely clear on this matter, DOE has maintained a consistent position for over a decade, at least since it interpreted what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007. 72 FR 10038. In that rule, DOE stated that the statutory triggering event requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the efficiency level for that equipment. *Id.* at 72 FR 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the uniform national standard adopted pursuant to EPCA, DOE does not have authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). DOE subsequently reiterated this position in final rules published in the **Federal Register** on July 22, 2009 (74 FR 36312, 36313), May 16, 2012 (77 FR 28928, 28937), and July 17, 2015 (80 FR 42614, 42617).

However, in the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012), Congress modified several provisions related to ASHRAE Standard 90.1 equipment. In relevant part, DOE must act whenever ASHRAE Standard 90.1's ''standard level or design requirements under that standard'' are amended. (42 U.S.C. 6313(a)(6)(A)(i)) Furthermore, that statutory amendment required that DOE must conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 ''every 6 years.'' (42 U.S.C. 6313(a)(6)(C)(i))

In practice, DOE's review in making this assessment of ASHRAE's actions has been strictly limited to the specific standards for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). In the Process Rule NOPR, DOE stated that it believes that this is the best reading of the statutory provisions discussed previously, because if ASHRAE were to change the standard for a single equipment class, but DOE then considered itself triggered at the equipment category level or equipment type level, the process would arguably no longer comport with the statutory scheme. More specifically, in such cases, DOE would be addressing certain classes of ASHRAE equipment for which standards had not changed, so it would be impossible for DOE to adopt the ASHRAE level as the statute envisions (as, in most cases, it would already be the same as the existing Federal standard). Instead, DOE could only consider adoption of more-stringent standard levels. Such interpretation would arguably run counter to the ''follow ASHRAE'' statutory structure set in place by Congress. Furthermore, Congress specifically and recently added a 6-year-lookback provision for covered ASHRAE equipment at 42 U.S.C. 6313(a)(6)(C)(i), a provision which instructs DOE in terms of how and when to address covered equipment upon which ASHRAE has not acted in a timely manner. Furthermore, DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard should remain in place. DOE believes it is reasonable to assume that, in revising ASHRAE Standard 90.1, ASHRAE would consider an entire equipment category before deciding to adopt a revised standard for only one or more classes of equipment in that category.

[12] DOE does not anticipate the need to examine the ASHRAE levels in the context of a 6-year-lookback rulemaking, because the existing Federal standard already would reflect either the level in ASHRAE Standard 90.1 or a more-stringent level supported by clear and convincing evidence.

Thus, for equipment classes for which it was not triggered, DOE would act under its 6-year-lookback authority at 42 U.S.C. 6313(a)(6)(C) to issue a standard more stringent than the existing standard for the product, provided that there exists clear and convincing evidence, as defined above, to support such decision.

Commenters raised a number of other issues of statutory interpretation which would be expected to impact how the revised Process Rule would treat ASHRAE equipment, each of which is addressed below. Again, consistent with its long-standing interpretation, the Department proposed to define the ASHRAE ''trigger'' to be applicable only to those equipment classes where ASHRAE Standard 90.1 has adopted an increase to the efficiency level as compared to the current Federal standard for that specific equipment class. Most commenters supported DOE's interpretation regarding EPCA's ASHRAE trigger provision. BWC agreed with DOE's proposal to limit its changes to those specific equipment classes where ASHRAE has made a change, even though other similar equipment types were left untouched. (BWC, No. 103 at p. 2) The Joint Commenters also supported DOE's clarification that ASHRAE's revision of one equipment class's performance standards or test method does not trigger DOE's statutory obligation to initiate a rulemaking on all related equipment classes, explaining that DOE is correct to decline to initiate additional rulemaking on related products that were never considered by the consensus body. (Joint Commenters, No. 112 at p. 3) Similarly, Lennox agreed with DOE's clarification that ASHRAE's revision of one equipment class's performance standard or test method does not trigger DOE's statutory obligation to initiate a rulemaking on all related equipment classes. Lennox stated that this clarification will avoid the artificial imperative to initiate a rulemaking on a product class that was not addressed by ASHRAE. (Lennox, No. 133 at p. 3)

However, one commenter appeared to favor a different interpretation of the ASHRAE trigger, under which triggering would result in a significantly broader rulemaking action. A.O. Smith raised a number of questions seeking additional clarification regarding DOE's interpretation in the Process Rule NOPR of the statutory provisions related to ASHRAE equipment (particularly the ''ASHRAE trigger'' and 6-year-lookback which would lead to rulemaking action). The commenter's inquiries were focused on packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, although DOE notes that the issues raised would apply more broadly to the full suite of covered ASHRAE equipment. (A.O. Smith, No. 127 at pp. 7–8)

First, A.O. Smith asked, if the ASHRAE trigger only applies to those specific equipment classes where ASHRAE Standard 90.1 has increased the efficiency level, how will the Department handle the other equipment classes within the same product category or within the same covered product that ASHRAE 90.1 did not address? In other words, how does the statutory requirement by which, every six years, the Secretary shall conduct an evaluation of each class of covered equipment and shall publish either: (a) A notice of the determination of the Secretary that standards for the product do not need to be amended, based on the criteria established in the statue; or (b) a notice of proposed rulemaking including new proposed standards based on the criteria and procedures established under subparagraph (B), apply to those equipment classes where ASHRAE 90.1 took no action? Would the Department conduct a separate ''six-year look back'' rulemaking to address those equipment classes where ASHRAE 90.1 took no action, or does the Department interpret ASHRAE 90.1 action on a single equipment class sufficient to satisfy the statutory requirement for the entire category or covered product? (A.O. Smith, No. 127 at p. 7)

As explained previously, EPCA contains two separate provisions pertaining to updating the standards for ASHRAE equipment, one for the ASHRAE trigger (*see* 42 U.S.C. 6313(a)(6)(A)) and another for the 6-year-lookback (*see* 42 U.S.C. 6313(a)(6)(C)). Under DOE's interpretation, these two statutory provisions act in harmony to ensure that the standards for all types of covered ASHRAE equipment are reviewed on a periodic basis and updated as appropriate. Although not compelled to do so by the statute, DOE may decide in appropriate cases to simultaneously conduct an ASHRAE trigger rulemaking (*i.e.,* for those equipment classes for which ASHRAE set a higher standard) and a 6-year-lookback rulemaking (*i.e.,* for those equipment classes where ASHRAE left levels unchanged or set a lower standard) so as to address all classes of an equipment category at the same time. In other cases, DOE may choose to bifurcate the rulemakings and to handle the non-triggered equipment classes on a schedule to comply with the requirement to review standards every six years. As a general principle, DOE believes it appropriate to weigh the benefits of expediency (*e.g.,* consolidated rulemaking, potentially earlier energy savings) against the burdens (*e.g.,* accelerated compliance and certification costs for non-triggered equipment) for any given ASHRAE rulemaking. DOE anticipates stakeholder feedback on this preliminary issue in response to publication of the ASHRAE NODA following an ASHRAE triggering event.

Second, A.O. Smith asked, if a metric is changed by ASHRAE Standard 90.1 for a given equipment class, does this trigger Department action? The new metric may or may not result in an increase in the efficiency level as compared to the Federal efficiency level. (A.O. Smith, No. 127 at p. 7)

In response, if ASHRAE maintained the existing regulating metric that serves as the basis for current Federal energy conservation standard (without changing those levels), DOE would not consider the addition of another metric to be a triggering event. However, if ASHRAE were to substitute a new metric and eliminate the existing metric entirely, DOE would need to, at a minimum, conduct a crosswalk to the existing metric to see if the changed ASHRAE Standard 90.1 levels would be more stringent than the current Federal standards, in which case DOE would be triggered for those equipment classes where ASHRAE established a higher standard. (DOE expects this latter scenario to likely be theoretical, as substantial market turmoil would conceivably accompany a wholesale exchange of metrics without the maintenance of a transitional metric.) Nonetheless, DOE would need to consider as a policy matter the appropriateness of transitioning to the new metric which ASHRAE has incorporated into Standard 90.1. If DOE determines that there is a sound scientific, technical, and policy basis for changing the metric underlying the Federal standard, it would pursue such change through notice-and-comment rulemaking.

Next, A.O. Smith stated that if the Department were to interpret the provisions as separate requirements under the statute, it could foresee a future where the Department is conducting two separate rulemakings (*i.e.,* one under EPCA's ASHRAE authority and another under EPCA's 6-year-lookback authority), which carry different processes under the proposed Process Rule, different analyses, and different compliance dates. According to A.O. Smith, this would be a very burdensome and costly interpretation

because it would require double the resources spanning many years to comply with the uncoordinated requirements for the different equipment classes within a given covered product. For example, the commenter stated that there are currently 10 equipment classes of commercial packaged boilers, each with a different energy conservation standard for which compliance is required. A.O. Smith asked, if ASHRAE Standard 90.1 adopts a more-stringent standard for only one of those ten equipment classes and the Department subsequently adopts that standard, would the Department continue to be triggered by the six-year lookback to conduct a regular review of the other 9 equipment classes within the covered equipment? If this is the case, A.O. Smith strongly urged the Department to revisit its narrowly-defined interpretation of the ASHRAE trigger due to the potential burdens associated with misaligned review cycles arising from the separate grants of authority under EPCA. (A.O. Smith, No. 127 at pp. 7–8)

On its face, A.O. Smith's comment makes what appears to be a reasonable argument. However, the Department emphasizes that all other commenters on this issue opposed the idea of shifting the ASHRAE trigger from the equipment class level to an equipment category or equipment type level. In addition to individual companies (BWC and Lennox), a Joint Comment by 10 major trade associations (ACCA, AHRI, AMCA International, ALA, AHAM, HARDI, HPBA, NAFEM, NEMA, and PMI)—representing hundreds of corporate members— all supported DOE's proposal and in opposition to the change suggested by A.O. Smith to remedy ''misaligned review cycles.'' DOE has concluded that there are regulatory burdens separate from participation in the rulemaking process that these commenters deem to outweigh the ones identified by A.O. Smith. Perhaps the Joint Commenters see some benefit in spacing out rulemakings and associated compliance expenditures. Regardless, DOE reasons that there are other avenues in appropriate cases to alleviate the concerns expressed by A.O. Smith.

As noted previously, DOE believes that its approach provides the best reading of the statutory provisions at issue, because if ASHRAE were to change the standard for a single equipment class, but DOE then considered itself triggered at the equipment category level or equipment type level, the process would arguably no longer comport with the statutory scheme. In such cases, DOE would be addressing certain classes of ASHRAE equipment for which standards had not changed, so it would be impossible for DOE to adopt the ASHRAE level as the statute envisions (as, in most cases, it would already be the same as the existing Federal standard). Instead, DOE could only consider adoption of more-stringent standard levels. Such interpretation would arguably run counter to the ''follow ASHRAE'' statutory structure set in place by Congress. Equipment classes which ASHRAE has decided to leave unchanged would remain subject to review under the statute's 6-year-lookback provision. Whether to consolidate ASHRAE trigger and 6-year-lookback rulemakings will likely hinge on the facts of a given situation. For example, if ASHRAE amends 9 out of 10 commercial packaged boiler equipment classes, it may make sense to immediately commence a 6-year-lookback rulemaking and to consolidate the rulemakings. However, the answer may conceivably be very different if ASHRAE acts to amend only one equipment class. Fortunately, DOE's amended Process Rule provides ample opportunity for stakeholders to weigh in on such issues through the prioritization process, an early assessment, or through comments on the ASHRAE NODA analyzing potential energy savings in response to an ASHRAE trigger. Through such mechanisms, DOE believes that it is possible to minimize, if not eliminate, the types of regulatory burdens about which A.O. Smith expressed concern.

Earthjustice challenged as unsupported DOE's statement in the NOPR that ''ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place.'' (84 FR 3910, 3916 (Feb. 13, 2019)). The commenter argued that DOE has not explained why that is a reasonable interpretation of ASHRAE's failure to amend a standard, or why that interpretation of ASHRAE inaction is consistent with the intent of Congress, which it argues has repeatedly amended 42 U.S.C. 6313(a)(6) to make clear that ASHRAE cannot shield covered equipment from strengthened DOE standards (*compare* 42 U.S.C. 6313(a)(6)(C) (2010) (requiring DOE's review ''[n]ot later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under this part''), with 42 U.S.C. 6313(a)(6)(C) (2019) (requiring DOE's review ''Every 6 years'' and establishing a deadline for action on equipment ''as to which more than 6 years has elapsed since the most recent final rule establishing or amending a standard'')). (Earthjustice, No. 134 at p. 3)

In response to Earthjustice, DOE reasons that if ASHRAE acts to amend standards for certain equipment classes for an equipment category in Standard 90.1, that organization would have at a minimum reviewed the entirety of that equipment category. It would be illogical, confusing, and misleading to cherry-pick only select equipment classes within a category without reviewing the complete category, particularly since that could impose unnecessary burdens on industry and State code enforcement officials. Consequently, presuming this assumption is correct, in most cases, ASHRAE would be making an active decision to the extent it did not modify certain equipment classes within an equipment category. However, the matter is largely a philosophical debate, because such characterization of ASHRAE's action (or, in this case, non-action) does not have any impact on the subsequent steps DOE is required to take under EPCA. Where ASHRAE has not acted, DOE remains obligated to review the need for amended standards under DOE's 6-year-lookback authority. (42 U.S.C. 6313(a)(6)(C)) Pursuant to that statutory provision, DOE must adopt amended standards more stringent than the current standards, if there is clear and convincing evidence showing that such amended standards would result in significant additional conservation of energy and are technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II); 42 U.S.C. 6313(a)(6)(B)(ii); 42 U.S.C. 6313(a)(6)(C)(i)(II)) Because DOE must follow its legal obligations under EPCA, ASHRAE cannot shield covered equipment from potential amended energy conservation standards in the manner Earthjustice suggests.

Southern Company argued that DOE should (but has not always) examine the totality of ASHRAE actions in setting equipment standards, because there may be associated usage standards which are also part of the equation (*e.g.,* requiring occupancy sensors to limit the time lamps are on, which may justify a higher energy use per watt but save more energy overall). According to Southern Company, DOE needs to look at the totality of how equipment would be used under ASHRAE Standard 90.1, not just looking at a particular piece of equipment in isolation and judging that by DOE's rules, ASHRAE should have chosen a higher standard. (Southern Company, March 21, 2019 Public

Meeting Transcript, No. 87 at pp. 102–103)

In response, DOE acknowledges that ASHRAE action in Standard 90.1 may sometimes employ a suite of complementary provisions intended to provide operational and energy savings benefits. In doing so, ASHRAE is not bound by the legal constraints of EPCA, so the organization is free to approach issues from a more purely technical perspective, rather than a regulatory one. In contrast, DOE must meet its legal obligations under the statute—particularly 42 U.S.C. 6313(a)(6)(A)–(C) and applicable definitions under 42 U.S.C. 6311—in considering new or amended standards for ASHRAE equipment, whether acting under the ASHRAE trigger or 6-year-lookback. In general, DOE must adopt the levels set forth in ASHRAE Standard 90.1, unless DOE finds, supported by clear and convincing evidence, that more-stringent standards would result in significant additional energy savings and are technologically feasible and economically justified. Consequently, in conducting rulemakings for ASHRAE equipment, DOE must live within the parameters set forth in the statute.

PG&E argued there needs to be some form of verification of ASHRAE test procedures to ensure that they produce representative results. The company cited an example where through its own research, it was able to determine that an ASHRAE test procedure was producing results that were as much as 50 percent off, so the commenter recommended that a process be put in place to ensure that similar problems do not arise going forward. (PG&E, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 123–124)

DOE agrees that there should be a robust assessment of industry consensus test procedures prior to adoption as Federal test procedures, as contemplated by the statute. EPCA clearly contemplates that the test procedures for ASHRAE equipment ''shall be those generally accepted industry test procedures or rating procedures developed or recognized by [AHRI or ASHRAE] as referenced in ASHRAE/IES Standard 90.1.'' The statute also directs that, when those industry test procedures are amended, DOE should amend the Federal test procedures to be consistent. The statute does require that such amended test procedures remain reasonably designed to produce test results that reflect the energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle and shall not be unduly burdensome to conduct. If the test procedure is a procedure for determining estimated annual operating costs, such amended procedure must continue to provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle, and from representative average unit costs of the energy needed to operate such equipment during such cycle. (42 U.S.C. 6314(a)(2), (3), (4)(A)–(B)) If the amended industry consensus test procedures fail to meet these requirements, DOE may establish its own test procedure that meets the requirements of the statute. (42 U.S.C. 6314(a)(4)(C))

It is DOE's standard practice to undertake a review of amended industry consensus test procedures referenced in ASHRAE Standard 90.1 before proposing conforming amendments to the corresponding Federal test procedures. As part of the process, DOE seeks public comment on its proposed test procedures, and all substantive comments must be addressed prior to adoption of a test procedure final rule. DOE believes that thorough vetting by both the Department and the interested public offers a sound practice that satisfies these express statutory requirements, as demonstrated by the case in PG&E's example.

Southern Company argued that the proposed 0.5 quad threshold for significant energy savings should not apply to individual equipment lines in ASHRAE's standards (given that many involve equipment with smaller overall energy usage). The point was that for those equipment types, the threshold level may never be reached, so DOE would be left once again to await ASHRAE action, despite that fact that Congress had adopted a 6-year-lookback provision for ASHRAE. (Southern Company, March 21, 2019 Public Meeting Transcript, No. 87 at p. 122)

In response, DOE notes that while Southern Company made the argument at the March 21, 2019 public meeting that certain categories of ASHRAE equipment may have small shipments, energy consumption, or both, such that the energy savings potential would be limited and potentially never meet the proposed 0.5 quad threshold for significant energy savings, the commenter did not provide any further detail, data, or other evidence to support its claim. Southern Company then asserts that DOE's proposed threshold would prevent such equipment from ever being subject to the 6-year-look back at 42 U.S.C. 6313(a)(6)(C), thereby ceding too much control to ASHRAE.

If, for the sake of argument, DOE were to assume Southern Company's assessment of the market for ASHRAE equipment to be correct, the Department believes that the commenter has failed to consider all of the relevant provisions of EPCA, as well as the impact that the percentage savings prong of the energy savings threshold would have in such situations. First, in the ASHRAE context, Congress did include a requirement that more-stringent standards be supported by clear and convincing evidence showing that such standards would result in ''significant additional conservation of energy'' and be technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)(ii)(II)), a provision which comes into play under both the ASHRAE trigger and the 6-year-lookback. By including such requirement for significant additional energy savings, Congress not only acted consistently with its overall approach of deferring to ASHRAE but also to explicitly point out that some equipment may have energy savings that are too small to justify the imposition of standards. The implication of Southern Company's argument would be to have DOE read the ''significant additional energy savings'' requirement out of the statute for at least some subset of ASHRAE equipment. DOE is not at liberty to follow that suggestion, but instead must give effect to all applicable statutory provisions.

Nonetheless, DOE is sensitive to the concern that such equipment not be put beyond the reach of energy conservation standards without proper consideration of the potential for significant additional energy savings. That is why DOE has also proposed to include a percentage energy savings prong as part of its significant energy savings threshold test. Under that prong, if covered ASRAE equipment could achieve a substantial energy savings improvement (*i.e.,* 10% reduction in energy use), such equipment would pass the test even though the quad threshold may never be reached. In summary, DOE has concluded that its approach properly addresses all of the relevant statutory provisions for adopting standard levels for ASHRAE equipment, including the requirement for significant additional energy savings. DOE's approach permits an assessment of each category of ASHRAE equipment, accords ASHRAE the deference it is due under the statute, and permits the adoption of more-stringent standards, supported by clear and convincing evidence, in appropriate cases.

D. Priority Setting

Previously, the Process Rule at 10 CFR part 430, subpart C, Appendix A,

section 3(d) outlines DOE's priority-setting analysis, which considers ten factors: (1) Potential energy savings; (2) potential economic benefits; (3) potential environmental or energy security benefits; (4) applicable deadlines for rulemakings; (5) incremental DOE resources required to complete the rulemaking process; (6) other relevant regulatory actions affecting products; (7) stakeholder recommendations; (8) evidence of energy efficiency gains in the market absent new or revised standards; (9) status of required changes to test procedures; and (10) other relevant factors. The Process Rule also previously required that the results of this analysis be used to develop rulemaking priorities and proposed schedules for the development and issuance of all rulemakings which would then be documented and distributed for review and comment. 10 CFR part 430, subpart C, Appendix A, section 3(a). The 1996 Process Rule also stated that each Fall, DOE would issue, simultaneously with the Administration's Regulatory Agenda, a final set of rulemaking priorities, the accompanying analysis, and the schedules for all priority rulemakings that it anticipated within the next two years. (*Id.* at section 3(c).)

In the February 13, 2019 NOPR, DOE proposed revising this process. DOE proposed that stakeholders would have the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring. In particular, DOE would point interested parties to the Regulatory Agenda posted to *www.reginfo.gov* the previous Fall and would request input concerning which rulemaking proceedings should be in particular action categories in the spring Regulatory Agenda and request comment on the timing of such rulemakings. If stakeholders believe that the Department is pursuing a rule that should not be prioritized, they would have the opportunity to use this mechanism to so inform DOE. If stakeholders believe DOE should act more quickly on another rulemaking they could make that point as well. DOE has concluded that increased stakeholder input early in the rulemaking process, combined with the public availability of the Regulatory Agenda, would meet the same objectives as DOE's previous priority-setting analysis. (84 FR 3910, 3916) (February 13, 2019)

In response to DOE's NOPR, stakeholders provided mixed reviews of the proposal. Several stakeholders supported DOE's proposed prioritization process to invite early stage comments. (Acuity, No. 95, at p. 2; AHAM, March 21, 2019 Public Meeting Transcript, No. 87, at p. 136; AHRI, March 21, 2019 Public Meeting Transcript, No. 87, at p. 135; AGA, No. 114, at p. 11; BWC, No. 103 at p. 2; CTA, No. 136 at p. 2; Edison Electric Institute, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 133–34; GM Law, No. 105 at p. 2; Joint Commenters, No. 112 at p. 3; NEMA, March 21, 2019 Public Meeting Transcript, No. 87, at p. 134; NPCC, No. 94, at p. 5; NPGA, No. 110 at p. 1; BHI, No. 135, at p. 4)

Others commenters stated that EPCA deadlines take precedence over the Department's policy preferences in determining DOE's agenda. For instance, ASE questioned whether DOE's prioritization proposal is needed. ASE argued that DOE's proposal is potentially duplicative of existing procedures based on statutory and regulatory requirements. ASE argued that Congress has already set deadlines for DOE, either by a date specific or through the 6-year-lookback provision (for energy conservation standards) or 7-year-look-back provision (for test procedures). Furthermore, ASE stated that DOE already reports its priorities through contributions to the Regulatory Agenda. However, ASE suggested that using requests for information (RFIs) to gather stakeholder input could help prioritize new product coverage and publicize statutory deadlines. ASE recommended that DOE issue a revised proposal to better reconcile its statutory and regulatory duties with its plan for priority setting. (ASE, No. 108 at p. 3) ASAP stated that a provision for priority-setting should not be in the Process Rule. (ASAP, March 21, 2019 Public Meeting Transcript, No. 87, at p. 137, 139) ASAP, et al. stated that existing statutory deadlines will largely determine the sequencing of DOE's work on standards and test procedures. Further, requesting input on prioritization would seem to be duplicative of the ''early assessment'' for each product since stakeholders will have the opportunity to provide input at the beginning of each rulemaking regarding whether DOE should proceed. (ASAP, et al., No. 126 at pp. 2, 5)

CT–DEEP, CEC, and Cal-IOUs, and Earthjustice agreed with other commenters that DOE should not prioritize rulemakings based on anything other than the sequencing already required by statute. (CT–DEEP, No. 93, at p. 2; CEC, No. 121, at p.3; Cal-IOUs, No. 124, at p.6; Earthjustice, No. 134, at p. 3) As Earthjustice summarized, the Process Rule cannot authorize a delay or suspension of work that would lead to or exacerbate the violation of a statutory deadline. (Earthjustice, No. 134, at p. 3)

The Cal-IOUs also indicated that it did not understand the specific details of this aspect of DOE's proposal or how it would ensure that DOE would adhere to its schedules. The Cal-IOUs acknowledged that providing stakeholder input on DOE's priorities seems positive, but it warned that this added input would create additional burden through the imposition of new steps to the current process. (Cal-IOUs, No. 124, at p. 6). Also, Energy Solutions questions how priority setting would supersede EPCA requirements. (Energy Solutions, March 21, 2019 Public Meeting Transcript, No. 87, at p. 132)

As for the 10 existing priority-setting factors, the CEC supports the continued application of the 10 existing priority-setting factors to DOE's priority-setting process and supports streamlining how the DOE notifies the public of its priorities by eliminating duplicative processes and using the Regulatory Agenda as the means for distributing the Agency's plans for upcoming efficiency regulations. (CEC, No. 121, at p. 3) Another commenter, AGA, stated that the Department should focus on two of the 10 existing priority-setting factors, the potential energy savings and the potential economic benefits as an initial screen for prioritization. The focus on these two factors is important because if the Department determines the proposed regulatory activity does not provide sufficient energy savings or is not cost effective, there is no need to review the other factors. (AGA, No. 114, at p. 11)

Although stakeholders have given DOE's prioritization proposal mixed reviews, DOE is implementing this revised priority-setting process because increased stakeholder input early in the rulemaking process, combined with the public availability of the Regulatory Agenda, is additional input that could better inform the Department in its decision-making process concerning priority-setting and would meet the same objectives as DOE's previous priority-setting analysis in the current Process Rule.

E. Coverage Determinations

In its proposal, DOE explained that EPCA provides DOE with the discretionary authority to classify additional types of consumer products and industrial/commercial equipment as ''covered'' within the meaning of EPCA. *See* 42 U.S.C. 6292(b) (providing authority for establishing coverage over consumer products) *and* 42 U.S.C.

6295(l) (setting criteria for setting standards for consumer products); *see also* 42 U.S.C. 6312(c) (providing authority for establishing coverage over specified commercial and industrial equipment). This authority allows DOE to consider regulating additional products/equipment that would further the goals of EPCA to conserve energy for the Nation—as long as the statutory threshold requirements are met.

DOE proposed to initiate the process through which it would add coverage of a particular product or equipment by publishing a notice of proposed determination to address solely the merits of covering that product or equipment. The notice would explain how the coverage of the item would meet the relevant statutory requirements and why coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. (84 FR 3910, 3916 (Feb. 13, 2019). *See also* 42 U.S.C. 6292(b)(1) (detailing criteria for classifying a consumer product as a covered product). In cases involving commercial/industrial equipment, DOE follows the same process, except that the Department need only show the coverage determination is ''necessary'' to carry out the purposes of EPCA. *See* 42 U.S.C. 6312(b) (providing that the Secretary of Energy ''may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of [Part A–1 of EPCA]''). DOE's authority to add coverage over commercial equipment is more limited than its coverage authority for consumer products because Congress specified the particular types of equipment that could be added. (42 U.S.C. 6311(2)(B)) Stakeholders would then be given 60 days to submit written comments to DOE on the proposed determination notice. Subsequently (and in a change from DOE's past practice), DOE would assess the written comments and then publish its final decision on coverage as a separate notice, an action which would be completed prior to the initiation of any rulemaking for related test procedures or energy conservation standards. If the final decision determines that coverage is warranted, DOE would proceed with its typical rulemaking process for both test procedures and standards, applying the requirements of the Process Rule, as amended. *See generally,* 84 FR 3910, 3916 (Feb. 13, 2019).

Comment Summary

DOE received a variety of comments responding to its proposal, which would, at its core, emphasize the need for clearly establishing coverage over the relevant product/equipment prior to taking any additional steps, such as engaging with the public on matters involving potential test procedures or possible energy conservation standards. Commenters responded both in support of the proposal and against it.

Supporters of DOE's proposal included manufacturers, trade associations, and utility companies.

Acuity agreed with the proposal, stating that it makes sense to solicit public input and determine coverage prior to considering potential standards for products/equipment. (Acuity, No. 95, at pp. 2–3.) It added that a bifurcated approach like the one proposed by DOE would save both DOE and stakeholders significant resources if there should be a ''no coverage'' determination. (Acuity, No. 95, at p. 3.) Acuity also agreed with DOE's proposal to identify newly covered products in a limited fashion and to narrowly and clearly define any new designations involving products. (Acuity, No. 95, at p. 3.)

BWC agreed with DOE's proposal to finalize a coverage determination at least six months prior to publication of a test procedure proposal, but it cautioned that the scope of coverage should be narrowly defined so as to prevent any unintended consequences. (BWC, No. 103 at p. 2)

Westinghouse Lighting stressed that as a small manufacturer, it does not have the bandwidth to quickly examine the impacts of a sudden ''last minute'' expansion in product coverage. It also emphasized that the coverage determination process ''cannot go back to square one'' but needs to have clear ''exit ramp options'' along the way to enable the agency to drop or add a product that no one had considered earlier in the process. (Westinghouse Lighting, March 21, 2019 Public Meeting Transcript at pp. 161–162.)

AGA supported DOE's proposal to limit any expansion of coverage to those narrow circumstances that satisfy the statutory requirements and purpose of EPCA. (AGA, No. 114, at 13)

NEMA stressed that it preferred to have determinations of rulemaking scopes of coverage, along with the completion of accompanying test procedures, completed early during DOE's rulemaking efforts. (NEMA, March 21, 2019 Public Meeting Transcript at p. 157)

The Joint Commenters also supported DOE's coverage determination proposal. In their view, finalizing coverage determinations before the initiation of any labeling, standards, or test procedure rulemakings (by six months prior to the start of a test procedure rulemaking) is necessary because it is impossible to address substantive issues until the products at issue have been clearly and specifically defined. (Joint Commenters, No. 112 at p. 3) They also asserted that any proposed covered products/equipment should be narrowly defined with sufficient clarity so that the proposed coverage corresponds to what is intended to be covered. In their view, following the proposed approach would avoid unnecessary confusion, the wasting of resources, and failures to address relevant and critical issues. They also asserted that finalizing coverage determinations first would ensure that both stakeholders and DOE know what products/equipment are at issue in the substantive rulemakings. The Joint Commenters also supported DOE's proposal to initiate a new coverage determination process (and to complete that process prior to moving forward either with a standards or test procedure rulemaking) if DOE finds it necessary to expand or reduce the scope of coverage during the substantive rulemaking process. (Joint Commenters, No. 112 at pp. 3–4)

HPBA stressed that unless a given product is ''covered'' by DOE, the Agency may not prescribe standards for that product (and only under certain circumstances)—and before DOE considers proposing a standard, there must be the possibility of a ''substantial improvement'' in that product's energy efficiency and DOE must first consider whether labeling requirements would be effective. (HPBA, No. 128, at pp. 1–2.) HPBA elaborated that, with respect to labeling, the question is not whether a labeling rule would achieve the same energy savings that a mandatory standard would achieve but whether such a rule would be insufficient ''to induce manufacturers to produce and consumers and other persons to purchase'' products capable of achieving the highest level of efficiency that would be technologically feasible and economically justified. (HPBA, No. 128, at p. 2 (quoting from 42 U.S.C. 6295(l)(D)).) HPBA stressed that DOE's consideration of potential new standards should occur only after the potential products for coverage have been clearly identified but before any standards development has begun and only after the criteria for issuing standards for newly covered products under 42 U.S.C. 6295(l) (*i.e.*, newly covered products) have been satisfied. (HPBA, No. 128, at p. 2.)

EEI viewed the proposal as ''a good first step.'' (Edison Electric Institute, March 21, 2019 Public Meeting Transcript at pp. 147)

HPBA suggested that DOE codify the predicate conditions for substantive

regulations in the Process Rule and stressed that DOE must (1) be clear as to what products are at issue, while determining that it is necessary to regulate them and (2) settle the issue of finality for judicial review to avoid having disputes over coverage before a decision is made on whether to impose standards. To address the latter of these, HPBA suggested characterizing the determination of coverage as a ''preliminary determination of coverage.'' (HPBA, March 21, 2019 Public Meeting Transcript at pp. 148–49) Following this suggested approach would lead to a final determination once standards are adopted. (HPBA, March 21, 2019 Public Meeting Transcript at p. 149)

Responding to concerns during the March 2019 Public Meeting about having to restart the whole process every time there is an error in the coverage determination, Spire argued that it is necessary for the process to restart to help ensure that manufacturers have an opportunity to be involved in the process. (HPBA, March 21, 2019 Public Meeting Transcript at pp. 153, 158)

Finally, GM Law supported what it regarded as DOE's proposal to limit its ability to recognize new covered products. In its view, the proposed approach would allow all interested parties to focus on the most effective conservation measures. (GM Law, No. 105 at p. 3)

Commenters who expressed concerns about DOE's proposal, like those who supported it, represented a variety of different interests. These interested parties included energy efficiency advocacy groups, States, and utilities.

Earthjustice expressed concern that DOE would not gather standards-related information prior to finalization of the coverage determination. (Earthjustice, March 21, 2019 Public Meeting Transcript at p. 156)

NPCC disagreed with the proposed use of a separate coverage determination process. In its view, having notice and comment on coverage adds unnecessary burden and time to the standards process. (NPCC, No. 94, at p. 5.)

ACEEE argued that requiring a final coverage determination prior to initiating a test procedure or standard rulemaking, and a final test procedure 180 days before a standards NOPR, will weaken coordination of DOE's rulemaking process. In its view, these restrictions will prolong the rulemaking process and prevent subsequent proceedings from informing earlier ones, resulting in worse coverage and test procedure decisions or years-long delays as the earlier rulemakings are repeated. (ACEEE, No. 123, at p. 2) ACEEE also indicated that it generally supported an approach that would result in completion of test procedures well before the end of the comment period on the accompanying energy conservation standard rulemaking for the affected product, while leaving an ability to fix problems that may become apparent later. (ACEEE, No. 123, at p. 2)

ASAP, like HPBA, supported the idea of settling the issue of finality regarding a given coverage determination for judicial review purposes and suggested that having a ''preliminary determination'' would help avoid the prospect of restarting the analytical process by moving back to a coverage determination analysis for the entire product or equipment type at issue. It envisioned a process where DOE could continue to move forward on those products/equipment that were already addressed by the earlier ''preliminary'' determination. (ASAP, March 21, 2019 Public Meeting Transcript at pp. 151–152) As proposed, ASAP expressed concern that the coverage determination process would be restarted whenever a problem with coverage is detected, which would result in DOE being unable to produce a rule within a reasonable timeframe, particularly if test procedures and coverage determinations are not being addressed in parallel with each other. To avoid this potential outcome, ASAP suggested that DOE adopt an approach that would address coverage determination and test procedures simultaneously. (ASAP, March 21, 2019 Public Meeting Transcript at pp. 167–168)

In jointly-filed comments, ASAP, *et al.* argued that the Process Rule should not require that a coverage determination be completed prior to initiating a rulemaking. These groups criticized DOE's proposal as not reflecting the fact that information learned during the rulemaking process for both test procedures and standards can, and should, inform the coverage determination. (ASAP, et al., No. 126 at p. 2) They cautioned that the proposal would result in potentially adding steps to the process and unnecessarily delaying rulemakings and pointed to the miscellaneous refrigeration products rule to illustrate how information that is learned during the rulemaking process can ultimately inform the determination of coverage. (ASAP, et al., No. 126 at pp. 5–6)

The State AGs contended that DOE's proposal to issue final coverage determinations six months prior to initiating a test procedure or standards rulemaking would improperly delay the promulgation of beneficial and necessary standards that are in the public interest. They worried that a standards-setting rulemaking would be significantly delayed if DOE determined that a coverage determination should be modified after finalizing coverage. They also worried that the need to restart the coverage determination process could act as a disincentive to modifying coverage determinations, even when warranted by new information obtained during the rulemaking process. In their view, the current approach followed by DOE readily permits changes to the scope of coverage as the process unfolds, while DOE's proposed approach would require re-noticing of the coverage determination, re-finalization, and restarting the 6-month clock for a standards rulemaking, all of which could impact DOE's ability to meet statutory deadlines. (AGs Joint Comment, No. 111 at pp. 8–9) The State AGs also contended that DOE's proposed ''limited'' approach to identifying new covered products is contrary to what they view as Congress's intent for DOE to continue expanding covered products. (AGs Joint Comment, No. 111 at p. 4) Finally, the State AGs noted that since coverage determinations allow DOE to regulate previously unregulated products, a delay at this stage would delay the potentially significant benefits that could accrue from regulating these new products, contrary to EPCA's objective of propelling the market for new efficient consumer and industrial technologies. (AGs Joint Comment, No. 111 at pp. 8–9)

The CEC also made a variety of broad points in its public meeting statements and comments. It stated its belief that it did not view the issuance of a coverage determination to have a preemptive effect until standards are set for the product at issue. (CEC, March 21, 2019 Public Meeting Transcript at p. 165) It also argued that DOE must retain flexibility to modify the applicable scope of coverage in response to new information developed as part of the rulemaking process. (CEC, No. 121, at p. 4 (pointing to DOE's actions during its battery charger rulemaking that resulted in moving backup battery chargers into a separate rulemaking proceeding)) In its view, DOE's proposal to restart its entire standard-setting process if it needs to revise the scope of coverage would effectively prevent any appliances from becoming newly covered products, regardless of the potential for energy savings, the maturity of the test procedure, or the readiness for standards. (CEC, No. 121, at p. 4.) The CEC added that, at best,

DOE's proposal would result in delayed standards without increasing stakeholder participation or providing consumer benefits. (CEC, No. 121, at p. 4.)

CT–DEEP argued that the proposal's coverage determination provision would generate an unnecessary and increased number of steps to the rulemaking process in cases where DOE finds it necessary to modify the scope of coverage during a rulemaking. (CT–DEEP, No. 93, at p. 2.) In its view, to prevent unnecessary delays, DOEs should not require a completed coverage determination prior to initiating a rulemaking. (CT–DEEP, No. 93, at p. 2.)

The Cal-IOUs noted during the March 2019 public meeting that it agreed with HPBA's suggestions—*i.e.*, that DOE must codify the predicate conditions for substantive regulations in the process rule, which would involve (1) not only being clear as to what products are at issue but also to determine that it is necessary to regulate them and (2) making this decision final for judicial review purposes to avoid having a dispute over coverage. (Cal-IOUs and HPBA, March 21, 2019 Public Meeting Transcript at pp. 148–150) (To the latter of these points, Spire suggested the use of a ''preliminary determination of coverage.'' (HPBA, March 21, 2019 Public Meeting Transcript at p. 149)) The Cal-IOUs were also concerned with whether the proposed process would preempt State regulatory efforts. In their view, preemption should not apply until the relevant test procedure and standards are established. (Cal-IOUs, March 21, 2019 Public Meeting Transcript at pp. 155–156.) In their written comments, the Cal-IOUs again asserted that final coverage determinations should be established only after standards have been finalized for the product that is subject to that determination. (Cal-IOUs, No. 124, at p. 6.) In their view, publishing a final determination before establishing standards could be problematic if modifications to the product scope are necessary during the rulemaking process. (Cal-IOUs, No. 124, at p. 6.) They argued that without the flexibility to readily modify the scope of coverage without pausing a rulemaking to solicit public comment on the coverage determination before moving forward, the rulemaking burden would increase both on DOE and stakeholders. (Cal-IOUs, No. 124, at pp. 6–7 (alluding to various comments from the March 2019 Public Meeting regarding potential problems with the proposed finalization of coverage determination before establishing standards))

Finally, individual commenter Linda Steinberg provided a general wholesale rejection of the proposal. (Steinberg, No. 90, at 1)

Response to Comments

DOE has carefully considered the comments it received from all interested parties. While DOE has decided to largely continue with its proposed approach, it is making certain clarifications to address the concerns expressed in response to the proposal.

As a preliminary matter, DOE notes that without settling the fundamental question of what product or equipment to regulate, all other aspects of its regulatory framework—*i.e.* test procedures and energy conservation standards—stand on infirm ground. By ensuring that the scoping of a particular product or equipment type is appropriately set, the necessary details regarding how to evaluate the efficiency of that product/equipment can be discussed and evaluated. Once there is an agreed-upon means on how to evaluate the energy efficiency of a product/equipment, only then can there be a meaningful analytical discussion regarding what the appropriate energy conservation standards should be. And without completing the test procedure prior to issuing a proposal on potential standards (and providing industry with time to familiarize itself with the test procedure itself), the analytical process in evaluating those potential standards would be more prone to confusion and error in ensuring that an appropriate standard is set. The approach that DOE is adopting in this final rule is consistent with what DOE has done in the past, and the agency seeks to adhere to this analytical sequence to help ensure that the framework that it applies to newly covered products and equipment will stand on firm technical and legal grounds.

Further, while DOE will seek to ensure that its coverage determination is as complete as possible, the agency emphasizes that coverage of a product/equipment type is necessarily broad in nature. DOE does not anticipate many changes to the scope of coverage of a product or equipment type once it finalizes a coverage determination but it recognizes that there may be issues involving which classes of products or equipment to regulate and how to regulate them. In DOE's view, these timing and policy questions are separate from the issue of determining coverage and can be addressed within the context of an ongoing test procedure or standards rulemaking, as appropriate. By way of a hypothetical example, if, after finalizing a coverage determination for ''handheld or worn mobile communication-capable computing devices'' that specifically includes smartphones, tablets, and smartwatches, DOE discovers that another group of devices should also have been covered—*e.g.,* smartglasses—DOE would be able to address that issue separately from the question of what testing method or standard would apply to the remaining classes of products within this product type. The question of coverage in this instance would be handled separately, as would questions concerning the appropriate test procedure and standards to apply. Once coverage is established, DOE may opt to regulate certain classes of a particular product type and defer regulating other classes for another time as appropriate.

DOE appreciates the concern expressed by Earthjustice regarding the importance of obtaining sufficient data prior to making a final decision regarding product or equipment coverage. This sentiment for ensuring that DOE has sufficient information before making any final coverage decision, as indicated in the earlier summary, was shared by others as well. DOE notes that in performing its analysis to determine whether to extend coverage over a particular product or equipment, it would, as it routinely has in the past, collect as much information as possible through its own analysis and research—including through careful reviews of responses to DOE's requests for information to the public. DOE is also hopeful that, given this apparently universally-held belief in the importance of ensuring that the agency has sufficient information on which to base its coverage determinations, interested parties will endeavor to provide DOE with as much relevant information as possible to help inform the decision-making process.

DOE also appreciates the concerns expressed by ACEEE to ensure that coverage determinations are properly set. DOE agrees that this factor is a critical consideration in the context of its test procedure and standards rulemakings. A coverage determination is the foundational step that serves as the stepping stone upon which an entire rulemaking will stand—and without a strong foundation on which to build, the framework of the rulemaking will be prone to difficulties in implementation and potentially vulnerable to a legal challenge. DOE wishes to avoid these and similar issues going forward to ensure that its regulations are appropriately scoped and implemented.

Regarding the notion of continuing with an ongoing test procedure or standards rulemaking if a problem with

a finalized coverage determination is found, DOE notes that the addition (or removal) of a given product/equipment class as part of the overall coverage of a product/equipment would be treated and analyzed separately from the other classes already being examined and agreed upon as appropriate for inclusion as part of an ongoing test procedure or standards rulemaking. To the extent that a given coverage determination is so defective that the determination itself needs reevaluating—such as from the reliance on inaccurate energy use data—DOE would pause its pending rulemakings to examine what aspects of its rulemakings need modifying in light of the new information. That process may very well involve seeking public comment and input to assist DOE in addressing any deficiencies in its analysis and related determination. DOE believes that the prospect of having to re-initiate the coverage determination process—and the attendant regulatory uncertainty and overall unpredictability that will follow—will serve as sufficient incentive for all interested parties to participate fully in the coverage determination process and provide DOE with comprehensive and relevant data to consider as part of the Agency's analysis when it first initiates a coverage determination for a product or equipment type. When applied in this manner, DOE does not believe that a ''preliminary determination,'' as suggested by HPBA and others, is necessary to ensure the validity of coverage determinations or that the rulemaking process is able to proceed in a timely fashion. Accordingly, DOE is declining to adopt the suggested preliminary determination approach. DOE may revisit this issue if circumstances suggest that such a change is needed.

DOE notes that examples of coverage determination changes cited by ASAP, et al. (miscellaneous refrigeration products) and the CEC (battery chargers), reflect approaches that could still be followed with respect to the addressing of any fundamental problems with coverage. In the example of miscellaneous refrigeration products (MREFs), DOE settled questions regarding coverage by eliminating icemakers from the potential rulemaking's scope after initiating a negotiated rulemaking. DOE does not anticipate that this process of addressing coverage questions prior to setting out the framework for related test procedures and standards would be altered by the provisions adopted in this final rule. DOE also notes that because it initiated a negotiated rulemaking to address test procedure- and standards-related issues, the agency was able to address its various regulatory framework issues through a mutually agreed-on negotiated rulemaking process allowing the handling of these issues. *See* 80 FR 17355 (April 1, 2015). DOE agrees that the concurrent publication of DOE's test procedure final rule and coverage determination for these products, when following the normal course set out in this final rule, would unfold differently than in the negotiated rulemaking process as used in the MREF proceeding. *See* 81 FR 46768 (July 18, 2016).

Regarding the CEC's concerns, DOE first notes that it disagrees with the CEC's suggestion that the proposed coverage determination provision would prevent DOE from issuing any standards in the future. Since EPCA separates the determination of coverage from the setting of standards and test procedures, unless the problems with an earlier coverage determination were defectively fatal, DOE does not anticipate that the coverage determination provision being adopted in this final rule will necessarily prevent the agency from issuing future standards. Instead, it will help ensure that the scope of coverage that DOE sets is appropriate and sets out a firm foundation for future rulemakings.

With respect to the backup battery charger situation cited by the CEC, DOE notes that the removal of that class of products from the battery charger rulemaking to a different product type's rulemaking would still be possible, as no overall change to the product type itself—*i.e.*, battery chargers—was made. *See* 81 FR 38266, 38275 (June 13, 2016). Applying this final rule's approach would allow a finalized coverage determination to continue to remain intact provided that the removal of a given class of products would not affect DOE's ability to demonstrate that the coverage criteria under 42 U.S.C. 6295(l) would still be met. If, however, DOE can no longer demonstrate that these criteria are satisfied, the prior coverage determination would need to be re-evaluated and analyzed as appropriate.

As for the CEC's statements regarding preemption, DOE notes that the scope of preemption is already covered by 42 U.S.C. 6297 and, as applicable, 42 U.S.C. 6295(ii). In DOE's view, test procedure rules would preempt any similar requirements imposed at the local level—irrespective of whether standards for the products/equipment at issue have been set. With respect to standards, any newly covered product for which DOE sets coverage and standards would be addressed under 42 U.S.C. 6295(ii). DOE agrees with the CEC that under this scenario, where DOE is setting standards for a newly covered consumer product type for the first time, preemption of any pre-existing standards would not occur until the compliance date for the relevant DOE standards is reached. *See* 42 U.S.C. 6295(ii)(1). With respect to industrial equipment for which DOE adds coverage, DOE believes that the provisions of 42 U.S.C. 6297(b) do not require that a Federal standard must first be effective in order for preemption to apply. This provision, which preempts State and local regulations until such time that a Federal standard becomes effective, provides an exception for those products that were already addressed by regulations prescribed or enacted before January 8, 1987 and applies to products before January 2, 1988. (Special provisions applicable to certain types of lighting products also apply.) Exceptions are also provided for a variety of other regulations but have no bearing on the industrial equipment over which DOE has authority to add coverage. See 42 U.S.C. 6297(b)(2)–(7).

With respect to the concerns expressed by the State AGs, DOE's responsibility is to ensure that it establishes legally defensible standards for newly covered products—in effect, to perform a balancing test regarding the benefits of energy savings, the costs of producing those savings, and the policy considerations inherent in making the final decision on standards. This means that the standards that DOE promulgates must produce significant energy savings that are economically justified and technically feasible. DOE acknowledges EPCA's goal of improving energy efficiency, and also emphasizes that DOE must ensure that those standards are produced with the benefit of full participation from interested parties to help it ascertain whether the requisite criteria for setting standards in a given scenario are met. DOE believes that the measured approach being adopted in this rule will enable it to continue to do so in a manner that addresses the concerns noted earlier by interested parties regarding the predictability and transparency of DOE's process while ensuring that a proper scope is used to set economically justified levels of energy efficiency that will benefit the Nation as a whole.

If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, limited to the issue of coverage, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the

statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. (42 U.S.C. 6292(b)(1)) In the case of commercial/industrial equipment, DOE follows the same process, except that the Department need only show the coverage determination is ''necessary'' to carry out the purposes of EPCA. (42 U.S.C. 6312) DOE's authority to add commercial equipment is more limited than its authority to add consumer products because Congress specified the particular types of equipment that could be added. (42 U.S.C. 6311(2)(B)) Stakeholders would then be given 60 days to submit written comments to DOE on the proposed determination notice. Subsequently (and in a change from DOE's past practice), DOE would assess the written comments and then publish its final decision on coverage as a separate notice, an action which would be completed prior to the initiation of any rulemaking for related test procedures or energy conservation standards. If the final decision determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards, applying the requirements of the Process Rule, as amended. Specifically, DOE would not issue any RFIs, notices of data availability (''NODAs''), or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product prior to finalization of the coverage determination. DOE will also finalize coverage for a product at least six months prior to publication of a proposed rule to establish a test procedure. And, DOE will complete the test procedure rulemaking at least six months prior to publication of a proposed energy conservation standard. This timing does not present any legal issue because adding coverage for a product and establishing test procedures and standards is a purely discretionary act without legal deadline.

The Joint Commenters, citing to 42 U.S.C. 6292(b)(1)(A), argued that DOE should exercise its authority to identify new ''covered products'' in a limited fashion, extending only to those products for which EPCA regulation is ''necessary or appropriate'' to the achievement of EPCA's purposes. They further argued that DOE's authority to identify new ''covered products'' is limited to products that consume at least enough energy to satisfy a stated minimum energy consumption criterion. The Joint Commenters urged that coverage determinations be made on a product-specific basis with each new covered product being defined separately with sufficient clarity to ensure that products serving different purposes are not treated as a single covered product. They added that each product should individually satisfy the minimum energy consumption requirement and qualify as a ''necessary or appropriate'' target for regulation. The Joint Commenters advocated that the Process Rule should be amended to require that proposed and final coverage determinations under 42 U.S.C. 6292(b) specifically identify each of the products at issue and provide a separate justification for the coverage of each. They further added that DOE has failed to satisfy these requirements in the past. Moreover, the Joint Commenters recommended that a final coverage determination be in place before substantive rulemaking on test procedures or energy conservation standards commences so that the public clearly understands which products are covered, thus avoiding unnecessary confusion, wasted resources, and the failure to address critical issues. Lastly, the Joint Commenters suggested that the 1996 Process Rule requires a reopening of comment on the justification for a coverage determination during the first rulemaking in which substantive regulation is imposed and if broader coverage is required, a new coverage determination must be proposed and finalized before initiating a rulemaking to regulate the broader range of products. (Joint Comment, No. 51 at pp. 9–10) Whirlpool and Lutron expressed support for these views. (*See* Whirlpool, No. 76 at p. 1; Lutron, No. 50 at p. 2)

DOE agrees with the points raised by the Joint Commenters, discussed previously, that DOE should exercise its authority to identify new ''covered products'' in a limited fashion. To this end, DOE proposes to extend coverage only to: (1) Those consumer products for which EPCA regulation is ''necessary or appropriate'' to the achievement of EPCA's purposes and which meet statutory consumption criterion, and (2) to that commercial/industrial equipment for which EPCA regulation is ''necessary'' to the achievement of EPCA's purposes. DOE agrees that any proposed new covered products/equipment should be narrowly defined with sufficient clarity so that the proposed coverage corresponds to that which is intended.

DOE does not agree with the Joint Commenters' suggestion that all coverage determinations must be reopened as a matter of course in the first substantive rulemaking on the newly covered product/equipment. After completing notice and comment on a proposed coverage determination and issuing a final determination, DOE believes it is appropriate to accord such process finality. However, if during the substantive rulemaking proceeding DOE finds it necessary and appropriate to expand or reduce the scope of coverage, the Department agrees with the Joint Commenters' that a new coverage determination process at that point should be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

F. Early Stakeholder Input To Determine the Need for Rulemaking

In the February 2019 NOPR, DOE proposed to adopt provisions in the revised Process Rule detailing the steps DOE would take prior to issuing a notice of proposed rulemaking, including a proposed determination not to amend an energy conservation standard or test procedure. The proposed revisions focused on two main areas: (1) Establishing an early assessment review of potential test procedure and energy conservation standard rulemakings; and (2) clarifying what steps DOE will take, and the corresponding opportunities stakeholders will have to comment, after the early assessment review and before issuance of any notice of proposed rulemaking. (84 FR 3910, 3917)

a. Early Assessment Review

In order to ensure that DOE maximizes the benefits of its rulemaking efforts, DOE proposed to revise the Process Rule to include an early assessment review of the suitability of further rulemaking. *Id.* at 84 FR 3917. This purpose of this review is to limit the resources, from both DOE and stakeholders, committed to rulemakings that will not satisfy the requirements in EPCA that a new or amended energy conservation standard save a significant amount of energy, and be economically justified and technologically feasible; and that an amended test procedure more accurately measure energy (or water) use during a representative average use cycle, or reduce testing burden. (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6293(b)) Therefore, as the first step in any proceeding to consider establishing or amending an energy conservation standard or amending a test procedure, DOE would publish a notice in the **Federal Register** announcing that DOE is considering initiation of a proceeding, and as part of that notice, DOE would request submission of related comments, including data and information showing whether any new or amended standard

would satisfy the relevant requirements in EPCA for a new or amended energy conservation standard or an amended test procedure. Based on the information received in response to the notice and its own analysis, DOE would determine whether to proceed with a rulemaking for a new or amended energy conservation standard or an amended test procedure. If DOE determines that a new or amended standard or amended test procedure would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking to make that determination. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that a new or amended energy conservation standard or amended test procedure cannot satisfy the requirements in EPCA. (84 FR 3910, 3917, 3921)

In response, several commenters supported the addition of an early assessment review. For example, Acuity stated that early determinations at these stages will save regulated parties and the Department countless hours and valuable resources by cutting off what have become virtually automatic rulemakings to update standards and test procedures—updates that no longer produce meaningful energy savings and divert attention and resources from pro-consumer innovation, R&D, etc. (Acuity, No. 95, at p. 3) Similarly, Joint Commenters stated that early assessment improves and streamlines the Department's approach to rulemaking by identifying early in the process how DOE should use its resources. (Joint Commenters, No. 112, at p. 4)

DOE also received comments expressing various concerns with the proposed early assessment review process. Several commenters were concerned that the addition of the early assessment review would increase the length of the rulemaking process and make it more difficult for DOE to meet applicable statutory deadlines. For instance, CEC stated that the early assessment review should be completed in sufficient time for DOE to meets its statutory deadlines under EPCA, as delays caused by adding new procedures are not sufficient to change those Congressional mandates. (CEC, No. 121, at p. 5)

In response, DOE notes that the purpose of the early assessment review is to reduce the length of the rulemaking process when issuing a determination that a new or amended energy conservation standard or amended test procedure is not warranted under the applicable statutory criteria. And, while DOE acknowledges that the early assessment review adds an additional step to rulemaking processes, this step will allow DOE to focus more resources on rulemaking activities that result in a new or amended energy conservation standard or amended test procedure. As a result, DOE believes the increase in available resources will offset, in part or whole, the extra time spent conducting an early assessment review.

Commenters, such as ASAP, et al. and ASE, also expressed concern that the early assessment review process is unnecessarily duplicative of DOE's current process regarding preliminary rulemaking activities. (ASAP, et al., No. 126, at p. 7; ASE, No. 108, at p. 5) In response, DOE notes that the early assessment review is not just an earlier version of DOE's normal rulemaking analysis. The goal of the early assessment review is to conduct a more focused, limited analysis of a specific set of facts or circumstances that would allow DOE to determine that, based on one or more statutory criteria, a new or amended energy conservation standard or amended test procedure is not warranted.

Some commenters expressed concern that the early assessment review would shift the burden of determining whether to proceed with a rulemaking to stakeholders. For instance, NPGA disagreed with placing the onus on stakeholders to demonstrate that new regulatory action is not necessary, and CEC stated that DOE will simply defer to commenters about whether a test procedure amendment is necessary, without conducting its own analysis, and then make a determination not to amend a test procedure without an opportunity for the public to comment on the reasoning behind that determination. (NPGA, No. 110, at p. 2; CEC, No. 121, at p. 6) Additionally, Cal-IOUs stated that an early assessment review creates a heavy stakeholder burden to review, research, test, and validate all aspects of a test procedure in the typical 30-day comment period because after the early assessment, DOE could decide a more thorough review of the test procedure is not required based on stakeholder comments in this limited window, ending the rulemaking process. (Cal-IOUs, No. 124, at pp. 11–12) In response, DOE clarifies that the revisions to the Process Rule do not affect DOE's responsibility to determine whether a rulemaking satisfies applicable statutory criteria under EPCA. DOE has always solicited input from stakeholders during the rulemaking process, but that has never changed the fact that it is DOE's responsibility to determine whether an energy conservation standard or test procedure is promulgated in accordance with the criteria and procedures laid out in EPCA.

b. Other Avenues for Early Stakeholder Input in the Rulemaking Process

In a November 6, 2010, policy statement, DOE stated that while the framework document and preliminary analysis provide useful information, there are more efficient ways of gathering data. Accordingly, in appropriate cases, the Department will gather the needed preliminary data informally and begin the public rulemaking process with the issuance of a proposed rule for public comment.[13] In the February 2019 NOPR, DOE proposed to revise this process to ensure stakeholders have the opportunity to comment prior to issuance of a proposed energy conservation standard or test procedure rule. Assuming the early assessment review process does not result in DOE issuing a determination that a new or amended energy conservation standard or amended test procedure is not warranted, DOE would issue a framework document and preliminary analysis or an ANOPR. These documents, as opposed to ''informal'' data gathering, would provide the necessary robust analysis to determine whether to move forward with a proposed standard. RFIs and NODAs could be issued, as appropriate, in addition to these analytical documents. (84 FR 3910, 3918, 3921)

In general, commenters were in favor of ensuring stakeholders have to opportunity to comment prior to issuance of a proposed rule. For instance, ASAP, et al. supports providing an opportunity for early stakeholder input prior to the publication of a NOPR, and CTA stated that greater opportunities for early stakeholder input is a step that would make more efficient use of government and private sector resources. (ASAP, et al., No. 126, at p. 2; CTA, No. 136, at p. 3) GWU stated that the proposed revisions to the Process Rule would improve opportunities for public

[13] The November 6, 2010 Policy Statement is available at *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf.*

participation by committing the agency to procedures for early stakeholder input, thereby strengthening DOE's decision-making process and aligning with good regulatory practices. (GWU, No. 132 at pp. 3, 6) With regard to specific vehicles for early stakeholder input, CEC supported the elimination of ANOPRs ''in favor of flexibility in determining the appropriate document for early stakeholder input,'' while AGA supported the continued use of the ANOPR process. (CEC, No. 121, at p. 6; AGA, No. 114, at p. 16) AGA also stated that DOE should explain its rationale for choosing a particular vehicle for early stakeholder input. (AGA, No. 114, at p. 16)

In response to these comments, DOE agrees that there are a variety of approaches that can achieve the goal of early information gathering in the rulemaking process. The ANOPR might be preferable in a given proceeding. Alternatively, an RFI or Notice of Data Availability would also allow for early stakeholder input through a request for comments in circumstances where DOE may not have sufficient information to develop an ANOPR. DOE might issue a Framework Document and Preliminary Analysis where DOE received information in response to the early look that might have been inconclusive with regard to the need for a new or amended standard, and DOE seeks additional input to help make that determination. These alternate tools equally promote transparency in DOE's process and allow for early information exchange. As such, DOE does not believe it is necessary to establish guidelines or scenarios for utilizing a specific form of early stakeholder input. In all cases, DOE will provide for some form of preliminary data gathering and public comment process, including either an ANOPR or Framework Document and Preliminary Analysis, prior to issuing a proposed rule.

G. Decision-Making Process for Issuing a Determination Not To Issue a New or Amended Energy Conservation Standard or an Amended Test Procedure

In the February 2019 NOPR, DOE proposed to adopt provisions in the revised Process Rule detailing DOE's decision-making process when determining whether a new or amended energy conservation standard or an amended test procedure is warranted under the relevant provisions in EPCA. In determining whether to move forward with a given energy conservation standards rulemaking, DOE stated it would address a series of issues that, while more expeditious than a complete rulemaking analysis, would nonetheless be supported by a thorough analysis to ensure that DOE proceeds with only those rulemakings that may yield a significant conservation of energy and be technologically feasible and economically justified. (84 FR 3910, 3920) For instance, if DOE is able to determine that a new or amended standard would not meet the threshold for significant energy savings, DOE would issue a proposed determination not to issue a new or amended standard without conducting additional analyses to determine whether a standard would also be technologically feasible and economically justified. DOE stated that it would apply a similar process for test procedure rules in order to determine whether an amended test procedure would more accurately measure the energy or water use of a covered product during a representative average use cycle or reduce testing burden. (84 FR 3910, 3921)

Joint Commenters, along with several others, noted that EPCA grants DOE authority to issue determinations of no new amended standards after considering three factors: Significant energy savings, technological feasibility, and cost effectiveness. (Joint Commenters, No. 112, at p. 6) CEC stated that DOE should replace the term ''economically justified'' with ''cost effective'' throughout the early assessment process, instead of adding new considerations that are not permitted under the statute. (CEC, No. 121, at p. 6)

In response, DOE notes that there are two situations in which DOE will issue determinations of no new amended standards. First, as commenters have pointed out, DOE has authority to issue determinations of no new amended standards based on three factors: Significant energy savings, technological feasibility, and cost effectiveness. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) However, DOE is also only authorized to issue an amended standard if the standard would result in significant conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6295(m)(1)(B) and 42 U.S.C. 42 6295(o)) If an amended standard does not satisfy these criteria, DOE will issue a determination that an amended standard is not warranted. As a result, DOE has revised the Process Rule to reflect DOE's statutory obligation to consider both cost effectiveness and economic justification when issuing a determination not to amend a standard.

H. Significant Savings of Energy Threshold

1. Comments on the Proposed Threshold Approach

The December 2017 RFI raised a number of issues for which DOE sought comment with respect to how the Process Rule might be improved. Among these issues was whether (and if so, how) to give a more definitive meaning to the statutory phrase used in EPCA: —''significant conservation of energy'' (or stated more generically, ''significant energy savings''). In response to numerous comments to the RFI urging DOE to address this larger issue of what level of potential energy savings would be appropriate for purposes of satisfying EPCA, DOE proposed using a two-step threshold for determining whether setting energy conservation standards for a given product or equipment type would be likely to lead to a significant conservation of energy. *See* 84 FR 3910, 3921 (Feb. 13, 2019). *See also* 42 U.S.C. 6295(o)(3)(B) (prohibiting DOE from prescribing an amended or new standard for a type or class of covered product if the Secretary determines that the standard ''will not result in significant conservation of energy'' or that the standard is not ''technologically feasible or economically justified.'')

Under the first step of this proposed approach, the projected energy savings from a potential maximum technologically feasible (''max-tech'') standard would be evaluated against a set numerical threshold. This initial step would be performed to ascertain whether a potential standard level would enable DOE to avoid setting a standard that ''will not result in significant conservation of energy,'' as provided under 42 U.S.C. 6295(o)(3)(B). (84 FR 3910, 3923) DOE proposed a quad-based threshold of 0.5 quad for this first step. (*Id.* at 84 FR 3924) Under the second step of the proposed approach, if the projected max-tech energy savings failed to meet or exceed this initial numerical threshold (with any lower level expected to achieve even less energy savings), those max-tech savings would then be compared to the total energy usage of the product/equipment to calculate a potential percentage improvement in energy efficiency/reduction in energy usage. (*Id.* at 84 FR 3923) DOE had proposed a percentage threshold of 10 percent, meaning that if the difference between the projected max-tech savings and the total energy usage of the product/equipment was under the 10 percent threshold, the analysis would end, and DOE would determine that no

significant energy savings would likely result from setting new or amended standards. (*See* Id. at 84 FR 3923–3924). This step would ensure that DOE will promulgate those standards that are most likely to confer substantial benefits to consumers and the Nation and eliminate from further consideration those potential standards that are projected to result in substantially lower energy savings below those generated under the relevant threshold. (*Id.* at 84 FR 3923)

Satisfying either of these thresholds would trigger DOE to analyze whether a standard can be prescribed that produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified (and still constitutes significant energy savings at the level determined to be economically justified). *See* 42 U.S.C. 6295(o)(2)(A). Because technological feasibility is already determined through the max-tech analysis, DOE would then focus on performing an economic justification analysis under the seven criteria in 42 U.S.C. 6295(o)(2)(B)(i). DOE is issuing a proposal elsewhere in this issue of the **Federal Register** to amend the previous process for determining whether and what standard can satisfy the criteria under EPCA. *Id.*

As DOE explained in the preamble to its proposal, in performing this analysis, the Agency would consider the total amount of energy savings at issue at each trial standard level (''TSL''). Assuming that DOE uses a minimum numerical threshold and a separate percentage threshold, the projected savings for any given TSL would be measured against these two thresholds. DOE would perform its economic analysis to determine whether an economically justified level (producing the maximum amount of energy savings possible) can be reached that meets or exceeds either of these thresholds. The analysis would proceed to compare that projected savings against the amount that the examined product/equipment consumes at each TSL. (84 FR 3910, 3923)

Unsurprisingly, DOE's proposed significant energy savings threshold approach generated substantial interest from commenters. These comments came during both of DOE's two separate public meetings to discuss its proposal as well as in written submissions. Commenters generally fell into one of two groups—those who supported the use of a threshold (including those who suggested modifications to the proposed approach) and those who opposed the use of a threshold.

A. Comments Supporting the Proposed Threshold Approach

Commenters who supported the idea of applying a threshold for significant energy savings included AHAM, AHRI, AGA, BWC, CTA, GEA, GMU Law, GWU, the Joint Commenters, Lutron, NAFEM, NEMA, Regal-Beloit, Rheem, Samsung, Signify, Southern Co., Spire, and BHI. Among these commenters, AHAM, BWC, the Joint Commenters, and Samsung, preferred that a threshold level different from the proposed levels be used. Regal-Beloit suggested that, in addition to the proposed thresholds, DOE supplement its approach to include the use of a ratio of quads over cost impacts (in dollars). The company asserted that using this method would enable DOE to help ensure that it could still avail itself of energy savings opportunities in those cases where a free or low cost opportunity to achieve additional energy savings is possible—but would not meet the proposed 0.5 quad threshold. (Regal Beloit Corp., March 21, 2019 Public Meeting Transcript at p. 291) EEI also suggested that an exception or different threshold for ASHRAE equipment as well as those products and equipment with smaller markets be used. (Edison Electric Institute, March 21, 2019 Public Meeting Transcript, No. 87 at p. 268)

Regarding specific issues raised by commenters favoring the use of thresholds, AHRI supported the use of a definition for significant energy savings and did not agree with criticisms that DOE's proposal was arbitrary, arguing instead that DOE's approach was based on a reasoned analysis. (AHRI, March 21, 2019 Public Meeting Transcript, No. 87 at p. 242)

AGA supported DOE's premise that the setting of a significant conservation of energy threshold should be non-trivial and that each candidate standard considered should result in significant energy savings. In its view, the thresholds set should illustrate a problem large enough to justify a regulation or rule. It asserted that DOE's proposal establishes a mechanism to evaluate whether a new standard is appropriate based on the significance of the energy savings, the technological feasibility of a given standards proposal and the economic effect of a proposed standards rule. It suggested that whatever methodology adopted by DOE should consider a combination of the anticipated percentage reduction of energy consumption for the covered product compared to the existing standard, along with the impact of overall energy consumption in the market sector. (AGA, No. 114 at pp. 19–20) In its view, reviewing a proposed standards rulemaking under the proposal's approach would indicate if a standard merits amending—for example, AGA asserted that a new standard for a consumer product ''may not be needed if it could achieve a 20% increase in efficiency, but only negligibly contribute to a reduction in overall residential energy consumption.'' (AGA, EERE–2017–BT–STD–0062, No. 114 at p. 20)

CTA agreed that DOE should apply a threshold with respect to whether the projected energy savings for a given standard would be significant for purposes of satisfying the statutory requirements under EPCA. Without a specific numerical threshold, it argued, interpretations of what is ''significant'' will vary by stakeholder and administration. In its view, such a threshold would also support priority-setting to help DOE in managing its periodic rulemaking obligations and related accumulated backlog of rulemaking activities. It asserted that establishing a threshold for significant energy savings, as well as having a formal consideration of diminishing returns and non-regulatory alternatives, are necessary for prioritization and the effective use of public resources. (CTA, No. 136 at p. 3)

Coupled with its belief that the proposal will help alleviate unnecessary regulatory burdens on the regulated entities as well as DOE, GEA asserted that it was particularly important for DOE to establish a requirement to demonstrate significant energy savings will occur before a revised standard is set. (GEA, No. 125 at p. 2)

GMU Law also favored the adoption of a minimum threshold for ''significant'' energy savings as a way to increase predictability and reduce regulatory uncertainty. (GMU Law, No. 105 at p. 3) In its view, DOE's proposal not only did not contradict the *Herrington* opinion, it reflected the type of cost-benefit analysis that the *Herrington* court expected DOE to perform, but which DOE had not done in the case before it. (GMU Law, No. 105 at pp. 7–8) GMU Law added that DOE's previous reading of the term ''significant'' as meaning ''non-trivial'' was based on a misreading of the *Herrington* decision and that DOE is permitted to conclude that the small energy savings benefits from a potential standard may be outweighed by the costs involved. (GMU Law, No. 105 at p. 7)

GWU supported a threshold-based analysis to avoid marginally effective revisions to standards whose benefits are outweighed by their costs. (GWU,

No. 132 at p. 8) However, GWU argued that because expected energy savings are based on projections, DOE should also conduct ex-post evaluations to determine the accuracy of the savings estimates of standards that are implemented. Furthermore, GWU stated that a threshold-based analysis should not be used as the sole determinant of whether a standards rulemaking should proceed with notice and comment, but instead be used to filter out standards where decreasing marginal returns to energy savings likely exist. To this point, GWU argued that in some cases, standards with benefits that do not outweigh their costs may still reach the threshold, which is why economic justification analysis is needed. GWU stated that DOE should ensure that standards undergo economic justification analysis before issuing a NOPR. (GWU, No. 132 at p. 8)

Lutron indicated that setting a threshold for significant energy savings is critical to adding clarity to, and planning for, future rulemakings, which would result in reducing burden by reducing regulatory uncertainty. (Lutron, No. 137 at p. 2)

NAFEM supported the development of objective thresholds for determining what constitutes ''significant energy savings.'' It suggested that rather than use the proposed 0.5 quad threshold, that DOE instead analyze the 57 standards examined under the proposal using the Pareto philosophy, where 80 percent of the deliverables would come from 20 percent of the activities. NAFEM asserted that since the Pareto analysis is consistently used in quality control and pertinent business research, DOE should consider using it in determining significant energy savings to provide a more grounded and defensible threshold. (NAFEM, No. 122 at p. 4)

NEMA supported the proposed threshold, noting that it provided DOE with a means to determine whether the potential energy savings in a given scenario are worth pursuing. It asserted that without a clearly defined path, the answer to the question of whether to set a more stringent standard would always be yes. (NEMA, March 21, 2019 Public Meeting Transcript, No. 87 at p. 244)

During the March 2019 public meeting, Rheem initially indicated that while it was unsure whether the proposed 0.5 quad threshold was ''the right number,'' it suggested that DOE consider the impact to the consumer. In other words, if going forward with a particular standard for a given item would result in the consumer paying significantly more to purchase that item, that standard would not be a good option for DOE to select. Rheem supported the idea of having guidelines for DOE to follow and expressed reluctance over a ''one-size fits all'' approach. (Rheem, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 263–264) Rheem's written comments supported DOE's proposed changes to its significant energy savings analysis and the definition of significant energy savings without elaborating further. (Rheem, No. 101 at p. 1)

Signify supported the setting of minimum threshold energy savings requirements and it asserted that such an approach would help DOE with prioritization and in focusing on the right energy savings opportunities. (Signify, No. 116 at p. 1)

Southern Co., like some other commenters, was unsure whether the proposed 0.5 quad threshold was the appropriate value to apply. It asserted that there is value in setting a formalized threshold value, since what DOE has considered ''significant'' has varied in the past. (Southern Company, March 21, 2019 Public Meeting Transcript, No. 87 at p. 246) Southern Co. also suggested that the threshold be a presumption and not mandatory. In its view, DOE should develop a procedure that offers an avenue for exceptions instead of having only a hard rule. (Id. at 266.) Southern Co. also echoed EEI's suggestion with respect to ASHRAE equipment and stated that the significant energy thresholds under consideration by DOE should not apply when DOE is conducting rulemakings under the ASHRAE-related provisions. It argued that not all of the different equipment types that are addressed by ASHRAE have the potential of yielding energy savings at the proposed threshold levels. Consequently, in its view, applying the proposed thresholds within the context of DOE's ASHRAE rulemakings under 42 U.S.C. 6313(a)(6) is not needed. (Southern Co., March 21, 2019 Public Meeting Transcript, No. 87 at p. 122)

Spire indicated during the March 2019 public meeting that DOE should clarify certain aspects of its proposal. In particular, it suggested that DOE include definitions for ''quad,'' ''site,'' ''source,'' ''discount rates,'' and other related terms used in the proposal. (Spire, March 21, 2019 Public Meeting Transcript, No. 87 at p. 284) Spire offered further observations as part of its written comments. First, it asserted that DOE needs to specify the metric being used, and — it suggested the use of ''source'' or ''primary'' energy and that the value used should include energy losses upstream of power plants. (Spire, No. 139 at p. 10.) Second, it suggested, consistent with DOE's proposal, that the Process Rule be made enforceable to mitigate the risk of litigation. (Spire, No. 139 at p. 11.) Spire indicated its support for DOE's proposed threshold-based approach provided that these two conditions are met. (Id.)

BHI supported the concept of a significant energy savings threshold as a means for DOE to deploy its rulemaking resources on products with the greatest energy saving potential. With respect to the proposed 0.5 quad threshold, BHI offered no specific comments other than to state that it expected DOE to set an initial level compatible with its objective to assign adequate resources for effective rulemaking processes. It added that it expected future rulemakings could amend the initial level as specific energy conservation standards reach points of diminishing returns (or [are] no longer eligible for an amended standard) and/or as the availability of the Department's resources fluctuates. (BHI, No. 135 at p. 3)

Some supporters of DOE's proposed approach also suggested applying different threshold levels. AHAM suggested that the quad threshold should be higher than the proposed 0.5 quad but offered no particular alternative or explanation as to why. (AHAM, March 21, 2019 Public Meeting Transcript, No. 87 at p. 223) BWC suggested that DOE consider a threshold of 1 quad, which it argued would justify a standard on a per-household basis but remain consistent with the threshold discussed in the *Herrington* case. Regarding the proposed percentage threshold, BWC questioned whether this level was appropriate, particularly in the context of products that have previously been regulated or may be nearing the maximum available technology—but it did not offer a specific alternative for DOE to consider. BWC added that it had no objections to the general concept of a threshold test using a hybrid approach for an overall level of energy savings and a certain percentage of efficiency improvement. (BWC, No. 103 at p. 3) The Joint Commenters supported DOE's approach as well as the proposed threshold levels. They added, however, that their own analysis for 21 past rulemakings demonstrated that a 1.0 quad threshold over 30 years could be more appropriate.[14] With respect to the

[14] For support, the Joint Commenters cited to a June 30, 2014, submission from the National Electrical Manufacturers Association regarding a proposed rulemaking addressing general fluorescent lamps and incandescent reflector lamps. That submission showed, among other things, the

Continued

proposed percentage increase in efficiency, the Joint Commenters supported the proposed 10-percent level as appropriate. They also supported having a bright-line rule for significant energy savings as it would provide certainty and predictability. (Joint Commenters, No. 112 at p. 7) Samsung, however, criticized the proposed 0.5 quad threshold as unnecessarily high and could hinder the advancement of energy efficiency standards for newly covered products. It asserted that energy efficiency standards have incentivized innovation in various product categories and have resulted in significant cost savings for consumers and environmental benefits. In spite of its concerns regarding the proposed quad-based threshold, Samsung nonetheless supported the proposed threshold for a 10-percent increase in energy efficiency/energy use reduction. (Samsung, No. 129 at p. 2)

B. Comments Opposing the Proposed Threshold Approach

Commenters who opposed DOE's proposal to use a significant energy savings threshold included A.O. Smith, ACEEE, the AG Joint Commenters, American Efficient, ASAP, ASE, Bosch, CEC, CT–DEEP, Earthjustice, Energy Solutions (on behalf of the Cal-IOUs during both public meetings), Ingersoll Rand, NYU Law, NEEA, NPCC, NRDC, Ms. Linda Steinberg, and PG&E (in conjunction with all Other Cal-IOUs in written comments). These commenters contended that applying a threshold was not only unnecessary but conflicted with EPCA.

DOE notes that one comment written on a single postcard expressed general dissatisfaction with the entirety of DOE's proposal. (Linda Steinberg, No. 90 at p. 1)

A.O. Smith was concerned about having what it viewed as defining ''significant energy savings'' by an arbitrary number. It argued that DOE should only consider the cost effectiveness of a given standard and that it did not understand why DOE needed to set a threshold. (A.O. Smith, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 28, 237.) A.O. Smith also posed the question of how DOE would treat a consensus agreement that presented potential energy savings that fell shy of the proposed quad threshold—*i.e.* whether the agreement would also be bound to the minimum threshold in order for DOE to move forward with a DFR on that agreement. (Id. at 239–241.)

ASE argued that there is an inherent arbitrariness and inflexibility to setting any threshold, including when stakeholders may reach a consensus on an alternate path towards potential standards. ASE suggested that DOE instead examine whether energy savings from standards are cost-effective both in terms of the amount of energy saved and other benefits. ASE also criticized DOE for considering a significant energy savings threshold when it should be focused on meeting statutory deadlines. (ASE, No. 108 at p. 5)

ACEEE pointed out during the public meeting that DOE needed to clarify whether the proposed threshold was based on source or site energy. It also argued that having a hard threshold would prevent DOE from setting a national standard that benefits both manufacturers and consumers. (ACEEE, March 21, 2019 Public Meeting Transcript, No. 87 at p. 277) ACEEE also asserted its belief that while a standard threshold is not needed, if DOE were to set one, the threshold should not only be at a much lower level but also be a rebuttable presumption rather than an inflexible requirement. It asserted that without having some flexibility in the treatment of the threshold, DOE may be prevented from considering consensus agreements, thus leaving manufacturers subject to a patchwork of State standards on a product. ACEEE also argued that requiring a threshold could also prevent DOE from considering a standard that would have a large impact on peak electric load or on a specific fuel. In its view, DOE should have the flexibility to consider these types of impacts. (ACEEE, No. 123 at p. 3)

During the March 2019 public meeting, ASAP argued that ''significance'' cannot be determined as a proportion of a figure but is an absolute value. (ASAP, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 256–57) It also sought clarity regarding when DOE's proposed ''significance analysis would be conducted in relation to other steps in the proposed revisions to the rulemaking process. (Id. at 260.) Additionally, ASAP, et al. argued that DOE should maintain its current interpretation of significant energy savings, which, it asserted, has been to view significant energy savings under the statute as savings that are not ''genuinely trivial.'' ASAP, et al. stated in written comments that DOE's proposal would establish arbitrary thresholds for defining significant savings that could result in large lost savings for consumers and businesses and prohibit the adoption of consensus agreements. It asserted, without providing supporting evidence, that energy savings of 0.5 quad are equivalent to electricity bill savings of about $7 billion and that DOE's proposal would sacrifice billions of dollars in potential savings for consumers and businesses. ASAP, et al. also asserted that the proposal is not consistent with *Herrington* or Congress' intent. (ASAP, et al., EERE–2017–BT–STD–0062, No. 126 at pp. 2, 9)

Further, ASAP, et al. did not agree with DOE's justification for the 0.5 quad threshold. In their view, the fact that a subset of rules comprises a relatively small portion of total savings does not mean that the savings from those rules are not significant. These commenters highlighted language cited in *Herrington* in which the Chairman of the House Sub-Committee on Energy and Power, Representative John Dingell, explained that ''conservation must be approached on a nickel and dime basis'' and that ''the cumulative impact of a series of conservation initiatives, which in themselves might appear insignificant, could be enormous.'' (ASAP, et al., No. 126 at p. 9) ASAP, et al. did not believe that the proposed thresholds reflected the intent of Congress, pointing in particular to *Herrington's* discussion regarding the annual energy use threshold of 4.2 billion kWh established by Congress for prescribing standards for a newly-covered product. (ASAP, et al., No. 126 at p. 9 (citation omitted)). Using figures cited in the proposal, the commenters argued that for a product consuming 1.45 quads over 30 years, achieving 0.5 quad of savings would require a reduction in energy use of about 33%. ASAP stated that DOE appears to recognize that in proposing a 10% savings threshold, it is not reasonable to assume that Congress intended that a 33% reduction in energy use for a product consuming 4.2 billion kWh would be necessary in order for the savings in quads to be considered ''significant.'' Citing *Herrington,* the commenters stated that ''Congress knew that standards for some covered products would produce quite modest incremental gains in efficiency and consequently in energy conserved.'' (*Id.* at 10 (citation omitted)) ASAP added that DOE's proposal would foreclose the possibility of pursuing a standard that did not meet the thresholds even if there would be no first-cost impact and gave some examples of potential scenarios where such rules would have been prohibited by the proposed threshold.

projected savings over 30 years (in quads) over the estimated industry net present value impacts for these two lighting equipment types when compared to the overall average projected energy savings for DOE's appliance efficiency rulemakings completed between 2008 and the date of the submission—2.156 quads. *See* NEMA, EERE–2011–BT–STD–0006, No. 54 at p. 4.

(*See id.*) ASAP added that the determination that a new or amended standard would constitute ''significant'' energy savings is not a determination that such a standard is economically justified. In its view, DOE's proposed thresholds for determining significant savings would eliminate DOE's ability to even consider whether a standard that would not meet the thresholds would be economically justified. (*Id.* at. 2, 9–11)

The AG Joint Commenters also criticized DOE's proposed significant energy savings threshold (which the commenters believed would short-circuit the standard-setting process) as a contravention of congressional intent, as expressed through EPCA, to save energy whenever technologically feasible and economically justified. (AGs Joint Comment, No. 111 at p. 4) They argued that setting a bright-line requirement for an energy savings threshold is an unlawful interpretation of EPCA that is both arbitrary and contrary to the APA. In their view, the proposal provided no substantive justification for the thresholds chosen or how these thresholds are appropriate in light of congressional intent, particularly how they strike an appropriate balance between lost energy savings and reduced regulatory burden, consistent with EPCA. They further asserted that DOE failed to explain whether the reduction in regulatory burden would outweigh the reduction in benefits that would be lost from the foregone standards, and warned that the proposal risks misinterpreting EPCA's significant energy savings provision in the same manner the agency had done in the run-up to the *Herrington* case. (AGs Joint Comment, No. 111 at pp. 9–11) The commenters argued that DOE must evaluate standards for a given product or equipment type unless the energy savings are ''genuinely trivial,'' so as to avoid foregoing cost-free benefits, and stressed that failing to conduct an economic justification analysis would mean that DOE cannot answer this fundamental question from *Herrington.* They added that the proposed use of a threshold could preclude regulations that, while producing small benefits individually, would result in substantial benefits cumulatively. The commenters suggested that only by combining the significant energy savings threshold with the seven factors for economic justification can DOE ensure that it is promulgating standards that substantially benefit the public. They reasoned that it would be more appropriate to assess significant energy savings later in the process when more information has been gathered on the record related to the seven factors for economic justification, of which energy savings is one. (AGs Joint Comment, No. 111 at pp. 10–11)

In addition, the AG Joint Commenters argued that DOE has not explained how its proposal would encourage gradual efficiency improvements without mandatory regulatory requirements. The commenters argued that DOE appears to be benefitting an entrenched industry at the expense of the public good and innovation. (AGs Joint Comment, No. 111 at p. 12) They also stated that significance thresholds can be subject to gaming, such as might occur if DOE were to divide rulemakings to only cover certain product classes (rather than all classes for a given product type) so as to keep the total anticipated energy savings below the significance threshold. The commenters argued that the proposal did not address this possibility or establish any safeguards to prevent such scenarios. They added that, were this to occur, it would frustrate the intent of Congress and EPCA. (AGs Joint Comment, No. 111 at p. 12) For all of the above reasons, the AG Joint Commenters concluded that DOE's proposed significance thresholds are arbitrary, capricious, and inconsistent with EPCA. (AGs Joint Comment, No. 111 at p. 12)

Bosch opposed the proposed thresholds, believing their application would produce results with far fewer energy efficiency gains, which would ultimately put U.S. manufacturers at a competitive disadvantage with its global competitors. It asserted, without citing or providing supporting evidence or data, that such a threshold would inadvertently pose a barrier to achieving small and incremental gains in efficiency, which Bosch claimed is the general way technology advances. Bosch sought additional clarity regarding DOE's methodology in selecting the proposed threshold levels, as well as a better understanding if and when DOE would allow for an exception to this threshold. (Bosch, No. 113 at pp. 4–5)

During the April 2019 public meeting, the CEC noted its opposition to the proposed thresholds. In its view, the statutory criteria were already adequate to allow for DOE to determine that no amended standards were needed in a given scenario and that setting an arbitrary minimum savings threshold would not relieve DOE from its statutory obligations to regularly review standards and, when required, to prescribe standards. It further asserted that any non-zero amount of technically feasible energy savings must be evaluated to determine its cost effectiveness and economic justification. (CEC, April 11, 2019 Public Meeting Transcript, No. 92 at pp. 230–231) The CEC elaborated on its views in written comments, asserting that the determination of significant energy savings must be made on a case-by-case basis. (CEC, No. 121 at p. 7) It further argued that applying a broadly defined threshold of 0.5 quad over 30 years or a 10 percent improvement in energy efficiency may not be appropriate for every appliance—such as in instances where potential energy (or water) savings have no incremental cost, where the potential savings accrue primarily in a few states where sales or use of the appliance at issue are more significant, or where the appliance currently has a small market share that makes a savings estimate small, but has the potential to balloon into a larger market share as a result of non-standards. (CEC, No. 121 at pp. 7–8) The CEC added that, in its view, DOE's failure to pursue standards for products that do not meet the applicable threshold ''misses an opportunity to make incremental improvements to an appliance rather than dramatic overhauls'' and argued that incremental improvements can yield significant energy savings improvements while minimizing manufacturer burdens. By setting a high threshold for a rulemaking to start, the CEC argued that DOE would be eliminating the opportunity for creating incremental improvements that Congress viewed as appropriate through its inclusion of regular review provisions in EPCA. CEC also asserted that the proposed thresholds would result in ''no-standard'' standards at the national level while preempting States from acting to set their own standards. (CEC, No. 121, at p. 8)

While CT–DEEP commended DOE for considering modifications to the current Process Rule to help moderate the burdens on industry and manufacturers, it too argued that the proposed significant energy savings threshold would eliminate enormous energy savings potential. It asserted that the energy savings from rules that would have fallen under DOE's proposed 0.5 quad threshold have collectively saved the equivalent of over 10% of commercial and residential building energy use annually—which CT–DEEP stated was equal to ''41.5 million MMBTU'' of annual energy savings. DEEP–CT argued that the proposed quad-based threshold would have significant impacts on energy savings nationwide and urged DOE to continue to interpret ''significant energy savings''

as defined by *NRDC* v. *Herrington.* (CT–DEEP, No. 93 at p. 3)

Like the AG Joint Commenters, Earthjustice noted its concern about how the proposed thresholds would apply in the context of the ASHRAE rulemakings that DOE conducts for certain categories of commercial/industrial equipment. In its view, DOE has discretion in sorting products for rulemaking, including ASHRAE equipment, but the proposal would be leaving to ASHRAE the determination of whether a product is going to meet the significance threshold. (Earthjustice, March 21, 2019 Public Meeting Transcript, at pp. 250–251) (See also id. at 252–253)

Energy Solutions (on behalf of the Cal-IOUs) argued that cost effective energy savings to a consumer is cost effective and in its view, 0.5 quad of energy use comprises a substantial amount of savings on the overall grid. It asked that DOE clarify the basis for its proposal by publishing the analysis for the 57 standards cited in the NOPR preamble and it added that it was unclear how DOE's max-tech analysis would differ from what would happen during the proposed pre-rulemaking stage. (Energy Solutions, March 21, 2019 Public Meeting Transcript, at pp. 228–29) Energy Solutions questioned the use of the lower end of the range over the higher or middle ranges in the analysis, (id. at 253) as well as the origins of the proposed 10% threshold. (Id. at 269)

Ingersoll Rand opposed the proposed thresholds and suggested that DOE continue to use its own discretion, after carefully weighing stakeholder input, as to whether potential cumulative energy savings are significant enough to proceed with a standards rulemaking. The company noted that 0.5 quad of energy could be significant, cost-effective, and technically justified for some product classes or sub-classes, which would, in its view, be appropriate to capture through appliance standards. It argued further that the proposed 10-percent improvement backstop was not appropriate, as this level of improvement could represent a significant leap for many covered products that is simply impossible to achieve, and may not be technically feasible. As a result, Ingersoll Rand argued that the proposed thresholds could prevent DOE from revising appliance standards when mature market conditions demonstrate that they would be appropriate, and leave cost-effective energy savings on the table. (Ingersoll Rand, No. 118, at p. 3)

Of additional concern to Ingersoll Rand is the potential unintended consequence of DOE having the inability to limit the stringency and/or scope of a standard in response to manufacturer feedback—or negotiations between affected stakeholders—in order to focus a potential appliance standard on the most optimal requirements in cases where projected savings would not meet the proposed thresholds. Ingersoll Rand cited a recent example of this issue, wherein DOE proposed one TSL for commercial and industrial air compressors but indicated it was ''strongly considering'' both a more stringent one and an expanded scope to include additional classes and size ranges of air compressors. The air compressor industry urged DOE to set standards using the more limited scope and stringency, which would have yielded correspondingly lower energy savings, as this was the more cost-justified level and aligned closely with familiar product testing methods. Under DOE's proposal for setting a threshold for significant energy savings, this discretion would not have been possible, but could have resulted in DOE pursuing standards more burdensome to manufacturers if they are also found to be technologically feasible and economically justified. (Ingersoll Rand, No. 118, at p. 3)

NYU Law asserted that DOE's proposed thresholds for defining whether energy savings are ''not . . . significant'' are arbitrary and that ''significance'' should instead be weighed by considering all important costs and benefits.'' (NYU Law, No. 119, at p. 1) In its view, whether the amount of energy savings is ''significant'' is relative and no single numerical threshold can determine significance in every situation. Instead, it argued, determining significance implicitly calls for the balancing of factors. It stressed that comparative terms that ''admit[ ] of degree'' like ''significant,'' ''minimize,'' or ''reasonable'' typically should be employed to compare the costs and benefits, because ''whether it is 'reasonable' to bear a particular cost may well depend on the resulting benefits.'' (NYU Law, No. 119, at p. 2)

Similarly, NEEA objected to the proposed quad threshold as arbitrary and argued that it should be lower. (NEEA, March 21, 2019 Public Meeting Transcript, No. 87 at p. 245) It also suggested that DOE determine whether a given level of energy efficiency is ''cost-effective to the consumer'' rather than using the proposed 0.5 quad as the relevant metric. (NEEA, March 21, 2019 Public Meeting Transcript, No. 87 at p. 276)

NPCC and NRDC also disagreed with DOE's proposal to set a threshold and argued that EPCA required the consideration of seven factors (not just one) when determining whether to adopt a standard. NPCC indicated that if Congress intended to establish a savings threshold it would have done so in EPCA. (NPCC, March 21, 2019 Public Meeting Transcript No. 87 at pp. 23–24, 249) In NPCC's view, the proposal is inconsistent with EPCA and that applying a threshold before a standard can be proposed and evaluated against the criteria under EPCA risks losing substantial savings from standards that simply do not pass the threshold but that EPCA would otherwise allow. Citing estimates from ASAP, NPCC asserted that a third of the standards adopted by DOE between 2009 and 2017 would not have met the proposed threshold, which means that these proposed standards (and their combined savings) would not have been realized under DOE's current proposal. It added that setting a threshold that prejudges a proposal based on only its proposed savings—and not a ''balanced consideration of the overall benefits and costs''—conflicted with DOE's statutory obligations. (NPCC, No. 94, at p. 6.)

NRDC argued that the issue of applying a threshold number for significant energy savings had been settled in *Herrington* and that, if implemented as proposed, would forego substantial energy savings. (See NRDC, March 21, 2019 Public Meeting Transcript, No. 87 at p. 248) In its view, the proposal to set a threshold for significant energy savings is arbitrary and contrary to both EPCA and the *Herrington* decision and should be withdrawn. NRDC asserted that it would be difficult or impossible to develop a threshold that is sufficiently responsive to the unique characteristics of each covered product and that does not unnecessarily reject savings. It added that the proposal would not account for the importance of saving energy at different times of day, such as at times of peak grid demand. NRDC also argued that DOE failed to explain whether its thresholds for significant energy savings were based on site energy consumption, source energy consumption, or some other method of calculation, which left stakeholders unable to effectively comment. NRDC also asserted that DOE has not explained how it will apply the threshold when aggregating savings from product/equipment classes and expressed concern (like Earthjustice and State AGs) that DOE could game the system by examining a subset of classes which fail to meet the threshold, even though a combined rule examining multiple product classes would meet it.

(NRDC, No. 131 at pp. 5–7) Pointing to the comments of ASAP, at al., NRDC argued that some of DOE's energy conservation standards could be considered ''cost-free,'' such as those for pre-rinse spray valves, and as a result, the proposed threshold would effectively prevent DOE from adopting such standards in violation of *Herrington.* (NRDC, No. 131 at p. 8)

NRDC stated that DOE's proposed significant energy savings threshold repeats the same mistake DOE made in *Herrington,* namely by arguing that 23 rulemakings adding up to 4.24 quads of savings were not worth the effort. NRDC argued that standards with smaller amounts of energy savings can add up to larger savings. Although it acknowledged that the *Herrington* court left open the possibility that an energy savings threshold could be set, NRDC asserted that DOE failed to show any awareness of the range of energy savings that Congress considered worth pursuing. In its view, this failure provides another reason for why DOE should withdraw its proposal. (NRDC, No. 131 at p. 9)

To highlight this point and to help illustrate the potential conflict between Congressional intent and the proposed thresholds regarding new energy conservation standards for various regulated products and equipment, NRDC identified three sets of statutory standards set by Congress for residential boilers, dehumidifiers, and electric motors, which over 30 years were projected to save 0.16 quads, 0.17 quads, and 0.14 quads, respectively. Under DOE's proposed significant energy savings threshold, NRDC argued that none of these energy conservation standards would have been set, although Congress clearly thought them worth adopting. (NRDC, No. 131 at p. 10)

NRDC also criticized DOE's proposal for failing to mention how the agency would determine a significant savings of water (which is required under 42 U.S.C. 6295(o)(3)(B) for showerheads, faucets, water closets, and urinals). It urged DOE to address how water-consuming products would be addressed under the Process Rule. (NRDC, No. 131 at p. 10)

Finally, PG&E stated that grid reliability must be considered when discussing significant energy savings and worried that it would not be if a contemplated rulemaking action ends because DOE's early assessment ''off-ramp'' is taken (*i.e.* the proposed thresholds are not met and no proposed rulemaking follows). PG&E noted that it would be unrealistic for it to submit comments to DOE during the proposed early assessment period since it would be difficult to assess grid impacts within the short amount of time allotted under the proposed time frame. (PG&E, March 21, 2019 Public Meeting Transcript, No. 87 at pp. 214–15) With respect to the proposed thresholds themselves, PG&E (in conjunction with the other Cal-IOUs) ultimately opposed them, indicating that any ''non-zero'' amount of technically feasible energy savings should be considered significant by DOE. To this end, it argued that DOE should interpret ''significant energy savings'' as meaning ''not genuinely trivial.'' (Cal-IOUs, No. 124, at pp. 7–8)

The Cal-IOUs criticized DOE's proposal, characterizing the justification for the proposed threshold values as vague, including what the commenters described as a lack of clarity as to whether the proposal relied on site versus source energy. (Cal-IOUs, No. 124, at p. 8.) Referring to text from the *Herrington* case and comparing it to the proposal, the Cal-IOUs posed three questions/issues to DOE to address: (1) Can DOE provide a current site-to-power plant energy use factor, so that stakeholders can better interpret *Herrington* in the current landscape? (2) Given that the proposed 0.5 quad threshold represents a 35 percent source energy savings based on the 1982 site-to-power plant energy use factor, and the *Herrington* court noted that ''Congress plainly thought that saving some part of the energy consumed by an appliance operating at those levels would be significant,'' DOE should elaborate on its interpretation of this adjudicated decision to interpret ''some part'' to mean 35 percent. (3) In light of the absence of a reference to a ten-percent energy savings threshold in the *Herrington* decision, DOE should elaborate on the logic and legal justification for the proposed threshold. (Cal-IOUs, No. 124, at pp. 8–9.) The Cal-IOUs also stressed that the proposal, by eliminating 23 rulemaking standards (as indicated in the NOPR's preamble discussion), would also have eliminated 4.24 quads of energy savings over 30 years, which the commenters viewed as a significant amount of savings. In their view, this approach would conflict with *Herrington* and with DOE's stated concern about limiting the first-cost impacts to consumers since the proposed threshold would not allow DOE to consider truly cost-free opportunities. (Cal-IOUs, No. 124, at p. 9.) The Cal-IOUs further noted that, as proposed, DOE would have removed multiple products/equipment from being considered for more efficient standards. The commenters cited DOE's rulemakings for circulator pumps and dedicated-purpose pool pumps as examples of the types of rulemaking activities that would have ceased prior to the initiation of an ASRAC working group. Since both rulemakings originated with the commercial and industrial pumps rule (which had a projected savings of 0.29 quads), the Cal-IOUs argued that neither of these rules would have survived DOE's proposed threshold—commercial and industrial pumps would have been dropped because it would not have satisfied the 0.5 quad threshold, which would also have ended the examination of potential standards for dedicated-purpose pool pumps. In the view of the Cal-IOUs, the savings projected for these two rulemakings (which the group stressed would be 4.51 quads) would have been lost under DOE's proposal. (Cal-IOUs, No. 124 at p. 9)

The Cal-IOUs were also critical of the information released by DOE regarding how the thresholds would be implemented as part of the Process Rule. They asserted that there were inconsistencies between flow diagrams released as part of the proposal and during the April 2019 meeting, with the latter document noting that the thresholds would apply at three different points—(1) during the early assessment review, (2) during the preliminary stage review, and (3) during the NOPR review, while being compared against technological feasibility and economic justification at each step. (Cal-IOUs, No. 124 at p. 10) The Cal-IOUs viewed this approach as ''particularly troublesome'' during the early stages of the review process because DOE did not indicate whether it would conduct a thorough analysis to provide a reasonable savings comparison against a quantitative savings threshold. In their view, DOE should specify that a DOE-led thorough analysis will be conducted at each stage and that a suggested (rather than mandatory) threshold be applied at earlier stages of the review process. (Cal-IOUs, No. 124 at p. 10)

The Cal-IOUs further noted that the published flow chart contained in the NOPR (unlike the revised one handed out during the April 2019 meeting) indicated that the savings threshold would first be considered during the preliminary stage of review while acknowledging that the early assessment will consider whether significant energy savings can be achieved in accordance with EPCA's economically justified and technologically feasible tests. In their view, these statements are in conflict and that DOE should elaborate in detail how and when the proposed

quantitative threshold will be applied. They added that DOE should also explain what information will inform the analysis throughout the rulemaking process and how the thresholds would be applied in those cases where a product type has multiple product classes. (Cal-IOUs, No. 124 at p. 10) The Cal-IOUs also criticized the proposal by asserting that the use of a threshold would ignore real-world implications and the additional value provided by more efficient products, citing as examples reduced energy generation and reducing and managing energy demand during peak hours. (Cal-IOUs, No. 124 at pp. 10–11)

C. Comments Regarding DOE's Notice of Data Availability

DOE received fourteen (14) comments responding to its July 2019 NODA. In addition to reiterating or expanding on earlier points made in response to the NOPR, these comments also highlighted the potential challenges and disadvantages that DOE may face if it were to adopt an energy savings threshold based on site energy use compared to primary source or full fuel cycle (''FFC'') energy use. Commenters also raised issues regarding the sufficiency of DOE's data as support for the proposal and alleged that the particulars regarding the thresholds remained unclear.

A.O. Smith asserted that the NODA and its associated analysis fell short in providing enough analytical, technical, and factual justification to support DOE's proposed energy savings threshold. It argued that the materials provided no actual methodology or explanation on how DOE arrived at a 0.5 quad energy savings threshold. In its view, the NODA and accompanying data did not support the proposed energy savings threshold conclusion or provide a sound methodology to recreate the actual value proposed in the NOPR to enable the public to understand how the threshold conclusion was reached and cannot be relied on to justify this aspect of DOE's proposal. (A.O. Smith, No. 153, at pp. 1–2) It added that basing a threshold using site energy savings would not present a ''full picture of the total energy use used by the building (or the appliances in it) because the process of generating electricity incurs substantial losses associated with delivering fuel (*e.g.* gas, electricity, oil) to the site In its view, source energy is the most equitable metric for evaluating national energy savings comparisons among buildings and appliances since it considers different fuels and provides a more neutral foundation to assess total energy savings. It further argued that relying on site energy ''severely undervalues'' electricity savings compared to gas or oil savings and noted that there is a three-fold difference between site and primary/FFC electricity savings when accounting for all transmission and distribution losses. A.O. Smith contended that such a threshold would place electric and gas/oil appliances on an unequal footing with each other, distort DOE's national energy savings analyses, and negatively impact consumers and U.S. manufacturers by permitting the importation of less efficient products. (A.O. Smith, No. 153, at p. 2).

A.O. Smith also criticized the information disclosed in the NODA because DOE did not acknowledge or consider that each rulemaking included an analytical methodology that was appropriate for the particular covered product in question. For example, not all of the examined rulemakings use the same analysis period (*i.e.* length of time), leading to a mismatched comparison. (A.O. Smith, No. 153, at p. 2) Further, it noted that the U.S. Energy Information Administration continuously updates the Annual Energy Outlook with changes in the economy and energy supply/generation, which may deviate from earlier estimates published by the Department. It asserted that to account for the changes in methodology across this time period, DOE would need to convert each energy savings estimate from published final rules to allow for an accurate comparison. (A.O. Smith, No. 153, at pp. 2–3) It also suggested that DOE should evaluate the impacts of a significant energy savings threshold using the most recent version of DOE's analysis of energy and economic impacts from energy and water conservation standards, which would allow for cross comparisons of savings across rulemakings. (A.O. Smith, No. 153, at p. 3)

Finally, A.O. Smith asserted that the NODA included the energy savings from four remanded rulemakings in error—2001 central air conditioners and central heat pumps (replaced by a 2002 rule with lower national energy savings), 2010 direct heating equipment (unrealized energy savings from remanded portion of the rule for hearth products), 2011 central air conditioners, central heat pumps, and furnaces (unrealized energy savings from remanded portion of rule regarding furnaces); and 2014 walk-in coolers and freezers (double-counting of energy savings of some products vacated from the 2014 rule and subsequently covered by the replacement 2017 rule). (A.O. Smith, No. 153, at p. 3)

A.O. Smith also noted that DOE failed to consider the historical context of the appliance standards program and the implementation of energy conservation standard regulations over time. In its view, the initial standards rulemakings conducted by DOE amounted to ''lower-hanging fruit'' with regard to improvements in energy efficiency and, as a result, yielded much higher energy savings than subsequent ''more incremental'' standards rulemakings. Consequently, A.O. Smith argued that DOE's inclusion of the projected energy savings from these earlier initial rulemakings was erroneous and that DOE should have excluded these initial savings when developing an energy savings threshold. (A.O. Smith, No. 153, at p. 3)

A.O. Smith further asserted that EPCA already prescribes a method for determining whether a given standard would be too costly (or technologically infeasible) for DOE to adopt. As a result, A.O. Smith viewed the need for a significant energy savings threshold value as unnecessary. (A.O. Smith, No. 153, at p. 4)

AGA urged DOE to rely on FFC energy use rather than site energy use for developing energy savings thresholds and in calculating energy savings projections for new or amended energy conservation standards. (AGA, No. 157, at p. 2) It stressed that under 42 U.S.C. 6295(o), DOE may use full FFC energy use when determining whether a given level of energy savings constitutes ''significant'' energy savings. (AGA, No. 157, at pp. 5–6) AGA also pointed to DOE's prior policy statement regarding the use of full fuel cycle energy use metrics. (AGA, No. 157, at pp. 6–7) AGA also argued that site energy use does not account for upstream energy savings impacts from standards or permit comparisons across fuel types. (AGA, No. 157, at pp. 7–8) By adopting an approach that eliminates all upstream energy consumption and associated emissions required to deliver fuel to its point of use, AGA argued that DOE's significant energy thresholds would provide an incomplete picture regarding the potential impacts of a standard. (AGA, No. 157, at pp. 8–9). AGA also noted that the National Academy of Sciences recommended that DOE use a FFC metric and that other agencies, such as the EPA, supported that approach. (AGA, No. 157, at pp. 9–11). AGA added that source energy—used by the GREET model [15]—excludes

[15] Sponsored by the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy

extraction and production losses but could be readily converted to a FFC measure of energy consumption. (AGA, No. 157, at p. 11). AGA was also concerned that DOE's potential reliance on a site energy-based approach would ignore the benefit that FFC energy use would provide by accounting for a broader range of energy impacts and would depart from the Agency's past practice. (AGA, No. 157, at p. 12) It added that the public would benefit from the use of a FFC energy metric and asserted that such a metric would provide ''the most efficient and equitable characterizations'' of energy usage across competing fuels. Further, it noted EPA's reliance on full fuel cycle energy data as part of their ENERGY STAR program for commercial buildings. (AGA, No. 157, at p. 13)

In addition, AGA reiterated its support for the use of significant energy savings thresholds and reiterated its earlier recommendation that the thresholds consider a combination of the anticipated overall energy consumption savings along with the percentage reduction of energy consumption for the covered products compared to the applicable existing standard. (AGA, No. 157, at p. 14) AGA suggested that DOE should take into account a combination of the possible quad reductions and the anticipated percentage reduction of energy consumption so that it is not ''one or the other.'' (AGA, No. 157, at p. 15)

AGA offered an example to illustrate one way to use its suggested threshold approach:

If DOE established a threshold of 0.5 quads of energy savings and a 10 percent reduction in the energy consumption of the covered product, as referenced in the NODA, and if a new standard was projected to save 0.25 quads of energy (a level below the energy savings threshold) but result in a 20 percent reduction in energy consumption for the covered product (two times the percent threshold), the rulemaking process could proceed since the two thresholds were proportionately achieved. However, if in the above example, the new standard would have only achieved a 10 percent reduction in energy consumption for the covered product, it would not proportionately meet the combined thresholds and the rulemaking process would not proceed. (AGA, No. 157, at pp. 14–15)

AGA also suggested that all DOE benefit and cost calculations be fully documented, subject to public review prior to their use in any rulemaking analyses, and peer reviewed prior to final publication. (AGA, No. 157, at pp. 15–16) It suggested that DOE establish consistent national average energy conversion factors that reflect consensus views of transitions to renewable electricity generation operating contribution, captured energy from renewables, and more realistic electricity grid considerations. It pointed to the use of source energy conversions published by the Pacific Northwest National Laboratory (''PNNL'') in May 2019. [16] (AGA, No. 157, at pp. 16–17)

In addition, AGA suggested that analyses of products should include an analysis of competing product markets and penetrations flowing from efficiency standards proposals, particularly with respect to competing fuel types—which would collectively include estimated responses among manufacturers and their competing product lines, including fuel choice considerations, more realistic fuel switching considerations, and public review of fuel choice and switching methodologies. (AGA, No. 157, at p. 17) Consumer baseline decisions should also presume rational decision making. Under this approach, AGA contended that DOE should model consumers as preferring the product model providing the greatest consumer surplus relative to all covered product models available in the absence of new minimum standards. (AGA, No. 157, at pp. 17–18). It also suggested that once a covered product analysis begins, DOE should better characterize end-user markets. Specifically, AGA suggested that DOE define these markets in public workshops directed at identifying key customer classes and building types, and achieve consensus on how the standards analysis would apply to these differentiated markets. (AGA, No. 157, at p. 18)

APGA continued to support DOE's goal of establishing a metric that best estimates climate impacts and supports the interests of the public. (APGA, No. 151, at p. 2) It expressed concern, however, with the prospect of DOE's adoption of a site-based energy use metric. Citing to earlier work from the National Academy of Sciences and DOE's subsequent adoption of a policy statement agreeing to use FFC metrics, APGA urged DOE to continue to follow this FFC-based approach when measuring energy consumption. (APGA, No. 151, at pp. 2–3) Pointing to data comparing energy costs and CO_2 emissions across different electric-powered and natural gas appliances, APGA highlighted the lower annual operating costs, lower energy usage and lower CO_2 emissions of natural gas appliances relative to electric-powered ones. (APGA, No. 151, at p. 3)

APPA supported the use of site energy when determining whether the proposed energy use thresholds were met. (APPA, No. 154, at p. 2) In its view, site energy is credible, reliable, replicable, transparent, and an actual metric that can be verified while source energy is an estimate that can be calculated in a variety of ways, have a variety of values, and does not account for significant regional differences in the U.S. (APPA, No. 154, at pp. 2–3). APPA also suggested that DOE clarify which thresholds it would use. It sought clarification on how DOE would treat a scenario where a 10% reduction in energy use occurs over 30 years. If the reduction were based on site energy use, in APPA's view, the threshold requirement should be based on a minimum percentage reduction in appliance/equipment site energy consumption per year over a 30-year analysis period (or require an X% reduction in *annual* site energy consumption over a 30-year analysis period). (APPA, No. 154, at p. 3 (emphasis in original)). Regarding those instances where DOE presents a potential range of savings over a 30-year analysis period, APPA suggested that DOE use the mid-point value of the range to improve the understandability and technical accuracy of the analysis being used. (APPA, No. 154, at p. 4)

In joint comments responding to the NODA, ASAP and its fellow joint commenters re-stated concerns with the proposed energy savings threshold and asserted that DOE has not made a clear proposal regarding those potential thresholds. The commenters were also concerned that DOE would consider using site energy use when evaluating potential energy savings from energy conservation standards and they asserted that DOE has still not provided an ''apples-to-apples'' comparison of energy savings from historical rulemakings. (ASAP, et al. 2, No. 158 at p. 1) The commenters urged DOE not to adopt a significant energy savings threshold and highlighted examples where DOE analyses have identified efficiency improvements with no first-cost impacts. They argued that setting a threshold would potentially deny the

(EERE), Argonne National Lab developed a full life-cycle model called GREET (Greenhouse gases, Regulated Emissions, and Energy use in Transportation) to allow researchers and analysts to evaluate various vehicle and fuel combinations on a full fuel-cycle/vehicle-cycle basis. This model is used by DOE to help ascertain potential impacts related to DOE's standards rulemakings.

[16] *See also* PNNL, Preliminary Energy Savings Analysis: 2018 IECC Residential Requirements.

benefits of these energy savings to consumers and businesses. (ASAP, et al. 2, No. 158 at p. 2)

The commenters also asserted that DOE's proposal and subsequent NODA have not yet offered a clear proposal regarding the potential thresholds for determining whether significant energy savings were present in a given situation. They noted that it was unclear whether DOE would be applying an approach based on site, source, or full fuel cycle energy use—in spite of the NODA's presentation of past energy savings in terms of site energy use. The commenters added that DOE has not clearly defined the 30-year period that would apply and that the proposal continued to remain unclear with respect to the 10 percent threshold—specifically, whether it would amount to a reduction in energy usage or an improvement in energy efficiency. (With respect to the last of these, it highlighted an example of the practical difference between a reduction in energy use and an increase in efficiency.) (ASAP, et al. 2, No. 158 at pp. 2–3)

Additionally, with the NODA's presentation of past rulemaking energy savings in site energy use, the commenters were concerned about relying on site energy, which would, in their view, deviate from prior DOE practice of using source or full fuel cycle energy use. It noted two problems in particular. First, site energy savings do not accurately reflect the total impact of standards on national energy consumption since associated losses in electricity generation, transmission and distribution are not included—in addition to the absence of considering energy used to extract, process, and transport the fuels that are consumed to produce that electricity. Second, relying solely on site energy use would not provide a fair comparison between electricity savings and natural gas savings for the reasons noted. They asserted that FFC energy savings from a standard that saves electricity produces (*i.e.* accounts for) roughly three times as much in energy savings than from site energy use measurements alone—a standard saving natural gas, by comparison, would yield only 10% more in savings over site energy savings. (ASAP, et al. 2, No. 158 at p. 3).

Finally, the commenters contended that even with the publication of the NODA and the release of its accompanying data, DOE has not provided an ''apples-to-apples'' comparison. They noted that the projected energy savings from certain rules presented in DOE's data provided different analytical periods. Second, the commenters stated that the projected savings of two standards were calculated differently: the small electric motors rule was based on a reduction in energy losses, while the electric motors rule was based on a reduction in energy usage. These different approaches can yield different results. Finally, the commenters noted that relying on site energy usage does not provide an ''apples-to-apples'' comparison when evaluating rules that affect both electric and natural gas products. (ASAP, et al. 2, No. 148, at pp.3–4)

ASAP, et al. 2 provided an example of how this discrepancy could impact the calculated energy savings. For example, the site energy savings listed in the document referenced in the NODA would suggest that the 2016 rule for residential boilers will save more energy (0.137 quads) than the 2016 rule for dehumidifiers (0.100 quads). But in fact, the total energy savings (reported as full-fuel-cycle energy savings in each rule) for dehumidifiers (0.30 quads) are about twice as great as those for residential boilers (0.16 quads). (ASAP, *et al.* 2, No. 158, at pp. 3–4 (footnotes omitted))

The Cal-IOUs suggested that DOE issue a supplemental notice of proposed rulemaking to provide additional details and respond to various comments. They asserted that the NODA raised a number of issues and that the NODA was unclear whether DOE was proposing to use site or source energy as the basis for the proposed thresholds. They also asserted that the NODA did not provide a uniform set of data to enable a comparison of historical rulemakings since the data unfairly compared the energy savings from gas and electric equipment standards and provided a misleading picture of the savings from gas and electric standards. The Cal-IOUs also expressed confusion over the ''statutorily required measure'' referenced by DOE in the NODA's preamble. (Cal-IOUs, No. 155, at p. 2) Further, the Cal-IOUs reiterated certain questions it raised in response to the proposal itself: (1) How and when will the quantitative energy savings threshold be applied, and what information will inform that analysis? (2) How would the threshold apply to products with multiple product classes? (3) How did DOE arrive at the conclusion that to apply a 0.5 quad threshold in light of the *Herrington* decision's discussion regarding aggregate source energy? (4) What is the basis for DOE's 10% threshold? (Cal-IOUs, No. 155, at pp. 2–3)

The Joint Commenters indicated that DOE could adopt a higher quad-based threshold of up to 0.75 quad or a percentage-based reduction of ten percent—which would achieve the same energy savings as the proposed 0.5 quad threshold. (Joint Commenters, No. 159 at pp. 1–2) They noted that the NODA's data showed that 34 of the 57 rules analyzed would have met the proposed significant energy savings thresholds when applying a quad threshold range of 0.40 to 0.75 quad or ten percent reduction in energy use and emphasized that among the remaining rules that did not meet the proposed threshold, which comprised nearly half of the analyzed rules, the energy savings achieved by these rules amounted to a little over 6% of the total projected energy savings of DOE's standards rulemakings. (Joint Commenters, No. 159, at 2)

They also stressed that with the passage of time between since *Herrington,* DOE has developed a robust dataset and a voluminous record of energy conservation standards. The Joint Commenters also asserted that DOE's interpretation of the term ''significant'' conservation of energy in the aftermath of *Herrington* did not track that decision, which counseled that it was unlikely that Congress intended for DOE to ignore a cost-free chance to save energy unless the amount of energy saved was genuinely trivial. (Joint Commenters, No. 159, at pp. 3–4) They further emphasized that the *Herrington* court noted that if it were truly obvious, without the extended investigation appropriately undertaken as part of the inquiry into economic justification, that the value of saving small amounts of energy was outweighed by the cost and trouble of undertaking any appliance program at all, DOE might be justified in determining that those small savings were not significant. (Joint Commenters, No. 159, at p. 4 (quoting *Herrington,* 768 F.2d at 1373, n. 19)) The Joint Commenters also noted that recent case law suggests that the meaning of the word ''significant'' means something ''important, notable'' as opposed to being ''more than trivial or of no importance.'' (Joint Commenters, No. 159, at pp. 4–5 (quoting *Kaufman* v. *Allstate N.J. Ins. Co.* 561 F.3d 144, 157 (3rd Cir. 2009)) They further noted that in determining whether a given level of energy savings is significant, DOE necessarily must compare the aggregate site energy savings achieved by rulemakings that were able to achieve a potential energy savings threshold against those savings that do not. In their view, recognizing every incremental increase in energy savings without limit would effectively read the word ''significant'' out from EPCA. Consequently, the Joint Commenters

argued that the statute should be read as providing DOE with the discretion to establish a significance threshold based on a balancing approach such as the one that DOE has conducted in comparing the projected energy savings from rulemakings that meet a given threshold against the savings from rulemakings that do not. (Joint Commenters, No. 159 at pp. 5–6) To this end, using historical energy savings to determine a potential threshold level is, in the view of the commenters, reasonable. (Joint Commenters, No. 159 at pp. 6–9)

MHARR repeated its earlier assertions regarding the various alleged procedural defects affecting the unrelated rulemaking in which DOE is currently considering potential energy conservation standards for manufactured housing and again urged DOE to adopt the same type of procedural protections and safeguards set forth in the NOPR for manufactured homes. (MHARR, No. 149, at p. 2.) MHARR argued that DOE's approach with respect to setting energy use thresholds for determining whether a given standard would produce significant energy savings should apply equally to DOE's manufactured housing rulemaking—and that DOE should issue an entirely new rulemaking in light of the alleged defects. (MHARR, No. 149, at pp. 3–4)

NBI cautioned that the use of site energy would result in distorted information becoming the foundation of standards setting at DOE. (NBI, No. 150, at p. 1). It noted that jurisdictions both within and outside of the U.S. have relied on source-based, primary energy use rather than site energy, and if DOE were to adopt a site energy-based approach, the Agency would become increasingly divergent from the policies and rules being set at local, State, and international levels. (NBI, No. 150 at p. 1)

NRDC repeated its opposition to the adoption of an energy savings threshold and argued that when applying the projected energy savings presented with the NODA to the proposed thresholds, DOE's approach would make the proposed quad threshold more stringent than if it were based on source or FFC energy use. (NRDC, No. 156 at pp. 1–2) It further argued that the proposed threshold is invalid and contrary both to EPCA and *Herrington,* asserting that DOE's proposal (and subsequent NODA) fails to address the question of rejecting ''no-cost standards'' that would result in additional energy savings and urged DOE to evaluate the issue of significant energy savings on a standard-by-standard basis and to consider the aggregate savings of energy involved. (NRDC, No. 156 at pp. 2–3) In addition, NRDC stressed that, in light of the *Herrington* court's discussion of potential source energy-based savings, DOE should consider thresholds at or above the level of 1.45 quads of source energy as ''clearly legally impermissible.'' [17] (NRDC, No. 156 at p. 4) When applied to a site energy-based approach, NRDC asserted that DOE's proposed 0.5 quad threshold is equivalent to a 1.5 quad source energy threshold, which, in its view, would run afoul of the upper bound discussed in *Herrington.* (NRDC, No. 156 at 4) NRDC added that it would not consider a threshold below the 1.45 quad source energy level discussed in *Herrington* as necessarily reasonable or permissible and it urged DOE to withdraw its proposal in its entirety. (NRDC, No. 156, at 4–5)

NYU Law contended that DOE's proposal would set arbitrary thresholds in violation of EPCA and noted that at least one recent court decision indicated that a '''very small portion' of a 'gargantuan' total effect'' may still create a ''gargantuan'' effect of its own—suggesting that DOE's proposed thresholds would exclude a large amount of future energy savings as being insignificant. (NYU Law, No. 148, at p. 1) In the commenter's view, DOE's percentage approach can create a misleading impression and is subject to manipulation. Consequently, the energy savings from the various standards that would not have satisfied DOE's proposed thresholds—in addition to avoided carbon emissions—would be sacrificed in the future if the proposed thresholds were adopted. (NYU Law, No. 148, at pp. 1–2)

Samsung reiterated its earlier view (without providing additional support) that the proposed 0.5 quad threshold is too large and may hinder advancement of energy efficiency standards for newly covered products. (Samsung, No. 161, at p. 2) It also repeated its support for DOE's proposed percentage threshold of 10 percent increase in energy efficiency/reduction in energy usage for covered products as a trigger for new standard levels. (Samsung, No. 161, at p. 2)

In joint comments responding to the NODA, Sierra Club and Earthjustice expressed concern over what it perceived as a ''dramatic shift'' by DOE to move away from relying on source energy or FFC energy consumption to site energy use when projecting potential energy savings of a given standard. (Sierra Club & Earthjustice, No. 160, at p. 1) In their view, adopting a site energy-based approach would ignore DOE's own past findings that site energy measurements do not account for the inefficiencies present in electric generation. (Sierra Club & Earthjustice, No. 160, at pp. 1–2) If adopted without acknowledging and addressing DOE's own record with respect to the deficiencies of site energy and providing a reasoned explanation for the change, the commenters contended that such a move would be unlawful. (Sierra Club & Earthjustice, No. 160, at p. 2) They also asserted that EPCA does not compel that site energy be the basis for the Agency's analyses performed with respect to determining the impacts of a given energy conservation standard and it emphasized that DOE's past and longstanding use of source and FFC energy as part of prior standards rulemakings reflected the Agency's own conclusion regarding the partial picture presented by site energy usage. That conclusion, the commenters continued, was further buttressed by the work performed by the National Academy of Sciences, which recommended that DOE use FFC energy consumption when assessing the national and environmental impacts from energy conservation standards. (Sierra Club & Earthjustice, No. 160, at pp. 2–3)

They further asserted that even if DOE were permitted to establish a threshold for significant energy savings—which they stressed it could not—shifting DOE's energy savings calculations to site energy would result in setting a threshold that far exceeds the level of energy savings Congress viewed as significant when it amended EPCA to require DOE's adoption of standards. (Sierra Club & Earthjustice, No. 160, at p. 3) Citing to *Herrington,* the commenters again emphasized that Congress could not have intended for DOE to not adopt a standard that imposed ''absolutely no burdens at all'' and that it was unlikely that Congress had intended for DOE to throw away a cost-free chance to save energy unless the amount of energy saved was genuinely trivial. (Sierra Club & Earthjustice, No. 160, at p. 3 (citing *Herrington,* 768 F.2d at 1373)) Sierra Club and Earthjustice also stressed that when the *Herrington* court examined the specific figures inserted into EPCA by Congress, including the prerequisites found in 42 U.S.C. 6295(l) for prescribing standards for newly covered

[17] The figure of 1.45 quads is based on the D.C. Circuit's discussion of the energy consumption that must be present to permit DOE to issue a discretionary energy conservation standard for a consumer product—*i.e.* an annual energy consumption of 0.014335 quad, which is equivalent to 0.0483 quad of annual site energy usage. Projected over a 30-year period would yield 1.449 quads (*i.e.* 1.45 quads when rounded up). *See generally Herrington,* 768 F.2d at 1374.

products, it concluded that Congress had viewed 0.014335 quad of site energy use as significant—while DOE's proposed threshold would not. (Sierra Club & Earthjustice, No. 160, at p. 3)

With respect to the application of a percentage threshold, the commenters noted that the standards at issue in *Herrington* provided for efficiency increases of 5 percent or less, which, in their view, supported the notion that Congress sought to provide for incremental improvements in energy efficiency—and thereby constraining DOE's ability to treat equivalent efficiency improvements as insignificant. (Sierra Club & Earthjustice, No. 160, at pp. 3–4) The commenters argued further that prior amendments to EPCA—particularly, the National Appliance Energy Conservation Act of 1987, Public Law 100–12 (March 17, 1987), demonstrated (through its adoption of water heater standards that would yield efficiency increases of less than 10 percent and potential energy savings for some standards as being under 0.03 quad per year) that Congress had viewed marginal improvements in efficiency as ''worth seizing'' through efficiency standards. Accordingly, Sierra Club and Earthjustice argued that history counsels against adopting a significance threshold that would foreclose the adoption of standards yielding comparable energy savings. (Sierra Club & Earthjustice, No. 160, at pp. 3–4)

Spire supported the concept of adopting an energy savings threshold but claimed that a threshold based on site energy use would not appropriately measure the efficiency of fuel utilization from the point of extraction—thereby leading to misleading information regarding the efficiency of gas-fueled vs. electric-powered appliances. It asserted that reliance on site energy would distort the market for appliances and ultimately reduce competition, which would lead to higher costs for consumers. While Spire stated that source energy is a better metric for measuring energy savings than site energy, it also viewed that metric as flawed since the amount of energy lost from the point of fuel extraction to the input of an electric power plant is not considered for purposes of measuring the 'source' efficiency of an electric appliance. (Spire, No. 152, at p. 2) Instead, Spire suggested that DOE adopt an approach based on the FFC, which would, in its view, readily show that gas appliances ''significantly'' out-perform electric-based options with respect to CO_2 emissions and when examining consumer marginal energy use rates. (Spire, No. 152, at pp. 2–3)

2. Response to Comments on the Proposed Thresholds

After evaluating comments received from both those who supported the use of a threshold—including those who suggested that a different quad threshold be applied—and those who objected to one, DOE revisited its approach. In response to comments seeking clarification regarding the type of energy use on which the quad and percentage thresholds were based, DOE re-examined its data and published a Notice of Data Availability (''NODA'') to present its energy savings data in terms of site energy usage. *See* 84 FR 36037 (July 26, 2019). After taking a second careful look at its data and applying a uniform approach with respect to the energy usage examined, DOE has adjusted its thresholds to account for the concerns raised by commenters.

DOE has divided its responses to the comments on this issue into two parts—one to address comments that generally supported the use of the proposed thresholds and one to address comments that opposed them.

A. Response to Comments Supporting the Proposed Threshold Approach

As a preliminary matter, DOE emphasizes that its application of its thresholds will apply when it first examines whether to initiate a standards rulemaking, during the early assessment phase and throughout the rulemaking process. If DOE engages in a standards rulemaking, these thresholds will also be applied at the different steps of that rulemaking—*i.e.,* Early Assessment, Preliminary Stage, NOPR, supplemental NOPR (if applicable), and final rule. In effect, these thresholds will apply throughout the rulemaking process to ensure that the statutory requirement of achieving significant energy savings is achieved with any standards final rule that DOE promulgates. (For a visual illustration of how this would apply, see Figure III.1, presented later in this discussion.)

In response to commenters who suggested that the proposed 0.5 quad threshold be raised higher (AHAM, AHRI, BWC, and the Joint Commenters) to 1.0 quad, DOE notes that it recognizes that there is the potential for additional burden reduction and related manufacturer cost savings from increasing the magnitude of the quad-based threshold. The data examined by DOE, however, suggest that doing so in the context of the 57 standards final rules that were examined in the NOPR would significantly decrease the amount of potential energy savings that could be obtained. (*See* 84 FR 36037, 36038 (July 26, 2019)) When comparing that value to the suggested 1.0 quad offered by commenters and applying the same percentage threshold that DOE had proposed, the level of energy savings would decrease by approximately 3% from 94% v. 91%. Following this approach would also eliminate a little over half of these standards rulemakings. (*See id.* at 84 FR 36038–36039.) In DOE's view, raising the quad threshold in the manner suggested would have a severe impact on the potential energy savings that could be obtained from future rulemakings. DOE is not adopting this suggestion due to this fact, along with the absence of any supporting data or analysis from the proponents of this approach to increase the quad-based threshold. As for Samsung's separate suggestion that the 0.5-quad threshold may be too high, DOE has addressed this concern—along with similar ones raised by other commenters—by modifying the quad-based threshold, which is discussed elsewhere in this document.

Regarding suggestions from both EEI and Southern Co. to apply an exception or different threshold for ASHRAE equipment, as explained elsewhere in this document, DOE is treating ASHRAE equipment in a manner consistent with the specific provisions laid out in 42 U.S.C. 6313(a)(6). As explained elsewhere in this discussion, the threshold framework will apply in those instances where DOE intends to adopt standards that exceed the stringency of those set by ASHRAE. DOE notes that the ''significant conservation of energy'' requirement for standards, that is woven into 42 U.S.C. 6295(o)(3)(B) for consumer products and non-ASHRAE equipment, does not apply to ASHRAE equipment when DOE is following the statutory command to establish the national minimum efficiency standard at the level set by ASHRAE. In setting a more stringent standard for this equipment, DOE must have ''clear and convincing evidence'' that doing so ''would result in significant additional conservation of energy'' in addition to being technologically feasible and economically justified. 42 U.S.C. 6313(a)(6)(A)(ii)(II). This language indicates that Congress had intended for DOE to ensure that, in addition to the savings from the ASHRAE standards, DOE's standards would yield additional energy savings that are significant. In DOE's view, these two statutory provisions share the requirement that ''significant conservation of energy'' must be present—and supported with ''clear and convincing evidence''—to permit DOE to set a more stringent

requirement than ASHRAE. Accordingly, in examining these potential impacts, DOE believes that Congress intended for standards more stringent than ASHRAE to achieve significant conservation of energy in addition to the savings already projected under the ASHRAE standards. The variety of equipment that are encompassed by the ASHRAE equipment classes, the intense amount of scrutiny already applied by technical experts in adjusting any potential standards for ASHRAE equipment through the ASHRAE standards review process, and the nearly identical statutory language imposing that ''significant additional conservation of energy'' used by Congress with respect to DOE-initiated standards for this equipment, all favor treating ASHRAE equipment in a manner that recognizes the particular nature of this equipment relative to all other products and equipment that are not similarly subject to the same level of technical scrutiny and review. In other words, the statutory language and factual circumstances surrounding ASHRAE equipment indicate that DOE must determine that adopting a more stringent standard than ASHRAE will produce a significant amount of energy savings above what would be achieved by simply adopting the level set by ASHRAE. As a result, to be consistent with this established framework, DOE is applying the thresholds in this final rule to the standards rulemaking process of 42 U.S.C. 6313(a)(6) governing ASHRAE equipment.

As for EEI's suggestion that an exception or different threshold be applied to those other products and equipment with smaller markets—DOE does not believe that such changes, absent more concrete and definitive information, are necessary, particularly in light of the other changes that are being incorporated into this final rule in response to commenter concerns. In DOE's view, the fact that the footprint of a given product or equipment is small suggests that Federal intervention in the form of mandatory standards may not be the appropriate means at that time to improve the efficiency of that product. See, *e.g.,* Battery Chargers Standards Final Rule, 81 FR 38266, 38281–38282 (June 13, 2016) (refraining from including wireless chargers within the scope of the battery charger standards rulemaking to avoid the ''loss of utility and performance likely to result from the promulgation of a standard for a nascent technology such as wireless charging.''). In addition, the 10 percent energy savings threshold enables the application of more stringent standards to products with a ''small footprint'' that would otherwise be unable to meet the criteria for saving a significant amount of energy.

With respect to AGA's suggested imposition of an overall reduction in residential energy use test, DOE notes that such an approach would be similar to the one explicitly rejected in *Herrington,* which would not only present a legal problem under existing case law but also link improvements to energy efficiency from a standard for a given individual product/equipment type solely to the amount of savings from that standard relative to the entirety of residential energy usage. (*See Herrington,* 768 F.2d at 1375–1378 (rejecting DOE's significance tests that, among other things, relied on the overall reduction in energy use when evaluating the energy savings potential that a particular standard could achieve)) Aside from the conflict with current case law, this approach would effectively eviscerate the Agency's ability to amend its standards. In DOE's view, AGA's suggestion presents an overbroad approach that fails to consider the requisite balancing that Congress had instructed DOE to undertake—that of determining whether a given standard that produces significant energy savings for a given product or equipment type is both technologically feasible and economically justified—in order to produce a more precisely calibrated result to improve the energy efficiency of consumer products and (specifically identified) industrial equipment. *See* 42 U.S.C. 6201(5) and 42 U.S.C. 6312(a).

Similarly, NAFEM's suggestion that DOE apply a Pareto analysis approach to the thresholds presents another alternative that DOE is also declining to adopt. This approach may result in cases where DOE would forego energy savings in cases where one of the two thresholds is met since it would involve applying a more stringent threshold (*i.e.,* determine which 20 percent of rulemakings produce 80% of the energy savings) that would likely remove additional standards that would produce significant energy savings from further consideration. While DOE seeks to improve the efficiency of its own process in developing and finalizing energy conservation standards for its regulated products and equipment, it must also ensure that the statutory criteria can be achieved under the balancing performed under EPCA. *See* 42 U.S.C. 6295(o)(2)(A) (standards must be designed to achieve ''the maximum improvement in energy efficiency'') and 42 U.S.C. (o)(2)(B)(i) (detailing factors for determining whether a given standard is economically justified). Applying NAFEM's suggested approach, would make it unlikely for DOE to meet this requirement since it would raise the probability of prematurely eliminating standards rulemakings for those products and equipment that may still produce significant conservation of energy.

Regarding Regal-Beloit's suggestion that DOE supplement its thresholds with the use of a ratio of quads over cost impacts, DOE, after careful consideration of this suggested change, is declining to add this step to its threshold approach at this time. To the extent that any ''cost-free'' energy savings are possible, DOE believes that the modified levels being adopted in this final rule will be sufficient to ensure that it is able to capture the maximum amount of energy savings while limiting the potential financial burdens manufacturers or consumers may face provided the energy savings result in significant conservation of energy. As a result, DOE has decided to retain the general framework of its proposed thresholds without adding this suggested change.

As to GWU's concerns about the analytical process that DOE would follow once a significant energy savings determination is made, DOE notes that it would continue to perform the routine economic justification analysis for any potential rulemaking standard that satisfies the applicable threshold. Analyzing whether a potential standard is economically justified is a prerequisite to determining whether the economic justification prong under 42 U.S.C. 6295(o)(2)(B)(i) is met and DOE must complete this step prior to finalizing its rulemaking determination. Consequently, DOE does not anticipate making any changes to this aspect of its rulemaking process.

DOE also took into account Rheem's concerns regarding whether 0.5 quad was ''the right number'' for a quad-based threshold. Under the revised approach detailed in this final rule, DOE believes that these revisions establish an appropriate quad threshold—namely, 0.3 quads of site energy over 30 years—that satisfies DOE's legal obligations in implementing EPCA. As DOE explains elsewhere in this document, the approach adopted in the rule will apply appropriate quad and percentage thresholds to ensure that those energy savings meriting further analysis are not ignored and receive due consideration for adoption as a standard. And regarding Rheem's urging that DOE consider consumer impacts, DOE notes that consumer impacts remain an

integral part of DOE's routine energy conservation standards analysis and the Department does not anticipate any changes to this approach. (*See, e.g.,* 42 U.S.C. 6295(o)(2)(B)(i)(I) (instructing DOE when determining whether a standard is economically justified to consider ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.''))

Regarding BHI's comments regarding the potential amendment of the threshold levels in the future, DOE notes that while it does not anticipate making changes to these levels, any amendments would be made as part of a notice and comment rulemaking regarding the Process Rule similar to the one that DOE initiated for this final rule. DOE does not anticipate amending the threshold levels as part of individual energy conservation standards rulemaking efforts.

Finally, as suggested by Spire and numerous other commenters, including those opposed to the use of thresholds, DOE is clarifying the basis for its proposed thresholds and making adjustments to the values being adopted as part of this final rule. While DOE's proposal was based on a calculated value that used both site- and source-based energy savings, this final rule bases the adopted threshold levels on site energy-based savings. DOE's July 2019 NODA on this very topic laid out a variety of threshold scenarios based on site energy usage to illustrate their potential impacts using a combination of different threshold values. *See* 84 FR 36037, 36038–36039 (July 26, 2019) (detailing the impacts of a variety of quad-based and percentage-based threshold combinations based on site energy use). This approach will serve as the basis for DOE's significant energy use thresholds and is consistent with EPCA's definition for ''energy use'' (*i.e.,* ''the quantity of energy directly consumed by a consumer product at point of use'') and the process followed by DOE when determining whether to apply energy conservation standards to other covered products (*i.e.,* applying ''average per household energy use'' when determining whether to prescribe standards). See 42 U.S.C. 6291(4) (defining ''energy use'') and 42 U.S.C. 6295(l)(1) (detailing qualifying criteria DOE must consider prior to prescribing standards for newly covered products).

B. Response to Commenters Opposing DOE's Proposed Use of Thresholds

In reviewing and considering the arguments forwarded by commenters who opposed the use of thresholds for determining whether a potential standard would produce significant conservation of energy, DOE gave careful thought to the concerns and potential problems that they identified. After considering these specific concerns, DOE has taken a number of steps to address them and has made some adjustments to the proposed approach as part of this final rule. These adjustments include providing further explanation of the supporting data (as presented in the July 2019 NODA) and modifying the quad-based threshold level that DOE initially considered adopting. As indicated in DOE's NODA regarding the various threshold combinations it examined, DOE sought additional feedback from the public regarding what might be appropriate levels to use by providing the projected energy savings for the examined standards final rules in a uniform manner using site energy.

As a preliminary matter, in response to the commenters who opposed the proposed thresholds because of the lack of clarity concerning the basis for the proposed levels or out of concern for the level of the proposed thresholds themselves (ACEEE, Bosch, CT–DEEP, Ingersoll-Rand, and NEEA), DOE has since clarified the basis of these threshold levels. *See* 84 FR 36037 (July 26, 2019) (presenting and explaining data regarding projected impacts on number of rulemakings and percentage of energy savings retained relative to applying no threshold under various quad/percentage improvement scenarios using primary source energy use). That NODA explained that DOE re-examined its data and discovered that its proposed 0.5 quad threshold was based on the use of source- and site-based energy. As a result, DOE released a set of tables to illustrate the potential energy savings related to the 57 different standards rulemakings that were examined and the impacts that various quad/percentage efficiency threshold combinations would have had on those rulemakings. These revised tables present the energy savings involved uniformly in terms of site energy usage and DOE's use of these data is consistent with the manner discussed elsewhere in this document. And while DOE acknowledges Energy Solutions' (*i.e.* the Cal-IOU's) objections to the proposed thresholds, Energy Solutions offered no data or substantive analysis in support of its views.

Consistent with these clarifications, DOE notes that it will determine whether the threshold levels are met by relying on site energy use values, which, as indicated earlier, is consistent with EPCA's treatment of energy use and procedures for prescribing standards for those covered products not already explicitly addressed under the statute. DOE will also continue to follow its policy of using FFC analyses as part of the Department's energy conservation standards program when analyzing overall impacts, including emissions, from a given rulemaking standard. *See* 76 FR 51281 (Aug. 18, 2011) (announcing DOE's statement of policy to use FFC analysis in its standards rulemakings). *See also* 77 FR 49701 (Aug. 17, 2012) (amending DOE's FFC policy by specifying that DOE's National Energy Modeling System rather than the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation model). In DOE's view, this approach maintains consistency with both its statutory obligations and its policy of ensuring that its analyses address the full range of potential savings and costs that flow from examining the FFC energy use of a given product or equipment.

Regarding the CEC's concern that the application of any thresholds would preempt States from enacting their own standards for a Federally-covered product or equipment type, DOE agrees that EPCA contains explicit preemption provisions that apply both in general for covered products and as specified in particular circumstances. *See* 42 U.S.C. 6295(ii) and 42 U.S.C. 6297 (detailing specific circumstances in which limitations on Federal preemption of State standards applies).

With respect to Ingersoll-Rand's and NEEA's concerns over the use of thresholds—specifically, that they may be arbitrary and too high, with the proposed 10 percent threshold posing too steep a level of improvement for many covered products and equipment to achieve—DOE notes that it has modified its quad threshold after reviewing its data and relevant comments. The modified thresholds adopted in this final rule, which are based on analyses of projected energy savings from final rules previously adopted by DOE, ensure that those rulemakings that produce energy conservation standards also produce, as urged by NEEA, cost-effective savings to consumers while reducing the burdens that accompany repeated cycles of rulemakings to eke out more limited potential energy savings. While the final selected level of energy efficiency may be influenced by a variety of factors specific to a given case, DOE must rely on its available data and analyses in determining what level—if any—to set for energy savings. Using data from its past analyses and rulemakings, and weighing its obligations under the statute to account for a variety of factors,

DOE has determined that applying the thresholds detailed in this final rule set out an approach consistent with its legal obligations and policy to continuously improve energy efficiency that is economically justified.

In DOE's view, the adjustments made to the final threshold levels should be sufficient to address both NEEA's and Ingersoll-Rand's initial concerns about their magnitudes. DOE notes that, given the increasing number of products and equipment that it is either directly regulating or over which it currently has coverage but is not yet regulating, the Agency's oversight responsibilities are extensive—and, based on prior Congressional actions, are expected to continue to grow. *See, e.g.* Energy Policy Act of 2005, Public Law 109–58 (Aug. 8, 2005) (adding battery chargers and external power supplies as products for DOE to regulate), Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007) (adding walk-in cooler and freezer equipment for DOE to regulate and revising the scope of electric motor coverage), American Energy Manufacturing Technical Corrections Act, Public Law 112–210 (Dec. 18, 2012) (making a series of amendments affecting a variety of procedural and scoping-related provisions regarding regulated consumer products and industrial equipment), and EPS Improvement Act of 2017, Public Law 115–115 (Jan. 12, 2018) (setting out procedures for DOE to follow in the event that solid state lighting power supply circuits, drivers, or devices are treated by DOE as covered equipment). Without a more efficient way of managing and prioritizing its limited resources to address these increasing regulatory activities, DOE runs an increased risk of falling further behind in fulfilling its statutory obligations, reducing the quality and comprehensiveness of its analyses, or, adopting statutory interpretations that, while potentially providing an expedient solution for a given issue, may inadvertently undermine the careful consideration that Congress required DOE to perform when evaluating potential efficiency standards for the numerous consumer and industrial appliances that DOE oversees.

As to those commenters (A.O. Smith, AG Joint Commenters, ASAP, et al., Cal-IOUs, CEC, NPCC, NRDC, and NYU Law) who opposed the use of any thresholds, most took that position out of the belief that EPCA only permits the use of an individual case-by-case analysis in every instance where DOE is considering whether to amend or establish a standard for a particular product or equipment. We note the fact that EPCA specifically states the Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy, or that the establishment of such standard is not technologically feasible or economically justified. *See* 42 U.S.C. 6295(o)(3)(B).

DOE has carefully considered these arguments and re-examined the *Herrington* opinion. The statutory test for establishing or revising an energy conservation standard contains three separate and distinct determinations. EPCA makes clear that DOE cannot establish or amend a standard unless all three are met. To comply with EPCA requirements DOE is unable to simply decide that any savings of energy that is technologically feasible and economically justified per se saves a significant savings of energy or that the savings from a number of energy conservation standards will add up to a significant amount of energy. Separate from a determination regarding economic justification or technological feasibility, the Secretary is explicitly prohibited from prescribing an amended or new standard that will not result in significant conservation of energy. Any other position would write out of the statute the discrete determination the language requires about the significance of the energy savings. In explaining its proposal, DOE noted its concern with the direct economic impacts that are likely to flow from imposing standards that are projected to yield relatively lower energy savings—standards that may produce little in overall benefits in energy and cost savings for consumers when compared to the costs related to the manufacture and purchase of products and equipment meeting these kinds of standards. (84 FR 3910, 3922 (Feb. 13, 2019)) DOE elaborated on the basis for its proposal, noting that this [proposed] approach gives effect to the *Herrington* court's reference to not forego energy savings that are ''cost-free.'' However, it would also limit the first-cost impacts to consumers to those instances where a given rulemaking is expected to generate significant energy savings and other substantial benefits. (84 FR 3910, 3922 (Feb. 13, 2019))

And as DOE previously pointed out in its preamble to the proposal, *see* 84 FR 3910, 3922 (Feb. 13, 2019), EPCA, despite using it in multiple statutory sections, does not define the term ''significant conservation of energy'' nor does it specify any particular criteria or specific guidance as to the term's meaning. *See* 42 U.S.C. 6295(n) (specifying that DOE shall grant a petition for an amended standard if the petition contains evidence that, if no other evidence were considered, provides an adequate basis that amended standards will result in significant conservation of energy) and (o) (providing that DOE may not prescribe an amended standard if the establishment of that standard will not result in significant conservation of energy). *See also* 42 U.S.C. 6313(a)(6)(A)(ii)(II) (requiring DOE to demonstrate with clear and convincing evidence that adoption of a standard more stringent than those set by ASHRAE would result in ''significant additional conservation of energy''). The fact that this term, despite its prominent place in key provisions related to DOE's standards-making authority remains undefined, indicates that Congress had intended for DOE to make this determination of what level(s) of energy use savings (if any) would satisfy this term. Under such circumstances, case law is clear that an agency, where gaps are present in the statute, must necessarily fill those gaps as appropriate. *See Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 843–44 (1984) (''If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.'') (Stevens, J.) *See also Herrington,* 768 F.2d at 1372–1373 (noting that DOE has ''substantial discretion to set specific levels of significance'' so long as the levels selected are ''consistent with the express terms and underlying congressional intentions of [EPCA].''). Significantly, the *Herrington* court did not attempt to dictate the meaning of ''significant conservation of energy,'' deferring instead to those specific provisions Congress prescribed in the enacted legislation to discern a reasonable meaning for ''significance.'' *See Herrington,* 768 F.2d at 1373–1374.

Further, the use of thresholds for determining significance was clearly contemplated under the *Herrington* decision. The *Herrington* court did not shy from applying a threshold—it sought only to determine what would be a reasonable one in light of the various provisions laid out in EPCA. Using the threshold that Congress already set for prescribing an energy conservation standard for which DOE has added coverage, the *Herrington* court determined that Congress must have viewed the prescribed level of energy savings (0.014335 quad per year of household energy consumption for a

given product, which translates into a source energy use of 0.0483 quad per year) as being significant. *See id.* (When calculated over 30 years, this source energy use value reaches 1.449 quads and the site value reaches 0.43 quads. These values clearly exceed the max-tech quad threshold of 0.5 quad that DOE had earlier proposed and the 0.3 site energy quad that DOE is finalizing here, respectively.) [18] The *Herrington* court even went as far to emphasize that in those instances where the threshold for significance was not reached, DOE must not issue a standard even in the face of the prospect of forfeiting savings that would impose no burdens. *See* 768 F.2d at 1373 (stressing that ''DOE may not issue a standard it has disqualified under the significance provision *even if that standard imposes absolutely no burdens at all.*'') (emphasis in original). Determining significance is a decision that rests with DOE. In making this judgment, the Department balanced competing considerations and its limited resources. DOE notes that while the commenters object to the use of thresholds, their past actions in other rulemaking contexts have demonstrated a willingness to accept no changes in a standard for specific product classes where the projected energy savings would be small. *See, e.g.* ASAP, December 16, 2015 Central Air Conditioner and Heat Pumps Working Group Meeting, EERE–2014–BT–STD–0048 at pp. 90–91 (ASAP stating its willingness to leave the standards for single-packaged air conditioners and heat pumps unchanged when the projected energy savings over 30 years were calculated to be 0.2 quad)

Further, DOE notes that EPCA itself does not use the phrase ''genuinely trivial'' when describing the amount of energy savings that a given standard must achieve. The *Herrington* court used that phrase in an attempt to give substance to the concept of significance but, like ''significant energy savings,'' never defined that phrase. While DOE may have treated ''genuinely trivial'' as the test to apply when determining whether to adopt a standard, DOE is now applying the test from the statute itself—*i.e.* whether the standard produces significant energy savings.

Finally, DOE points out that the *Herrington* court expressed concern not with the use of thresholds but the manner in which those thresholds were developed and justified. In that case, the court viewed DOE's effort at defining ''significant energy savings'' as problematic in light of the agency's inability to sufficiently explain why its three tests for significant conservation of energy were valid in light of other provisions contained in EPCA. The tests that DOE attempted to use to define the contours of significant energy savings effectively prevented DOE from issuing the discretionary energy conservation standards that Congress had intended for DOE to promulgate. *See Herrington,* 768 F.2d at 1375–76. The *Herrington* court sought evidence demonstrating that DOE's definition of significance showed ''some awareness of the range of energy savings Congress thought worth pursuing.'' *Herrington,* 768 F.2d at 1377.

In this rule, DOE has taken a much more tailored approach to account for the concerns noted in *Herrington* and the issues raised by commenters regarding the potential impacts from using thresholds. It has not erected a series of tests that would pose an insurmountable barrier that would effectively bar it from promulgating efficiency standards going forward. To the contrary, DOE's approach, which relies on the past experiences, data, and information from dozens of standards rulemakings completed over three decades, has been designed to not only ensure that economically justified energy conservation standards are developed but to also provide a reasonable level of predictability to DOE's rulemaking process as numerous commenters have repeatedly asked DOE to follow. These thresholds will also enable DOE to focus its rulemaking efforts and enable DOE to efficiently manage the finite resources it currently has with respect to overseeing the standards and test procedures for the products and equipment it regulates.

Further, DOE notes that technological innovation occurs on a constant basis, which means that the product and equipment efficiency levels and cumulative energy savings potential from new or revised standards for a given product are not static. This potential for continuous improvement is driven by technological innovation and product development which are a function of time. Designs that DOE previously analyzed as max-tech prototypes, and which failed the screening criteria 20 years ago, are today's baseline models. As a result, DOE does not anticipate that the thresholds being adopted in this rule will present an insurmountable barrier to achieve further energy savings in the future.

In light of the balancing of interests that DOE continues to perform with respect to evaluating potential energy conservation standards, DOE is also mindful of its past rulemakings when setting new or amended standards for regulated products and equipment, and believes its extensive regulatory past is the best guide to its future actions. As DOE previously explained, it selected a level that accounted for the concerns noted in the *Herrington* decision by considering the level of savings to apply against the thresholds discussed in that decision and prescribed in EPCA. *See* 84 FR 3910, 3922–3924 (Feb. 13, 2019). In so doing, DOE initially determined that a 0.5 quad threshold applied to the projected max-tech savings, when compared against the sizable number of completed rulemakings that produced new or amended standards for regulated products and equipment, would help DOE to continue to ensure that the vast majority of future energy savings from its rulemakings would be preserved.

Additionally, DOE's proposed approach included a second step to ensure that it would be able to capture energy savings even in those cases where less than 0.5 quad of savings were projected under the max-tech analysis. That second step—applying a percentage-based increase in efficiency, also projected under the max-tech analysis—was intended to provide DOE with a backstop that would help better account for the energy efficiency potential of the individual product or equipment at issue. DOE notes that by applying these thresholds to the max-tech analysis, DOE will be able to assess the technological feasibility of whether significant energy savings is possible at an early stage of its analysis. Once it makes this determination, DOE will also be positioned to evaluate whether a standard for this level of energy savings is economically justified. Accordingly, under DOE's approach, decisions regarding whether and how to proceed with a given standard can be made in a more transparent and predictable manner consistent with the statute.

While commenters have expressed concerns regarding the potential of inadvertently missing cost-free opportunities for higher energy efficiency-related savings from a standard, those savings must in the first instance be significant, since Congress

[18] DOE notes that in the case of industrial equipment, which DOE began regulating after the *Herrington* decision, the population of potential commercial/industrial equipment over which DOE could add coverage is limited solely to those equipment types listed under 42 U.S.C. 6311(2)(B). DOE may include such equipment types as covered equipment if the Secretary ''determines that to do so is necessary to carry out the purposes of this part.'' 42 U.S.C. 6312(b). While this provision, unlike its counterpart for consumer products (found in 42 U.S.C. 6295(l)), does not specify a minimum energy use threshold to establish coverage or to set standards, an appropriate threshold based on similar energy consumption use could also apply. Accordingly, DOE may use its discretion in setting initial threshold requirements for adding regulatory coverage of commercial/industrial equipment.

did not intend for DOE to continually set standards irrespective of the magnitude of those potential savings. *See Herrington,* 768 F.2d at 1378 (noting that ''DOE is right to think that under [42 U.S.C. 6295(o)], standards for each product type must result in significant conservation.''). *See also id.* at 1373 (stressing that ''DOE may not issue a standard it has disqualified under the significance provision *even if that standard imposes absolutely no burdens at all.*'') (emphasis in original). DOE believes that its revised process as outlined in this final rule will encourage interested parties to provide substantive input that will assist DOE in readily addressing those potential areas where rulemaking will be most beneficial and yield the greatest amount of energy savings without imposing the economic burdens from multiple additional rulemakings yielding only marginal benefits. By conducting an early assessment of the max-tech energy savings from potential new or amended standards for a given product or equipment type as described in this final rule, DOE expects that interested parties will provide as much information as early as possible to help supplement any information already being evaluated by DOE to ascertain whether either of the thresholds is met. And in those cases where DOE must make decisions regarding the scope of a particular set of standards, the Agency will apply a cleaner—and broader—approach by evaluating each product/equipment type as a whole rather than dividing a particular product/equipment type into multiple classes or subclasses. DOE does not expect such a circumstance to arise, but should the Department proceed with a standards rulemaking applicable to only a segment of a covered product, it will evaluate the potential energy savings across all product classes. While DOE may ultimately decide not to set standards for every conceivable class within a product or equipment type, DOE anticipates that the potential max-tech standards it will use to evaluate each product and equipment type as a whole at the early assessment stage will enable DOE to reasonably determine whether a new or amended standard for a given product or equipment type merits further evaluation. And should DOE initially view new or amended standards as not being warranted for having not met either threshold, interested parties would have the opportunity to weigh in with additional information and data as part of the notice of proposed determination process required under 42 U.S.C. 6295(m)(1)–(3). See Figure III.1 at the end of this discussion section.

In the case of those rulemakings where standards have been characterized by commenters as having been cost-free (*i.e.* those involving commercial clothes washers, pre-rinse spray valves, dehumidifiers, and hugger fans), DOE refers back to *Herrington,* which stressed that a standard must not be set unless there are significant energy savings to be had. And as to the specific rulemakings highlighted by commenters, DOE notes that the preamble discussions from the cited rules noted that certain efficiency levels that DOE considered for certain classes of the products or equipment at issue were not projected to yield net costs, not that these standards would have been cost-free (an amended standard would necessarily involve costs for manufacturers to implement through new compliance-related costs).[19] Regarding water savings, DOE notes that the significant energy (water) savings requirement does not apply to pre-rinse spray valves, which would mean that even if DOE had developed specific water savings thresholds, as it has the authority to do, such thresholds would not apply to this particular equipment type. *See* 42 U.S.C. 6295(o)(3)(B) (specifying significant conservation of water for only ''showerheads, faucets, water closets, or urinals''). In any event, even if DOE could consider adopting standards that it believed did not produce significant energy savings, those standards cannot be accurately characterized as ''cost-free.''

As to concerns of potential conflicts between the quad savings levels achieved by Congressionally-enacted standards and the quad threshold being set by DOE in this rule, DOE notes that Congressionally-enacted standards are independent of DOE's analysis of what qualifies as ''significant'' and can be determined on a case-by-case basis. As a result, Congressionally-enacted standards are always open to any level that Congress deems appropriate. It does not follow, however, that DOE would, without explicit statutory language to the contrary, set a standard without first determining whether significant energy conservation of energy could be achieved. By leaving the meaning of this term undefined, Congress has permitted DOE to define the meaning of this term—and DOE's reliance on a reasonable threshold that accounts for the savings of prior rulemakings in no way conflicts with the ability of Congress to unilaterally set a standard that may differ from the thresholds that DOE applies through this Process Rule. As indicated elsewhere, DOE's approach can permit standards that fall below the quad threshold through its second prong if the facts supported a rulemaking based on the projected reduction in energy use from a standard.

Regarding Earthjustice's concerns of potential gaming by DOE if a threshold is set, DOE notes generally that when examining all products and equipment within a particular type (or in the case of ASHRAE equipment, equipment category) for purposes of determining whether the projected energy savings would satisfy the significance thresholds, DOE will examine product and equipment types in a manner that makes the most sense and not selectively examine classes or subclasses of products and equipment simply for the purposes of projecting whether potential energy savings would satisfy the applicable thresholds. Similarly, in the case of ASHRAE equipment, which are addressed by a separate statutory provision, if DOE is triggered to examine the standards for certain classes within a particular equipment type, DOE will also examine all of the remaining classes within that same equipment category consistent with its current obligations under the six-year review cycle under 42 U.S.C. 6313(a)(6)(C). Accordingly, in light of the concerns expressed by Earthjustice, DOE has adjusted its regulatory text under Section 6(b) to explicitly spell out this approach.

Regarding water efficiency, DOE acknowledges that its proposed thresholds do not encompass a particular level for the specific water-consuming products identified in 42 U.S.C. 6295(o)(2)(B). In DOE's view, with sufficient data and analysis, a water savings threshold may be possible in the future. However, the absence of a proposed threshold was due at least in part to the fewer number of data points with respect to water savings. With this data situation remaining the same since the publication of DOE's proposal, DOE is opting not to set any threshold levels related to water savings at this time.

DOE also acknowledges the concerns raised by the Cal-IOUs. While grid reliability issues are a critical concern in the overall context of energy usage, these issues are best addressed within a separate effort focusing on these issues. DOE also notes that the Cal-IOUs did not indicate whether the magnitude of

[19] *See* 79 FR 74492 (Dec. 15, 2014) (final rule amending standards for commercial clothes washers); 81 FR 4748 (Jan. 27, 2016) (final rule amending standards for commercial prerinse spray valves); 81 FR 38338 (June 13, 2016) (final rule amending standards for dehumidifiers); *and* 82 FR 6826 (Jan. 19, 2017) (final rule amending standards for ceiling fans).

the proposed max-tech threshold levels—let alone those thresholds that DOE is adopting today—would have any appreciable impact to grid reliability and if so, by how much. Nevertheless, DOE notes that, to the extent that these issues become a major factor in a given rulemaking, DOE will address them within the context of that particular rulemaking action.

Regarding the Cal-IOUs assertion that the proposed thresholds would eliminate 4.24 quads of energy savings, DOE believes that the adopted approach presents a careful and reasonably balanced method of ensuring that significant energy savings are produced while limiting the overall burdens associated with implementing and following the necessary regulations for complying with new or amended standards. Moreover, under the proposed thresholds, DOE would still have achieved over 100 quads of energy savings (with 54.64 quads of site energy savings). (*See* 84 FR 3910, 3923 (Feb. 13, 2019) (noting that applying a 0.5 quad threshold would yield 109 quads of energy savings based on an examination of prior DOE standards rulemakings) and 84 FR 36037, 36038 (July 26, 2019) (noting site energy savings of 54.64 quads) (*See also* 84 FR 36037, 36038–36039 (July 26, 2019) (noting that 34 of the examined 57 standards rules produced nearly 94% of the total energy savings—and would be roughly equivalent to 51.3 quads of site energy savings)). In addition, the 4.24 quads of savings that the commenters cite translate to 3.29 quads of site energy. Moreover, according to EIA, the United States consumed approximately 100 quads of energy in 2018.[20] The 0.3 site energy quad threshold for a significant conservation of energy established in this revision to the Process Rule is savings over a 30-year period and, therefore, is an extremely low bar when considered against approximately 3000 quads of consumed energy in the same timeframe (holding 2018 energy consumption constant).

As for the concern raised by the Cal-IOUs of the possibility that DOE's thresholds may inadvertently close off potential rulemakings that may unlock substantially more energy savings than had been initially anticipated as part of DOE's early look process, DOE is unsure what the Cal-IOUs are suggesting. However, DOE notes that a properly scoped rulemaking effort from the beginning will minimize the risk of foregoing energy savings. The example cited by the Cal-IOUs—pumps—involved a broad array of products and equipment that fell within that particular category, within which were classes with different potentials for energy savings. When examining the particular pumps at issue in that rulemaking, DOE projected that the max-tech energy savings involved 1.28 quads primary source energy use (and 1.34 full-fuel cycle energy use)—easily well in excess of the 0.3 site energy quad threshold established in this revision to the Process Rule.

With respect to the timing of DOE's application of the thresholds, DOE notes that these thresholds would be applied continuously throughout its various rulemaking steps. DOE would apply these thresholds as part of the early assessment in addition to when weighing the merits of a particular proposal. DOE anticipates that all interested parties will assist the Agency's decision-making process to ensure that any potential energy savings are not unnecessarily foregone and that no rulemaking will be initiated until the appropriate conditions are met—*i.e.* when sufficient energy savings under the thresholds are satisfied through DOE's examination and analyses of potential max-tech energy savings. Accordingly, while DOE appreciates the concerns raised by the Cal-IOUs, the framework detailed under this rule should provide adequate incentives to ensure that DOE receives and analyzes sufficient information to enable the Agency to determine whether a given rulemaking merits further action at that particular point in time. Given that DOE is obligated to review its determinations to not amend a standard within a relatively short (three-year) window, additional opportunities to review the max-tech energy savings potential for a particular product or equipment will continuously present themselves. (*See* 42 U.S.C. 6295(m)(1)–(3) (detailing the process by which a notice of determination to not amend a standard will occur and specifying that such notice will provide an opportunity for written comment and for public review of DOE's analysis.))

As for A.O. Smith's concern regarding the treatment of DFRs within the context of DOE's significant energy threshold, DOE notes that any DFR agreement submitted to DOE must conform to the statute. As explained elsewhere in this final rule, the DFR provision is procedural, and in no way provides an authority to take an action not in compliance with the rest of EPCA. Thus, a DFR submitted to DOE would need to satisfy the provisions detailed in EPCA in order for DOE to move forward with that submission. In addition, consistent with the approach detailed elsewhere in this discussion of the final rule, any projected energy savings from the standards contained in a consensus agreement presented to DOE pursuant to the DFR provision would need to satisfy the thresholds in this final rule.

Finally, both ASE and Ms. Steinberg appeared to wholly oppose the thresholds out of principle. As to these commenters, DOE refers back to the arguments and explanations presented earlier. Regarding ASE's view that the setting of any threshold is arbitrary and inflexible, and that DOE should instead focus on meeting its statutory deadlines, DOE believes that the thresholds being established in this final rule are based on a careful consideration of available data regarding energy savings that were projected to accrue from these standards. In turn, DOE believes that the adoption of these thresholds will enable DOE to more readily satisfy its continuing obligation to review its standards as well as its separate ongoing obligations to review all of its test procedures on a cyclical basis by helping DOE to quickly identify those areas that will yield the most benefit from DOE's efforts to amend or establish standards producing significant energy conservation for a given regulated product or equipment. By helping DOE to prioritize its efforts, the thresholds will allow DOE to better focus on standards that ''provide for improved energy efficiency of . . . major appliances and certain other consumer products.'' 42 U.S.C. 6201(5).

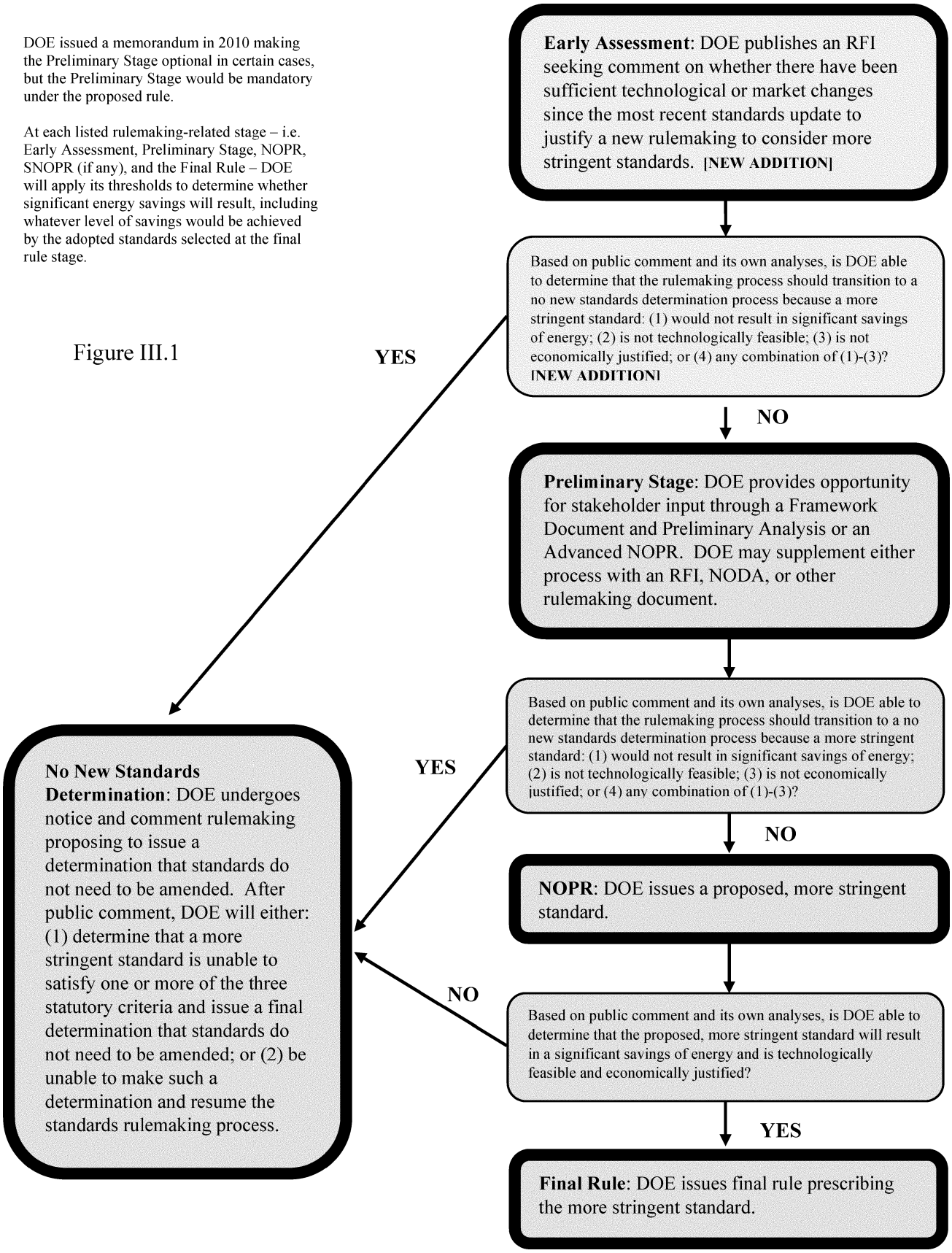
BILLING CODE 6450–01–P

[20] *https://www.eia.gov/energyexplained/us-energy-facts/.*

DOE issued a memorandum in 2010 making the Preliminary Stage optional in certain cases, but the Preliminary Stage would be mandatory under the proposed rule.

At each listed rulemaking-related stage – i.e. Early Assessment, Preliminary Stage, NOPR, SNOPR (if any), and the Final Rule – DOE will apply its thresholds to determine whether significant energy savings will result, including whatever level of savings would be achieved by the adopted standards selected at the final rule stage.

Figure III.1



BILLING CODE 6450–01–C

C. Response to Comments on the Notice of Data Availability

Site Energy

The term ''energy use'' is defined under EPCA as ''the quantity of energy directly consumed by a consumer product at point of use'' and as determined under the test procedure promulgated pursuant to DOE's authority under 42 U.S.C. 6293. (42 U.S.C. 6291(4)) *See also* 42 U.S.C. 6311(4) (defining ''energy use'' for industrial/commercial equipment as ''point of use'' energy). An energy conservation standard is defined as either (1) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use (or in the case of certain water products, water use) or (2) a design requirement with respect to certain specified products. (*See* 42 U.S.C. 6291(6). *See also* 42 U.S.C. 6311(18) (applying similar criteria for industrial/commercial equipment energy conservation standards)) Further, when establishing coverage for a product under DOE's limited discretionary authority under EPCA, DOE must first evaluate the average ''annual per-household energy use'' for the product at issue against a prescribed statutory threshold. (*See* 42 U.S.C. 6292(a)(20) (specifying that a covered product includes ''[a]ny other type of consumer product which the Secretary classifies as a covered product under [42 U.S.C. 6292(b)]'') *and* 42 U.S.C. 6292(b) (permitting the Secretary to classify a product as a covered product if it is ''necessary or appropriate to carry out the purposes of this chapter'' and where products of such type are likely to exceed an average annual per-household energy use of 100 kilowatt-hours or its Btu equivalent)) EPCA also clarifies that in determining whether the 100 kilowatt-hour threshold for coverage is met, DOE must take the estimated aggregate annual energy use of the product type at issue that is used by households in the United States, divided by the number of such households which use products of such type. (42 U.S.C. 6292(b)(2))

Similarly, when determining whether it can set an energy conservation standard for a product added for coverage under 42 U.S.C. 6292(b), DOE must determine whether additional criteria, including thresholds based on household energy use, are satisfied. (*See* 42 U.S.C. 6295(l)) In particular, DOE may prescribe an energy conservation standard for a product covered under 42 U.S.C. 6292(b) provided that the Secretary determines that: (1) The ''household energy use of products of that type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination; (2) the aggregate ''household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period; (3) substantial improvement in the energy efficiency of the product is technologically feasible; and (4) applying a labeling rule is unlikely to be sufficient to induce manufacturers to produce, and consumers and others to purchase, covered products of such type (or class) that would achieve the maximum level of energy efficiency that is technologically feasible and economically justified. (*See* 42 U.S.C. 6295(l)(1)(A)–(D))

Accordingly, since ''household energy use'' refers to the point of use energy consumption, these statutory provisions, when read together, indicate that the standards promulgated by DOE must be based on the site energy use of the products at issue. Consistent with this framework, DOE presented its supporting data for the NODA with this structure in mind.

Further, in contrast to the assertions made by some of the commenters, adhering to a site-based approach is also consistent with the framework developed under DOE's FFC Policy Statement when the Agency considered the question of using the FFC within the context of its energy conservation standards analyses. (*See* 76 FR 51281 (August 18, 2011) (DOE Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program)) While the Policy Statement noted that using FFC measures would help provide more complete information about the total energy use and greenhouse gas emissions associated with a specific energy efficiency level, the Agency also stressed that EPCA requires that its measures used to determine the energy efficiency of its covered products be based solely on the energy consumed at the point of use. (76 FR 51281, 51282) DOE pointed out that although EPCA does not mandate the use of ''point-of-use'' measures in each of its analyses in support of a given standard—and DOE ultimately decided to include FFC energy measures were included as part of DOE's national impact analyses and environmental assessments for standards rulemakings—DOE made clear its view that the final energy conservation standard chosen ''must be expressed as a point-of-use measure.'' (76 FR 51281, 51284 (citing to 42 U.S.C. 6291(4)–(6), 6311(3)–(4), (18)) DOE also considered the question of whether it should establish a policy to calculate and use full fuel cycle measure in future rulemakings in instances where a fuel choice is present—but ultimately concluded that these additional measures would only provide a rough indicator of the impacts of possible fuel switching on total energy savings and emissions and, therefore, would not enhance current DOE estimates of the direct impacts of alternative standard levels on fuel choice, energy savings, emissions and other factors. (76 FR 51281, 51285)

The adoption of a full fuel cycle approach by other entities and jurisdictions (as indicated by a number of commenters) does not change the fact that DOE has its own, Congressionally-mandated requirements to follow—which require that DOE base its standards on site-based energy use. DOE also notes that the determination of a threshold for significant energy savings is a separate question from whether a given standard is economically justified. Accordingly, consistent with its statutory obligations and with its past practice and policy statements, when determining whether a given standard is economically justified, DOE will apply FFC measures to evaluate the given standard level but continue to base its energy conservation standards on site energy use.

Calculation Methodology

DOE appreciates the various suggestions offered by commenters on possible ways to modify DOE's supporting analysis, such as by modifying the analysis to account for changes in EIA-related numbers, accounting for different methods for setting standards (*e.g.,* reduction in losses v. increased energy efficiency), excluding first-round rulemakings, and others. However, the purpose of DOE's analysis was not to go back and verify or improve the energy savings analyses from these rules. Instead, DOE conducted this analysis in response to *Herrington,* which stated that the ''cumulative savings possible from the appliance program as a whole is certainly relevant to whether the conservation that standards for a particular product type might achieve should be deemed significant.'' 768 F.2d 1355, 1378 (1985). DOE's goal was to determine how much the proposed threshold would have reduced the projected, cumulative energy savings from its prior rules. As the proposed threshold would have preserved 94 percent of the projected, cumulative energy savings, DOE believes it is a

reasonable threshold for significant energy savings.

In future rules, DOE will quantify the quads of site energy saved using the same methodology it has used for previous rulemakings to ensure that standards meet the 0.3 quad threshold over 30 years outlined in this rule. As noted elsewhere in this document, DOE will continue to use FFC energy savings to calculate emissions reductions. As an alternate threshold, DOE will assess the energy savings percentage by assessing the quads of energy saved relative to the baseline. DOE notes that, using this method, the percentage of energy savings would be identical whether quads are assessed at the site energy or primary energy level. In this way, use of a percentage energy threshold in addition to the site energy threshold addresses some commenters' concerns regarding whether a site energy threshold would skew how the Department will treat standards for gas-using versus electric appliances.

Quad and Percentage Thresholds

Regarding the various comments in favor and against the proposed thresholds in light of the supplemental data furnished by the NODA and related docketed materials, DOE continues to believe that it has the authority to establish threshold levels for determining significant energy savings. Nevertheless, DOE has revisited its proposed threshold levels in light of the comments it received in response to the NODA. After reviewing the quad site energy savings from past energy conservation standards rulemakings, DOE has determined to revise its proposed 0.5 quad threshold. The 0.5 quad threshold was not based on a consistent evaluation of energy use across rules. When the energy savings of all rules are evaluated on a site energy basis, the primary goals of the proposed threshold are best achieved at 0.3 quads of site energy. Namely, this threshold clearly distinguishes between the standards that accomplish the vast majority of total energy savings and those that accomplish purely incremental savings at the same level of administrative burden. When considered in this light, DOE has decided to adopt a threshold for significant energy savings at 0.3 quads of site energy or, if that level is not met, a 10 percent reduction in site energy use.

As a preliminary matter, DOE notes that the NODA data were intended to present the projected energy savings from past rulemakings in a uniform manner consistent with the framework established by Congress to illustrate the relative savings achieved by DOE's prior rulemakings when setting energy conservation standards. As A.O. Smith noted, the rulemakings listed in the NODA do not all have the same analytical period. However, DOE clearly specifies in this rule that for future rulemakings energy savings will be assessed over a 30-year analytical period, which clearly provides a uniform approach across rulemakings.

With respect to the energy usage threshold that Congress imposed as a mandatory prerequisite before permitting DOE to set standards for a given product using its discretionary authority under 42 U.S.C. 6295(l), that threshold is equivalent to 0.014335 quad of site energy use on an annual basis. When extrapolated over 30 years, that total amount of quad savings—0.43005 quad—would exceed the site energy-based equivalent level adopted in this final rule. With the site energy-based approach adopted in this rule, DOE has decided to lower its quad-based threshold to 0.3 quad.

DOE notes that in those instances where even this amount of savings may prove too high a hurdle to surmount, DOE would apply its percentage threshold, which was intended to be a measure that would be better tailored to accommodate the particular energy savings potential of the product/equipment under consideration. With respect to applying the percentage threshold, DOE notes that it has further examined its proposed 10 percent level. Under DOE's proposed thresholds, approximately 95% of the total savings from the 57 final rule would have been retained. Given the concerns raised by the commenters, DOE adjusted its quad-based threshold but has chosen to retain the proposed 10 percent threshold for this final rule. In DOE's view, these thresholds together create a fair trade-off to ensure that energy savings achieved by DOE's rulemaking efforts produce results that are consistent with the balancing required under EPCA—*i.e.* to produce significant energy savings that are technologically feasible and economically justified. This result is consistent with EPCA's goal of improving energy efficiency while also ensuring that those energy savings achieved are significant in the first instance. *See generally* 42 U.S.C. 6201(5) *and* 42 U.S.C. 6295(o)(3)(B). *See also Herrington,* 768 F.2d at 1376 (noting that DOE may set levels of significance as a percentage of energy consumed by a product ''provided that the levels selected reasonably accommodate the policies of the Act.'') In DOE's view, the adjustments it is making in this final rule to establish thresholds for significant energy savings attempts to reduce the overall potential regulatory burdens in the form of reduced rulemakings while retaining the vast majority of energy savings (over 95%) when viewed against past rulemakings. (*See* 84 FR 36037, 36038 (July 26, 2019)).

Further, use of a percentage threshold addresses commenters' concerns regarding the ways in which a site energy threshold could cause appliances with different fuel sources to be treated differently, because the percentage change remains constant regardless of which energy metric is selected. *See generally* 42 U.S.C. 6201(5) *and* 42 U.S.C. 6295(o)(3)(B). *See also Herrington,* 768 F.2d at 1376 (noting that DOE may set levels of significance as a percentage of energy consumed by a product ''provided that the levels selected reasonably accommodate the policies of the Act.'' The 10 percent level being adopted in this rule accounts for potentially lower reductions in energy savings that may occur as DOE continues to incrementally amend the standards for regulated products and equipment.

As DOE previously explained, its purpose in setting thresholds for significant energy savings was to take a middle ground when determining significant savings of energy to improve the predictability and transparency of its standards rulemakings. (*See* 84 FR 3910, 3923 (Feb. 13, 2019)) Further, DOE must also consider ''the overall conservation possible'' under its program in determining what would meet the ''significant conservation of energy'' requirement prescribed under EPCA. *Herrington,* 768 F.2d at 1378. In following this framework, and in contrast to its past approach of emphasizing whether projected energy savings were ''genuinely trivial,'' DOE gave careful consideration to the results of its past rulemaking actions and is now seeking to better balance the potential savings and potential burdens involved to help ensure that DOE produces rulemakings that achieve significant energy conservation as required under EPCA while reducing the overall burdens in achieving those savings.

Regarding requests that DOE clarify whether it is adopting a max-tech percentage threshold based on a reduction in energy use or an improvement in energy efficiency, DOE has decided, as indicated earlier, to adopt the former. In addition to the differences noted by commenters, DOE believes that adopting a percentage threshold based on the reduction in energy use is preferable given that it

more closely tracks the statutory framework to directly address energy use and to reduce that usage to the extent possible within the limits prescribed by EPCA. *See generally* 42 U.S.C. 6291.

Other Comments

With respect to MHARR's suggestion to apply the Process Rule's provisions to the separate rulemaking on manufactured housing that is currently underway, while DOE appreciates this suggestion, we note that the statutory authorities for manufactured housing and the appliance standards that are addressed by this final rule are in separate chapters within Title 42 of the U.S. Code and have no relationship with each other—aside from applying generally to DOE. Consequently, DOE is declining to adopt this suggestion.

As for suggestions that DOE issue a supplemental notice of proposed rulemaking, DOE is also declining this suggestion. In DOE's view, the proposal, related public meetings, and subsequent NODA (and accompanying data), provided a sufficient opportunity for interested parties to meaningfully comment on the proposed rulemaking. Given the detailed feedback provided by commenters, and the nearly 200 days in total that stakeholder have had to submit comments on these topics, DOE does not believe that a supplemental notice is necessary. Should DOE decide, however, to amend the process rule at a later point in time, a new notice of proposed rulemaking would be issued and published.

Regarding how and when the quantitative thresholds would be applied, as noted elsewhere, these thresholds would be applied at the initiation of a review of potential standards for a given product or equipment. Assuming that the max-tech-based threshold for significant energy savings is met, DOE would evaluate potential standards under consideration against that threshold and whether those standards would be economically justified—with technological feasibility already being addressed under the initial max-tech analysis. This review would be conducted in a manner consistent with the approach outlined in Figure III–1. Relevant information collected by and submitted to DOE at each respective step will be used to assess any potential standards under consideration. In applying these thresholds to multiple product classes belonging to a particular product type, as stated elsewhere in this document, the significant energy thresholds would apply to the product type as a whole, not simply to a particular class of that product type. DOE has added language to the regulatory text to mitigate the risk of potential manipulation of classes (or subclasses) for the purposes of attempting to solely satisfy (or not satisfy) the thresholds.

I. Finalization of Test Procedures Prior to Issuance of a Standards NOPR

Currently, the Process Rule states that DOE will propose any modifications to a test procedure prior to issuing an ANOPR for energy conservation standards and finalize those modifications prior to issuing a NOPR for energy conservation standards. However, DOE has deviated from this schedule in the past and conducted test procedure and standards rulemakings concurrently.

DOE recognizes that a finalized test procedure allows interested parties to provide more effective comments on proposed standards. Further, if the test procedure is finalized sufficiently in advance of the issuance of proposed standards, interested parties will have experience using the new test procedure, which may provide additional insights into the proposed standards. As a result, in its February 13th NOPR, DOE proposed to require that test procedures used to evaluate new or amended standards will be finalized at least 180 days before publication of a NOPR proposing new or amended standards. (84 FR 3910, 3926) In this final rule, DOE has adopted this proposal.

Most commenters are in general agreement that test procedures should be finalized before DOE proposes new or amended standards. Commenters agreeing include: CTA, No. 136 at p. 3; A.O. Smith, March 21, 2019 Public Meeting Transcript, No. 87, at p. 27; Acuity, No. 95, at p.5; AHAM, April 11, 2019 Public Meeting Transcript, No. 92, at p. 36; AHRI, March 21, 2019 Public Meeting Transcript, No. 87, at p. 12; AHRI, April 11, 2019 Public Meeting Transcript, No. 87, at p. 49; ASE, No. 108 at p. 5; AGA, March 21, 2019 Public Meeting Transcript, No. 87, at p. 20; Joint Commenters, No. 112, at p.8; AGA, No. 114, at pp. 20–21; ALA, No. 104 at p. 2; APGA, March 21, 2019 Public Meeting Transcript, No. 87, at pp. 14–15; APGA, No. 106 at p. 4; ASAP, April 11, 2019 Public Meeting Transcript, No. 92, at p. 43; BWC, No. 103 at p. 3; CTA, No. 136 at p. 3; Joint Commenters, No. 112 at p. 8; Lutron, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 52–53; Lutron, No. 137 at p. 2; NEMA, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 47–48; NPGA, No. 110 at p. 2; PG&E, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 41–42; Rheem, No. 101 at p. 1; Signify, No. 116 at p. 2; BHI, No. 135, at p. 3; Westinghouse, April 11, 2019 Public Meeting Transcript, No. 92, at p. 38; Zero Zone, No. 102 at p. 2.

Most of the commenters agree that the proposed 180-day time period is appropriate. Only three would prefer a longer time period: NAFEM suggesting a 270-day time period (NAFEM, No. 122, at p. 4), Westinghouse suggesting a longer time period without a specific proposal (Westinghouse, April 11, 2019 Public Meeting Transcript, No. 92, at p. 38), and ALA offering support for the 180-day, although suggesting that more time would be beneficial (ALA, No. 104 at p. 2).

Zero Zone argued that test procedures must be finalized before a standard is developed. Zero Zone emphasized that, due to EPCA's anti-backsliding provision, energy conservation standards improperly set due to an incomplete understanding of test procedure amendments cannot be adjusted downwards. According to Zero Zone, completion of a test procedure prior to standards initiation would help avoid such problems and ensure that standards are set at an appropriate level. (Zero Zone, No. 102 at p. 2) DOE agrees with Zero Zone's comment as another reason in support of DOE's proposal.

Several commenters believe that the requirement to finalize test procedures 180-days prior to proposing a related standards rule is too restrictive. ACEEE stated that such a requirement would not only prolong the process, but also prevent the later proceedings from informing the earlier one, thus resulting in worse test procedure decisions or years-long delays as the earlier rulemakings are repeated. ACEEE stated that it generally supports completion of test procedures well before the end of the comment period on the standard NOPR, while leaving an ability to fix problems that may become apparent later. (ACEEE, NO. 123, at p. 2) Similarly, the AGs Joint Comment opposed the requirement for test procedures to be finalized 180 days prior to issuance of a standards NOPR because it would unnecessarily delay the rulemaking process by imposing a 180-day waiting period, thereby threatening DOE's ability to meet EPCA statutory deadlines. It agreed that DOE should strive to finalize test procedures before a standards rulemaking commences, but saw no reason to impose an inefficient waiting period which would be to the detriment of the interests of the public and other non-manufacturer stakeholders. Furthermore, the AGs Joint Comment

argued that manufacturers already have a very significant role in test procedure rulemakings, because they supply information (*e.g.,* product expertise and test data), so making the standards rulemaking await completion of the test procedure rulemaking would give manufacturers inordinate influence over when such standards rulemaking may begin. According to the AGs Joint Comment, DOE's proposed approach is contrary to the spirit of EPCA, which affords diverse stakeholders an equal opportunity to participate in the process, and any delay on the part of the manufacturers could render DOE unable to meet its statutory deadlines. (AGs Joint Comment, No. 111 at p. 7)

DOE disagrees with the proposition from the AG's Joint Comment that the 180-day waiting period will give manufacturers excessive influence over the timing of the standards rulemaking process. First, DOE approaches the rulemaking process expecting that all stakeholders will act in good faith even while advocating for their particular position. DOE notes that existing Process Rule, which has been in place for more than 20 years, has contemplated that the test procedure would be finalized prior to the publication of the proposed rule in the standards proceeding and the scenario posited by the AG's Joint Comment has never materialized. Second, the 180-day period has its own clear purpose, that is, it is designed to ensure that during the standards process all parties can rely on the accuracy of the related final test procedure. Most stakeholders agree with the underlying intent of the provision even if they disagree with the specific time period.

The CEC asserted that DOE's proposal to insert an interval between the test procedure and standards rulemakings would introduce ''unnecessary barriers'' to the standards process and would ''do nothing to advance energy efficiency under the statutory intent of EPCA'' and harm consumers by delaying the effectiveness of standards that would otherwise save energy and money. (CEC, No. 121, at pp. 4–5) CT–DEEP asserted generally that it opposed any changes that would lengthen the rulemaking process. (CT–DEEP, No. 93, at pp. 1–2) As noted above, the accuracy of test procedures advances EPCA's goal of energy efficiency. The standards rulemaking process cannot proceed without accurate test procedures. Thus, the 180-day period is not an ''unnecessary barrier.''

NPCC supported the goal of developing a test procedure prior to the issuance of a standards NOPR but it objected to the fixed 180-day time interval between the test procedure final rule and the publication of the standards proposal. In its view, this time period is both too long and removes DOE's flexibility to issue a proposal in a shorter period of time in order to satisfy a related statutory deadline for a standards rulemaking. NPCC also objected to the proposed condition that the test procedure final rule be ''completely 'finalized' prior to the [standards] rulemaking [being initiated NPCC argued that DOE should continue to allow for flexibility if the rulemaking process reveals a need to modify the applicable test procedure. (NPCC, No. 94, at p. 6)

Energy Solutions stated that DOE should aim to finalize a test procedure before issuing a proposal for standards, but it should be non-binding guidance, not mandatory. If it is mandatory, it could cause DOE to miss statutory deadlines. (Energy Solutions, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 37–38, 56) Similarly, the Cal-IOUs support the current guidance approach, which is for DOE to aim to issue a final test procedure rule prior to a standards NOPR whenever feasible or practical so that the standards rulemaking can account for any test procedure updates. (Cal-IOUs, No. 124, at p. 11) By linking a standards rulemaking directly to a test procedure rulemaking, the Cal-IOUs worried that this approach would significantly hamper DOE's ability to meet statutory deadlines. Cal-IOUs, No. 124, at p. 11. ASE expressed concern that a binding Process Rule would make it impossible for DOE to resolve test procedure issues which come to light without losing time and potentially missing statutory deadlines. (ASE, No. 108 at p. 5)

The above comments reflect the concern among several commenters that DOE needs to retain flexibility during the rulemaking process. To a large extent, the process of amending the Process Rule arose from complaints that DOE was exercising too much flexibility during the rulemaking process and was not following the current Process Rule. A number of those complaints were situations in which DOE had not completed a test procedure rulemaking prior to proposing a new or revised standard. In DOE's experience, not following that step-wise approach resulted in disputes over data and technical issues that lead to delays. In response, DOE has examined the issue and has decided to make the previously existing concept of completing the test procedure rulemaking prior to proposing a new or revised standard mandatory and specify a period of time that is of sufficient duration that accurate data can be produced using that test procedure to inform decisionmaking in the standards rulemaking process.

One specific issue addressing flexibility on which commenters have generally expressed concern is how the Department will handle technical corrections to a finalized test procedure, either discovered during the standards rulemaking or perhaps, at a time after it becomes final. Lennox suggested that if such a situation arises, DOE should assess the best course of action on a case-by-case basis guided by principles that: (1) Stakeholders have adequate notice and opportunity to comment on rulemakings; and (2) burdens on regulated-equipment manufacturers, including the burdens of the rulemaking process itself, are minimized. Lennox believes that DOE should not automatically be required to re-propose the standards NOPR if the need for a technical correction is discovered. (Lennox, No. 133, at pp. 6–7) On this same topic, the AGs Joint Comment questioned whether the test procedure problem would need to be resolved first and then have the standards rulemaking start all over again. According to the AGs Joint Comment, not only would this approach jeopardize DOE's ability to meet statutory deadlines, but given the ambiguity of this part of the agency's proposal, stakeholders have not been afforded adequate notice to allow a meaningful opportunity to comment. (AGs Joint Comment, No. 111 at pp. 7–8)

Similarly, ASAP raised the concern as to how DOE will make changes to the test procedure when the problems arise during the standards process after the test procedure has been finalized. Referring to the test procedure, ASAP said ''have it done but don't have it so done'' that the Department cannot make changes if needed and still meet statutory obligations for test procedures. (ASAP, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 44–46) ASAP urges the Department to retain flexibility to address test procedure issues because it seems inevitable that situations will arise that will require deviating from the general practice. ASAP, et al. believes that the language in the current Process Rule that ''final, modified test procedures will be issued prior to the NOPR on proposed standards,'' is sufficient. ASAP, et al. states that an alternative could be to specify 180 days between the finalization of a test procedure and the end of the comment periods on the standards NOPR, which would give manufacturers enough time to evaluate the impact of any test procedure

changes on the performance of the products. (ASAP, et al., No. 126, at pp. 2, 11–12) In response, DOE takes the position that ASAP's alternative proposed language is too open-ended and vague to create certainty for stakeholders.

Southern California Edison also expressed its concern as to how test procedure changes will be handled and is concerned about DOE giving up its flexibility. (Southern California Edison, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 49–51). One commenter specifically suggested that if changes to the test procedure are made after the 180-days, manufacturers will need to re-test to the new standard and the 180-day period should be reset. (Lutron, April 11, 2019 Public Meeting Transcript, No. 92, at pp. 52–53) The Joint Commenters recommended that DOE include an opportunity for DOE to adjust and address test procedure amendments on an expedited basis, such as a petition from stakeholders. This commenter stated that such a process would not be intended to address sweeping changes to the method of test, but could fix errors or address burdensome practical challenges that had not been anticipated during the rulemaking stage. (Joint Commenters, No. 112, at p. 8; GEA, No. 125 at pp. 2–3, also supporting a quick fix process)

Generally speaking, DOE would not expect that as soon as a test procedure is finalized, DOE and stakeholders would immediately find significant changes that need to be made to the just-finalized test procedure. In fact, requiring the test procedure be completed prior to proposing a new or revised energy conservation standard should ensure that these issues don't occur and, in the unlikely event that they do, DOE can make an amendment before getting too far along in the standards rulemaking or before the statute would require use of the test procedure to make representations. If it was discovered that small, technical changes are needed, DOE would hope that all stakeholders would join together with DOE to allow such minor changes to be made without revisiting the entire test procedure from the beginning. We would expect that all stakeholders would join in a common sense, expeditious solution.

The remote possibility of a worst-case scenario happening, that is, significant errors being discovered during a standards rulemaking for a related, recently finalized test procedure, should not diminish the positive impact of providing for a specific 180-day period, which coincides with the statutory 180-day period prior to use of the test procedure for making representations using the test procedure. Providing a 180-day period between a final test procedure rule and a proposed standards rule gives stakeholders the opportunity to evaluate the new or amended test procedure and assess the effects of the test procedure on upcoming proposed standards within a specified reasonable time period. As AHAM stated at the April 11, 2019 public meeting, industry needs to have some opportunity to work with the new or amended test procedure before standards proposals can be effectively analyzed. (AHAM, April 11, 2019 Public Meeting Transcript, No. 92, at p. 36) APGA offered a similar comment stating that finalizing the test procedure first gives stakeholders the opportunity to work with the test procedure to help ensure that it is technically correct and produces repeatable results, and that interested parties can ascertain the impacts of the test procedure on the current energy efficiency rating of covered products. APGA argued that unless stakeholders know the exact and settled procedure for testing, they cannot meaningfully analyze and comment on the impacts of proposed standards. (APGA, No. 106 at p. 4) And, the Joint Commenters commented that the appropriate sequencing allows predictability, transparency, and the opportunity for stakeholders to understand the ramifications of the DOE's rulemaking proposals. Only after real-world testing can manufacturers, and indirectly DOE and the public, be comfortable that the implications for the test procedure's application to a revised standard are fully understood. (Joint Commenters, No. 112, at p. 8)

Accordingly, in light of the reasons discussed above, DOE is adopting its proposal to require that test procedures used to evaluate new or amended standards will be finalized 180 days before publication of a NOPR proposing new or amended standards.

J. Adoption of Industry Standards

As part of its February 13th NOPR, DOE proposed to amend the Process Rule to require adoption, without modification, of industry standards as test procedures for covered products and equipment unless such standards do not meet the EPCA statutory criteria for test procedures. (84 FR 3910, 3927) This Process Rule requirement would apply to covered products and equipment where use of an industry standard is not mandated by EPCA. In effect, this requirement is merely a codification of DOE established practice.[21]

DOE's established practice has been to routinely adopt industry standards as DOE test procedures and in cases where the industry standard does not meet EPCA statutory criteria for test procedures make modifications to these standards as the DOE test procedure. These modifications have always been handled during the individual notice and comment rulemaking proceeding for the test procedure at issue. As noted in the NOPR, DOE recognizes that modifications to these standards impose a burden on industry (*i.e.,* manufacturers face increased costs if the DOE modifications require different testing equipment or facilities).

Several commenters, CTA, the Joint Commenters, and NEMA point to the fact that U.S. law and policy, that is, the National Technology Transfer and Advancement Act (NTTAA) and OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' together direct Federal agencies to adopt voluntary, private sector, consensus standards to meet agency needs during standards development activities, thereby supporting the use of technical standards that are developed or adopted by voluntary, private sector, consensus standards bodies (rather than government-unique standards), unless such standards are inconsistent with applicable law or otherwise impractical. (National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, Section 12 (March 7, 1996) and revised Circular A–119, 81 FR 4673 (January 27, 2016)) The NTTAA codified the policies in OMB Circular A–119. The 2016 revised version of OMB Circular A–119 is available and can be accessed via PDF download at *https://www.whitehouse.gov/omb/information-for-agencies/circulars/*.

[21] Throughout this discussion, DOE will use the terminology ''consensus standards'' as opposed to ''industry standards'' due to the fact that the National Technology Transfer and Advancement Act (NTTAA) and OMB Circular A–119 address the use of private sector standards, developed by private, consensus organizations to meet Federal agency needs in standards development activities.

There was some debate during the course of this rulemaking as to the meaning of ''consensus.'' NRDC specifically states that these standards should not be rebranded as something they are not. (NRDC, April 11, 2019 Public Meeting Transcript at pp 79–80) Consensus means different things in different context. (NRDC, April 11, 2019 Public Meeting Transcript at p. 87) EEI stated that the term consensus is more than a simple majority but less than unanimity. (EEI, April 11, 2019 Public Meeting Transcript at p. 82) Westinghouse requested that DOE change terminology from industry standards to consensus standards. (Westinghouse, April 11, 2019 Public Meeting Transcript at pp. 39–40)

Together, the commenters explain that several public policy objectives underlie the NTTAA and OMB Circular A–119. These objectives include the intention to enhance technological innovation for commercial public purposes, to promote the adoption of technological innovations, to encourage long-term growth for U.S. enterprises, to promote efficiency and economic competition through harmonization of standards, and to eliminate the cost to the Federal government of developing its own standards and decrease the burden of complying with agency regulation. CTA also points out that it believes governmental use of consultants to develop test procedures is not only costly, but is less transparent and open than the consensus standards development process. It states that such standards development organizations are accredited by national bodies and are open to all interested parties. (CTA, No. 136, at pp. 2–3) NEMA added that by adopting such industry test procedures as Federal test procedure, it is likely to facilitate expedited compliance with DOE legally mandated test procedures. Also, NEMA states that these consensus test procedure standards are likely to meet the EPCA requirement that a test procedure not be ''unduly burdensome to conduct'' as they are likely already in use. (NEMA, No. 107, at p. 6) And finally, the Joint Commenters point out that DOE's proposal aligns with decades-old executive and Congressional policy goals and agrees with NEMA that this policy enables more rapid compliance. The Joint Commenters add that it also promotes confidence in the adoption of energy conservation standards by regulated parties. (; NEMA, No. 107, at pp. 5–6, and the Joint Commenters, No. 112, at pp. 9–10) Accordingly, putting DOE's proposal in context, on its face, this proposal explicitly implements and is consistent with the NTTAA and OMB Circular A–119.

Lastly, with respect to the NTTAA, Atlas Copco suggested that language be added to DOE's proposal requiring procedural compliance with section 12(d)(3) of the NTTAA. (Miles & Stockbridge on behalf on Atlas Copco, No. 100, at p. 2–3) In order for DOE to consider adding new language to its proposal at this time, DOE would need to issue a supplemental notice of proposed rulemaking (SNOPR) and re-open the comment period. Rather than delay finalizing this rule, DOE will take this recommendation under advisement and decide at a later date if further amendment to the Process Rule is required.[22]

DOE also strongly agrees with stakeholders that the Department has a fundamental obligation to apply all EPCA statutory requirements when it promulgates any and all test procedures for covered consumer products and commercial and industrial equipment. For certain covered products and equipment, EPCA specifically mandates that DOE adopt certain consensus standards, subject to certain conditions as specified in EPCA. This latter category is not the subject of this discussion. Instead, the following discussion applies only to covered products and equipment where use of consensus standards is not mandated by EPCA.

In order to adopt any such test procedure, the Department must apply certain EPCA statutory criteria. These criteria are contained in two sections of EPCA, that is, 42 U.S.C. 6293(b)(3), and (4), or 42 U.S.C. 6314(a)(2) and (3), depending upon the specific covered product or covered commercial equipment to which the test procedure would apply. Both of these sections contain similar language describing two statutory criteria for the promulgation of a test procedure: (1) That the test procedure shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and (2) that the test procedure shall not be unduly burdensome to conduct.[23]

Accordingly, when DOE considers promulgating either a new or amended test procedure, DOE will evaluate the applicable consensus standard to determine whether such consensus standard meets the applicable above-referenced EPCA requirements. If the consensus standard does not meet both of the two criteria in the applicable section of EPCA, DOE will not adopt the consensus standard ''as is.'' Stated another way, the consensus standard under consideration must meet the EPCA statutory criteria for it to be used verbatim. If it does not meet the statutory criteria, it will then be necessary for DOE and stakeholders, during the notice and comment rulemaking process, to determine what specific modifications will bring the consensus standard into compliance with the statutory criteria in order for it to be the basis for a final DOE test procedure. Logically speaking then, if the applicable consensus standard under consideration fully meets both statutory criteria, then DOE will adopt it pursuant to this provision in the amended Process Rule. If, on the other hand, the consensus standard cannot be modified to meet the statutory criteria, DOE will not use it and will need to craft its own test procedure from the beginning. As with all test procedure rules and as we stated above, all of these issues, including whether the consensus standard meets the EPCA statutory criteria, will be discussed and decided in the regular notice and comment rulemaking process.

DOE hopes that the above discussion clarifies the application of DOE's proposal to the adoption of consensus standards. In reviewing the many comments concerning this proposal, DOE observes that many commenters misunderstood DOE's proposal. Many commenters objected to the proposal, stating in various ways, that DOE should not have a mandatory rule to rely on, or give deference to, consensus test procedures. These commenters state that they do not want DOE to abdicate its responsibility for reviewing and revising consensus test procedures since modifications may be necessary. Generally, commenters want DOE to retain its independence and flexibility when setting test procedures. It would appear that these commenters generally believe that the DOE proposal does not require application of the EPCA statutory criteria to the consensus standard under consideration. (A.O. Smith, March 21, 2019 Public Meeting Transcript at p. 28; A.O. Smith, No. 127, at pp. 3–4; ASE, No. 108 at p. 5; AGA, No. 114, at pp. 21–22; ASAP, April 11, 2019 Public Meeting Transcript at pp. 70–71; ASAP, et al., No. 126 at pp. 2, 12–13; ACEEE, No. 123, at p. 3; NPCC,

[22] Atlas Copco also proposed additional changes to the amended Process Rule that relate to its rulemaking petition concerning the Rotary Air Compressor Test Procedure. This petition was submitted in response to DOE's request that stakeholders identify existing test procedures that should be modified to conform to existing industry test procedures. (Miles & Stockbridge, on behalf of Atlas Copco, No. 100, at pp. 1–6) These matters will be addressed during the DOE rulemaking that considers Atlas Copco's petition.

[23] The language in 42 U.S.C. 6314 (a)(2) and (3) differs slightly from its parallel sections in 42 U.S.C. 6293(b)(3) and (4). 42 U.S.C. 6314(a)(2) reads as follows: ''(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

Subparagraphs (3) for each of these two statutory provisions referenced above address test procedures for determining estimated annual operating costs have similar language but are not identical in order to reflect differences in criteria for covered products and covered commercial equipment.

March 21, 2019 Public Meeting Transcript at p. 24; NPCC, No. 94, at pp. 6–7; NRDC, No. 131 at pp. 11–12; PG&E, April 11, 2019 Public Meeting Transcript at pp. 228–229; Cal-IOUs, No. 124, at pp. 6, 12–13; Southern California Edison, April 11, 2019 Public Meeting Transcript at p. 65) One commenter, Energy Solutions, stated that outsourcing the test procedure development process to industry is problematic. (Energy Solutions, April 11, 2019 Public Meeting Transcript at p. 74) Whereas another commenter, CEC characterizes DOE's proposal as a ''blanket approach'' to adopting industry test procedures without providing reasoning that such test procedures meet EPCA's requirements. (CEC, April 11, 2019 Public Meeting Transcript at pp. 231–232; CEC, No. 121, at p. 9–10) Another commenter, the Cal-IOUs, questioned how the provisions in the NOPR regarding industry test procedures help DOE independently assess the representativeness and enforceability of DOE test procedures. (Cal-IOUs, No. 124, at p. 2). As we have explained previously, DOE has determined that it will use industry test procedures as the initial basis for a DOE test procedure, but that is only the first step in the process. Most importantly, DOE must assess whether the industry standard under consideration specifically meets the EPCA statutory criteria for the establishment of a test procedure. So, in response to the Cal-IOUs above-stated question, DOE is applying two separate principles; one does not support or help the other.

According to NRDC, DOE's proposed approach would conflict with EPCA, because unlike commercial equipment, Congress did not explicitly point DOE toward industry consensus standards for consumer products. But NRDC agrees that industry test procedures can serve as a useful starting point for discussions, even though they often require modification, for instance, to account for power consumption of new features or to address loopholes. NRDC states a preference for DOE's current approach to test procedures, whereby DOE acts as a neutral convener for discussion of test procedure issues. (NRDC, No. 131 at pp. 11–12) While it is true that EPCA does not require the use of consensus standards for certain test procedures for certain equipment, it does not prohibit such use and the NTTAA and OMB Circular A–119 favors the use of consensus standards by agencies, unless there is a conflict with applicable law or it is otherwise impractical. Clearly, nothing in EPCA prevents DOE from using consensus standards in test procedure rulemakings as long as DOE can demonstrate that these consensus standards meet the EPCA statutory criteria. Moreover, DOE believes that whether it uses consensus standards or not in any given situation, it can act as a neutral convener for the discussion and promulgation of test procedures during the rulemaking process.

Moreover, Earthjustice argues that the NOPR fails to consider the implication of Congress's decision to explicitly require DOE to adopt industry test methods for specific products (*i.e.,* many types of commercial equipment, thus limiting its discretion to a narrow review of industry standards for specific products). (Earthjustice, No. 134, at p. 4) As we stated above in response to NRDC, nothing in EPCA prevents DOE from using consensus standards in its test procedure rulemakings, as long as DOE can demonstrate that these consensus standards meet the EPCA statutory criteria. All commenters agree that DOE must meet the EPCA statutory criteria for the establishment of test procedures and most, if not all agree that consensus standards are a logical foundation to begin the test procedure process. Furthermore, the NTTAA and OMB Circular A–119 provide a context for the use of consensus standards to meet agency needs. Accordingly, DOE finds that this proposal implements both the underlying purpose of EPCA with respect to test procedures, and the NTTAA and OMB Circular A–119 with respect to consensus standards and ultimately, is a reasonable exercise of the agency's discretion in its test procedure rulemaking activity.

ACEEE also argued that consensus test procedures are not generally developed for regulatory purposes. ACEEE added that in developing and implementing mandatory standards, a lack of clarity or different interpretations of the test procedures may surface. It believes that a failure to address these issues results in an uneven playing field for manufacturers as well as inconsistent efficiency levels for consumers. New metrics or requirements may require additional test procedures. This commenter, and others, states that the Department should have the ability to ensure its test procedures serve the purposes of the program, and not be required to adopt industry procedures without modification. (ACEEE, No. 123, at p. 3) DOE agrees with ACEEE that the agency should be able to modify the consensus standards. As we have already discussed, and will reiterate throughout this discussion, if the EPCA statutory criteria are not met, DOE will not adopt the consensus standard under consideration verbatim and modifications will be made to the consensus standard, if possible, so that it will meet the statutory criteria. If this latter result cannot be achieved, DOE must develop a whole new test procedure.

Another commenter, ASAP, believes that DOE's proposal favors manufacturers. ASAP believes that DOE is turning away from consumer needs for a representative test procedure and the Department's need to set standards that are representative of actual energy use in the real world. (ASAP, April 11, 2019 Public Meeting Transcript at pp. 67–68) As with other commenters, it agrees that it is reasonable for DOE to start with existing test procedures (regardless of whether they are ''industry'' test procedures). (ASAP, April 11, 2019 Public Meeting Transcript at p. 68) ASAP further states their concern that the NOPR document emphasizes a test procedure without modification and it does not want DOE to tie its hands. (ASAP, April 11, 2019 Public Meeting Transcript at p. 71) ASAP, et al. further states that any reference in the Process Rule to the criteria that DOE will use in adopting test procedures should simply refer to the statutory criteria. (ASAP, et al., No. 126 at pp. 12–13) In response to ASAP, DOE points out that this proposal requires DOE to unequivocally apply the statutory criteria, with representativeness being part of that evaluation. Moreover, the regulatory text for section 8(c), *Adoption of Industry Test Methods,* contains the statutory criteria that DOE must satisfy.

Next, the AGs Joint Comment faulted DOE's proposed approach for using industry consensus test procedures, because it finds the approach to be overly deferential to industry and without sufficient weight given to DOE's own analysis and determination. This commenter states that by making a presumption in favor of consensus test procedures, DOE's flexibility would be unnecessarily limited and it would hinder DOE's ability to satisfy EPCA's test procedure requirements, as well as expose the Department to considerable litigation risk. It states that DOE cannot presume that industry test procedures satisfy EPCA's requirements. (AGs Joint Comment, No. 111 at pp. 4, 14) In response to the AGs Joint Comment, DOE can only reassure this commenter, and others who are similarly concerned, that DOE takes its regulatory responsibility seriously and will analyze the appropriate consensus standards in light of the EPCA statutory criteria to

ensure that EPCA is not undermined. DOE agrees with the AGs Joint Comment, and others like it, that DOE should not presume that the consensus test procedures meet the EPCA requirements; it will not do so.

According to the Attorneys General, the biggest problem with DOE's proposed approach is that it would impose a duty on DOE to adopt the industry test procedure unless the Department makes a contrary determination. The AGs Joint Comment argued that DOE would need to make an affirmative finding that the industry test procedures would need to be modified prior to adoption, and that finding would be subject to litigation in which the Department would bear the burden of proof that the industry test procedure did not meet EPCA's requirements. (AGs Joint Comment, No. 111 at p. 14) With respect to this point, DOE believes that the AGs Joint Comment has superimposed requirements that do not exist, and has inserted steps into the process that are unnecessary. DOE will proceed with its established practice to analyze the appropriate consensus standards, and with the input of stakeholders either determine that the EPCA statutory criteria are met and use it as the DOE test procedure, modify it so that it complies with the statutory criteria, or reject it and develop an entirely new test procedure. Stakeholders will have ample opportunity to comment on DOE's ultimate approach for any given test procedure under consideration.

The AGs Joint Comment also argued that industry test procedures are generally not created to measure energy efficiency and are likely not appropriate under EPCA. It alleges that industry interests hostile to stronger efficiency standards may try to manipulate the industry test procedures to their own advantage. (AGs Joint Comment, No. 111, at p. 14) While DOE appreciates the AGs perspective, we believe that this point of view is speculative at best.

The AGs Joint Comment also points out that some products may have multiple industry test procedures which could apply, but that the Process Rule NOPR does not explain how DOE would determine which procedure to adopt in those cases. (AGs Joint Comment, No. 111 at p. 14) Similarly, the CEC contends that the blind adoption of industry test procedures would create confusion where multiple procedures exist for a given product since it would be unclear as to which procedure to use. (CEC, No. 121, at p. 11) With respect to its criticism of DOE's approach, the CEC also argued that, in many cases, industry test procedures contain optional test requirements, multiple test set-ups, instances where testing requirements are not specified and left to the testing lab's discretion, or unclear or overlapping definitions. As a result, the CEC states that test results would vary between test labs (affecting reproducibility) and tested products (affecting comparability, and leave open the potential for gaming by manufacturers. As a result the CEC argues that consumers would not receive the expected level of efficiency from their products, manufacturers would not be held to the same efficiency standard for the same products, and DOE would be unable to enforce its standards effectively. (CEC, No. 121, at p. 10) Because, as one might expect, consensus test procedures vary widely, DOE takes the position that these hypothetical scenarios, if and when they materialize, must be addressed on a case-by-case basis during the specific rulemaking proceeding.

CEC further asserted that where EPCA requires DOE to affirmatively determine that amended test procedures are reasonably designed to produce test results that measure the energy use or operating costs of appliances and is not unduly burdensome to conduct, DOE cannot require, by regulation, the public instead to prove to DOE that an industry test procedure does not meet these goals. (CEC, No. 121, at p. 10) DOE's proposal does not shift the burden of proof to stakeholders to demonstrate that the applicable consensus standard should not apply. During the rulemaking process, DOE will analyze the consensus standard and make a determination as to whether the statutory criteria are met. Stakeholders will have the opportunity to give their comments.

As DOE explained at the beginning of this discussion, this proposal is merely codifying DOE established practice concerning the use of consensus standards as DOE test procedures. Commenters are incorrect that DOE is proposing mandatory use of consensus standards without providing for an evaluation as to whether the EPCA statutory criteria are met. This proposal does not require the absolute adoption of consensus standards verbatim in all circumstances. If the EPCA statutory criteria are not met, in order to use the appropriate consensus standard, modifications will need to be made so that the consensus standard meets the EPCA statutory criteria. Such modifications will be vetted during the notice and comment rulemaking process so that all interested stakeholders can give DOE feedback. DOE follows this same analytical process now and will continue to do so. Commenters need not worry that consensus standards will be automatically adopted as DOE test procedures. As a matter of fact, commenters generally agree that using consensus standards as a basis to begin considering the substance of new or amended DOE test procedures is appropriate. At least one commenter, AHAM, recognized and agreed that DOE's proposal on this matter is not a departure from DOE's current, established process, and gave its support. (AHAM, April 11, 2019 Public Meeting Transcript at pp. 63–64)

Other commenters generally support DOE's proposal, without specifically acknowledging that it is not a change from its current practice. (Acuity, No. 95, at p. 4; BWC, No. 103 at pp. 3–4; CTA, No. 136 at pp. 2–3; GM Law, No. 105 at p. 3; Joint Commenters, No. 112 at p. 9; Lutron, No. 137 at pp. 2–3; NAFEM, No. 122, at p. 5; NEMA, No. 107 at pp. 5–6; Rheem, No. 101 at p. 1; Signify, No. 116 at p.1; Westinghouse, April 11, 2019 Public Meeting Transcript at pp. 72,74) In support of the proposal, AHRI stated that this proposal reflects renewed adherence to the statutory requirements and makes sense from the perspective of a cost-benefit analysis. (AHRI, March 21, 2019 Public Meeting Transcript at p.12; AHRI, April 11, 2019 Public Meeting Transcript at pp 65–66)

In addition, many commenters support DOE working with consensus standards development organizations to address issues that would ensure that relevant consensus standards can be used as Federal test procedures. (AHRI, April 11, 2019 Public Meeting Transcript at p. 76; EEI, April 11, 2019 Public Meeting Transcript, at p. 82; BWC, No. 103 at pp. 3–4; Signify, No. 116 at p. 2; Southern Company, April 11, 2019 Public Meeting Transcript at p. 78) Acuity specifically urged DOE to work with the appropriate industry standards development organization to update the relevant standard to minimize any gaps, duplication or conflicts between testing standards and statutory requirements. (Acuity, No. 95, at p. 4) AGA stated that the use of industry standards can minimize regulatory burdens and improve transparency. (AGA, March 21, 2019 Public Meeting Transcript at p. 20; AGA, No. 114, at pp. 21–22) Similarly, GM Law stated that adoption of existing industry standards would decrease unpredictability and the burdens of regulation. (GM Law, No. 105 at p. 3) ASHRAE emphasized that the standards development process is open to everybody, and its fairness, due process and transparency are ensured by its

ANSI accreditation. (ASHRAE, April 11, 2019 Public Meeting Transcript at pp. 61–63)

BHI supports the adoption of industry test standards, but would prefer a collaborative process and specifically suggested adding language to DOE's proposal. BHI states that it disagrees with the expected comments that the industry technical experts who design and test the product are the best informed to draft test procedures. It states that industry technical experts normally design and test products to specific ANSI, UL or other construction and performance standards primarily focused on safety and reliability. It specifically suggested additional language to the DOE proposal to require the active DOE participation in the consensus standards process and require DOE to make available, as necessary, the resources of the National Institute of Standards and Technology (NIST). (BHI, No. 135, at pp. 5–6) While DOE appreciates BHIs suggestions, DOE does not believe that the suggested language itself will enhance DOE's participation. DOE currently participates in the consensus standards-setting process and already has the statutory authority to utilize NIST resources pursuant to 42 U.S.C. 6314(e). Accordingly, DOE will not add this language which it considers duplicative.[24]

Several commenters expressed concern with non-DOE consensus groups. PG&E voiced its concern that it is difficult to get changes to consensus standards in these groups, and that the standards do not work as they should. Mostly, consumers are hurt, according to PG&E. (PG&E, April 11, 2019 Public Meeting Transcript at pp. 59–61) Another commenter, the Cal-IOUs believe that DOE would increase stakeholder burden and reduce transparency by requiring stakeholders to participate in non-DOE activities—or, in the extreme case, have stakeholder voices ignored entirely if these non-DOE activities are not administered in a way to incorporate stakeholder participation or are otherwise headed by a biased committee. (Cal-IOUs, No. 124, at p. 6) The Cal-IOUs take the position that EPCA provides a balanced approach to create a repeatable, reproducible, representative, and enforceable test procedures, while any given consensus test procedure is produced within organizations that do not share these same goals. The commenters fear that following the DOE's proposed approach would reduce transparency and increase stakeholder burden by requiring stakeholder participation in at least two test procedure rulemaking processes per product—one led by standards setting consensus organizations and the other by DOE. (Cal-IOUs, No. 124, at p. 12)

Moreover, A.O. Smith specifically requested that the Department issue a supplemental proposal that would consider guidelines to help it better understand the facts underlying the development of any new or revised consensus test procedure including: (1) The representation on the committee; (2) how innovative technologies are addressed; (3) de-identified test data showing the new or amended industry method is capable of being run in a laboratory; and (4) the rationale for associated changes. (A. O. Smith, No. 127, at p. 4) After carefully considering the request, DOE has determined that the request for a supplemental NOPR to develop guidelines for use in the consensus development process is a subject that will not change the outcome of this specific proposal and would significantly delay implementation of the amended Process Rule. Accordingly, DOE rejects A.O. Smith's request at the current time. We also note that enhanced participation by DOE in the standards development processes, with or without this type of guidance, would not change DOE's obligation during the rulemaking process to review each consensus standard for adherence to the EPCA statutory criteria on a case-by-case basis.

After careful consideration of the many comments related to DOE's proposal concerning the adoption of consensus standards during the DOE test procedure rulemaking process, and for the reasons articulated above, DOE is adopting its proposal in the final rule.

K. Direct Final Rules

The Energy Independence Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140) amended EPCA, in relevant part, to grant DOE authority to issue a ''direct final rule'' (*i.e.* DFR) to establish energy conservation standards. As amended, EPCA establishes requirements for when DOE uses this type of rulemaking proceeding for the issuance of certain actions. Specifically, DOE may issue a DFR adopting energy conservation standards for a covered product or equipment upon receipt of a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view,'' provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o) or section 342(a)(6)(B) as applicable. (42 U.S.C. 6295(p)(4)(A)) In the February 2019 NOPR, DOE proposed to (1) clarify its authority under the DFR provision found at 42 U.S.C. 6295(p)(4); (2) provide guidance as to DOE's interpretation of ''fairly representative,'' and (3) explain DOE's obligations upon receipt of an adverse comment. (84 FR 3910, 3928)

1. DOE's Authority Under the DFR Provision

The DFR provision is found in EPCA at 42 U.S.C. 6295(p), the heading and introduction of which state: ''Procedure for prescribing new or amended standards. Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure.'' Given the placement of the DFR provision within EPCA, DOE sought to clarify in the February 2019 NOPR that 42 U.S.C. 6295(p)(4) is a procedural process for issuing a DFR and not an independent grant of rulemaking authority. As such, any standard issued as a DFR must comply with the provisions of the EPCA subsection under which the rule was authorized.

In response, AGA stated that the proposed revisions in the revised Process Rule will help to ensure that the DFR process is used only when all of the statutory requirements are met. (AGA, No. 114, at p. 24) Other commenters expressed concerns with DOE's clarification and its effect on achieving consensus agreements for new standards. For example, ACEEE stated that flexibility is needed in Direct Final Rules. DOE has interpreted the Direct Final Rule authority to allow more flexibility in metrics, requirements, and compliance dates than it usually takes in setting standards. This flexibility has been crucial to achieving consensus, allowing more room for negotiation, for example to trade stringency for lead time in ways that increase savings and decrease burden on manufacturers. (ACEEE, No. 123, at p. 4) AHRI also agreed that the ability to make important adjustments, particularly to compliance timelines, has been a vital aspect of being able to work together. (AHRI, April 11, 2019 Public Meeting Transcript, at 99) In addition to concerns about reduced flexibility in reaching consensus standards, commenters also disagreed with DOE's proposed clarification that the DFR provision is not an independent grant of

[24] OMB Circular A–119 encourages agencies to participate fully in the private standards development process as equal parties. OMB, however, defers to individual agencies on their policies for determining to what extent and under what circumstances agency representatives are authorized to engage in particular activities, based on agency requirements and priorities. (OMB Circular A–119, at pp. 7–8)

rulemaking authority. For instance, A.O. Smith stated that DOE did not provide an additional basis for its legal reinterpretation in the proposed process rule and A.O. Smith does not believe the reinterpretation is legally sound. (A.O. Smith, No. 127, at p. 6) Similarly, the Cal-IOUs stated that DOE's proposed clarification is ''incorrect and inconsistent.'' (Cal-IOU, No. 124, at p. 13)

DOE recognizes that the clarifications made in the Process Rule mean there is not flexibility in DFRs regarding certain aspects of energy conservation standards, *e.g.,* compliance periods, energy efficiency metrics, etc. That being said, EPCA generally has very specific requirements for compliance periods and other aspects of energy conservation standards. For example, EPCA mandates either 3 or 5-year compliance periods for standards issued under 42 U.S.C. 6295(m). EPCA also requires either 3 or 5-year compliance for standards issued in response to a petition for rulemaking under 42 U.S.C. 6295(n). The DFR provision in EPCA, on the other hand, is silent regarding compliance periods and every other aspect of the substantive requirements applicable to energy conservation standards. In the past, DOE has interpreted this silence as providing some flexibility regarding compliance periods and certain other aspects of energy conservation standards. However, that interpretation assumes that the DFR provision is an independent grant of rulemaking authority that outlines its own set of substantive requirements on the establishment or amendment of an energy conservation standard as opposed to a procedural option for issuing a standard authorized under another provision of EPCA, such as 42 U.S.C. 6295(m) or 42 U.S.C. 6295(n). However, there is no language in EPCA providing statutory support for that position. As stated previously, the DFR provision is found in EPCA at 42 U.S.C. 6295(p), the heading and introduction of which state: ''Procedure for prescribing new or amended standards. Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure.'' The first three subparagraphs of 42 U.S.C. 6295(p) outline the process the Secretary must follow to propose and finalize a standard using the ''normal'' rulemaking approach. These are procedural requirements that apply when DOE is exercising its rulemaking authority under a separate provision of EPCA. These subparagraphs could not be interpreted as granting DOE a separate and independent statutory authority for issuing standards.

Similarly, 42 U.S.C. 6295(p)(4) outlines the procedural requirements for issuing a standard as a DFR and should also not be read as independent grant of rulemaking authority. Nor has DOE claimed that 42 U.S.C. 6295(p)(4) is a separate grant of rulemaking authority in its prior issuances of DFRs that differed from the requirements in a substantive provision of EPCA. This is a curious omission in that it means DOE relied on a substantive provision of EPCA, such as 42 U.S.C. 6295(m), to authorize issuance of an energy conservation standard but based variance from the requirements in such section on a procedural provision that says nothing about such variance. Thus, the ''silence'' in 42 U.S.C. 6295(p)(4) regarding compliance periods and other requirements associated with standards cannot be interpreted as providing flexibility, but rather as simply the result of these requirements already being addressed by the statutory provision that authorizes issuance of the standard, *e.g.,* 42 U.S.C. 6295(m). Moreover, there is no limitation on a variance authorized by silence. That is, the logic of the argument expressed by commenters in favor of ''flexibility'' could be used to, for example, exempt all domestic manufacturers from compliance with a standard or permit backsliding on an existing standard. Such positions would surely make reaching consensus on a measure more enticing to some parties, but would be antithetical to the purposes of the statute. DOE cannot take a legal position that statutory silence has authorized it to pick and choose with interested parties the parts of the statute to negotiate away. The revised Process Rule clarifies that the DFR provision in 42 U.S.C. 6295(p) is not an independent grant of rulemaking authority and DOE will not accept or issue as a DFR a submitted joint proposal that does not comply with all pertinent parts of EPCA, including those product specific requirements included in the provision that authorizes issuance of the standard.

2. Interested Persons Fairly Representative of Relevant Points of View

As part of the DFR process, DOE must determine if a proposed standard has been ''submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates). (42 U.S.C. 6295(p)(4)(A)) In the February 2019 NOPR, DOE proposed that at a minimum, ''fairly representative of relevant points of view'' must include businesses, including small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, as appropriate, consumers, and States. DOE also stated that it would be necessary to determine whether a proposal was submitted by interested persons that are ''fairly representative of relevant points of view'' on a case-by-case basis, subject to the circumstances of a particular rulemaking. In order to assist DOE in making this case-by-case determination, upon receipt of a joint statement recommending energy conservation standards, DOE proposed to publish in the **Federal Register** the statement, as submitted to DOE, in order to obtain feedback as to whether the joint statement was submitted by a group that is fairly representative of relevant points of view. (84 FR 3910, 3929)

DOE received several comments on these proposals. First, with regards to DOE's explanation of what it means for a DFR to be ''submitted jointly by interested persons that are fairly representative of relevant points of view,'' Acuity stated that any DFR proposal should reflect a reasonable balance of representation and support from key stakeholders. (Acuity, No. 95, at p. 5) Spire stated that representation of manufacturers of the covered products at issue, suppliers of the energy used by such products, and efficiency advocates should always, at a minimum, be required. (Spire, No. 97, at p. 2) AGA and APGA stated that DOE should specify particular entity types or interest groups that are relevant to certain categories of proposed standards, such as gas distribution utilities and their customers for appliances that use gas. (AGA, No. 114, at pp. 24–25; APGA, No. 106, at p. 8) AGA and APGA also stated that the DFR process was intended to be used only in circumstances in which representatives of all relevant interests jointly submit a proposed energy conservation standard for a product, *i.e.,* when there is a clear consensus. (AGA, No. 114, at p. 24; APGA, No. 106, at p. 6) The Joint Commenters and Lennox, on the other hand, encouraged DOE to avoid an interpretation where every possible point of view must be represented for a DFR to proceed. (Joint Commenters, No. 112, at p. 11; Lennox, No. 133, at p. 5) Lennox also commented that ''DOE should not mandate the need for separate 'consumer' representation for a joint proposal.'' (Lennox, No. 133, at p. 5)

As for DOE's proposal to determine, after seeking public comment through a

Federal Register notice, whether a DFR was submitted by parties ''that are fairly representative of relevant points of view'' on a case-by-case basis, CEC and Signify agreed that the determination should be made on a case-by-case basis. (CEC, No. 121, at p. 12; Signify, No. 116, at p. 2) CEC, however, opposed the addition of a public comment period as it would add process and delay without adding any meaningful opportunity for input. (CEC, No. 121, at p. 12) NPCC commented that there may not always be a need for a public comment period and encouraged DOE to assess the need for that step on a case-by-case basis. (NPCC, No. 94, at p. 7)

In response, DOE notes that any concerns about whether a DFR was submitted by parties ''that are fairly representative of relevant points of view'' can be raised during the public comment period on the DFR. DOE will raise this issue as a specific topic on which it seeks input in the **Federal Register** notice publishing for public comment on any DFR. After receiving public comment DOE will determine if the submitting parties include, at a minimum, businesses, including small businesses, in the regulated industry/manufacturer community, energy advocates, energy utilities, as appropriate, consumers, and States. As for specific comments on which parties must be represented in a DFR, DOE agrees with AGA, APGA, and Spire that suppliers of the energy used by a covered product/equipment must be included, in relevant instances. This is reflected in DOE's list of mandatory parties to a DFR, which includes ''energy utilities, as appropriate.'' DOE does not agree with Lennox's comment that separate consumer representation is not necessary in a DFR. Consumer concerns do not necessarily overlap with those of manufacturers, efficiency advocates, or any of the other parties discussed previously. Finally, as the comment period for determining representativeness would occur during the time DOE analyzes the submission for other legal and analytical issues and considers preparation of a rulemaking document, it would not delay the decision to publish a DFR.

3. Adverse Comments

Simultaneous with the issuance of a DFR, DOE must also issue a NOPR containing the same energy conservation standards as in the DFR. Following publication of the DFR, DOE must solicit public comment for a period of at least 110 days; then, not later than 120 days after issuance of the DFR, the Secretary must determine whether any adverse comments ''may provide a reasonable basis for withdrawing the direct final rule,'' based on the rulemaking record. (42 U.S.C. 6295(p)(4)(B), (C)(i)) In the past, to determine whether a comment was sufficiently ''adverse'' so as to provide a reasonable basis for withdrawal of the direct final rule, DOE weighed the substance of any adverse comment received against the anticipated benefits of the consensus agreement and the likelihood that further consideration of the comment would change the result of the rulemaking (referred to as the ''balancing test''). This approach was outlined in recent DOE rulemakings, such as DOE's final rule for energy conservation standards for dishwashers. 77 FR 59712, 59714 (Oct. 1, 2012).

In the February 2019 NOPR, DOE proposed to consider the substance of adverse comments and not the quantity when determining if there is a reasonable basis for withdrawing the DFR. For instance, one comment may present an argument that could lead DOE to conclude that it is an adverse comment providing a basis for withdrawal of the DFR. Moreover, in contrast to previous policy, DOE also proposed to consider adverse comments even if the issue was brought up previously during DOE-initiated discussions (*e.g.* publication of a framework or RFI document) that preceded submission of a joint statement. In short, if DOE determines that one or more substantive comments objecting to the final rule provides a sufficient reason to withdraw the DFR, DOE will do so, and instead proceed with the published NOPR (which could include withdrawal of that NOPR, as appropriate). (84 FR 3910, 3930)

DOE received numerous comments on the revised approach to determining whether an adverse comment provides a reasonable basis for withdrawing a DFR. Acuity and AGA supported the revised approach's focus on the substance of the adverse comments, as opposed to the quantity of the adverse comments. (Acuity, No. 95, at p. 5; AGA, No. 114, at p. 25)) AGA also stated that speculative and unsupported assertions may not warrant the withdrawal of a DFR, but positions supported by the material submitted in the proceeding and precedent should be provided sufficient weight when balancing differing interests. (AGA, No. 114, at p. 25) APGA stated that the bar for withdrawal is ''very low'' and any serious and substantive objections to a DFR that are reasonably backed by argument—even if the Secretary disagrees with them—should be deemed to provide a reasonable basis for withdrawing the DFR. (APGA, No. 106, at p. 9) Spire commented that DOE should withdraw a DFR if any interested party submits comment that opposes the adoption of a DFR as written and provides relevant information or argument as a basis for such opposition. This approach would define ''adversity'' in simple, easily-applied terms, and—consistent with both the statutory language and the principle that exceptions to notice and comment requirements should be narrowly construed—it requires that any doubt be resolved in favor of withdrawal of a DFR when comment reflects substantive opposition.'' (Spire, No. 97, at pp. 2–3) GWU commented that moving away from the balancing test is a positive development, since DFRs constrain public input in the rulemaking process. (GWU, No. 132, at p. 9)

The CA IOUs, on the other hand, commented that the balancing test ''for evaluating adverse comments to DFRs was an effective approach and DOE's language reversal could allow a single commenter to derail the DFR process, even if that commenter had previous opportunities to submit adverse comments. The CA IOUs also requested that DOE provide more clarity on what constitutes a ''substantive'' comment in this setting, especially in light of DOE reserving the right to consider a previously-issued adverse comment as ''substantive'' enough to prevent finalization of a DFR. (CA IOUs, No. 124, at p. 13) The Joint Commenters and Lennox encouraged DOE to maintain flexibility in determining the quantity and quality of comments considered ''adverse.'' (Joint Commenters, No. 112, at p. 11; Lennox, No. 133, at p. 5) CEC opposed DOE's proposal to withdraw the DFR upon receiving any substantive adverse comment that provides a ''sufficient reason'' to withdraw the DFR, even if that comment raises issues previously considered by DOE and resolved. CEC further commented that this approach does not offer any clarity on what DOE considers to be 'substantive' or 'adverse,' and could result too easily in ideologically opposed stakeholders commenting on DFRs, using the exact arguments considered and rejected in earlier comment periods, to ensure that the DFRs are withdrawn. (CEC, No. 121, at p. 12)

In response, DOE notes that the focus on the substance, as opposed to quantity, of adverse comments, is designed to ensure that DOE considers adverse comments that may provide a reasonable basis for withdrawing a DFR. Thus, numerous speculative and unsupported assertions will not constitute a reasonable basis for

withdrawing a DFR, while one, well-supported comment may provide a reasonable basis for withdrawing a DFR. With regards to issues previously raised during the rulemaking process (*e.g.,* in response to a framework document or RFI), DOE recognizes that facts and circumstances may change or new information may come to light, and, as a result, DOE will not foreclose consideration of adverse comments that address issues previously raised during the rulemaking process.

L. Negotiated Rulemaking

Negotiated rulemaking is a process by which an agency attempts to develop a consensus proposal for regulation in consultation with interested parties, thereby addressing salient comments from stakeholders before issuing a proposed rule.[25] Consequently, when done properly, negotiated rulemaking can yield better decisions, while conserving time and resources of both the agency and interested parties. To facilitate potential negotiated rulemakings, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (*i.e.,* ASRAC) to comply with the Federal Advisory Committee Act (''FACA''), Public Law 92–463 (1972) (codified at 5 U.S.C. App. 2). As part of the DOE process, working groups have been established as subcommittees of ASRAC, from time to time, for specific products, and one member from the ASRAC committee attends and participates in the meetings of a specific working group. Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement. The negotiated rulemaking process allows real-time adjustments to the analyses as the working group is considering them. Furthermore, it allows parties with differing viewpoints and objectives to negotiate face-to-face regarding the terms of a potential standard. Additionally, it encourages manufacturers to provide data for the analyses in a more direct manner, thereby helping to better account for manufacturer concerns. While negotiated rulemaking is not a topic directly addressed by the current Process Rule, the Process Rule does recognize the value and encourage submission of joint stakeholder recommendations.

In the February 2019 NOPR, DOE proposed to include a section on negotiated rulemaking in the updated Process Rule. In the proposed section on negotiated rulemaking, DOE stated that negotiated rulemakings would go through the ASRAC process outlined above, and that the appropriateness of a negotiated rulemaking for any given rulemaking would be determined on a case-by-case basis. In making this determination, DOE proposed to use a convener to ascertain, in consultation with relevant stakeholders, whether review for a given product or equipment type would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter. DOE also proposed that the following five factors would weigh in favor of a negotiated rulemaking: (1) Stakeholders commented in favor of negotiated rulemaking in response to the initial rulemaking notice; (2) the rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data; (3) the current standards have already been amended one or more times; (4) stakeholders from differing points of view are willing to participate; and (5) DOE determines that the parties may be able to reach an agreement. If a negotiated rulemaking is initiated, DOE proposed to have a neutral and independent facilitator, who is not a DOE employee or consultant, present at all ASRAC working group meetings. Additionally, DOE proposed to set aside a portion of each ASRAC working group meeting to receive input and data from non-members of the ASRAC working group. Finally, DOE stated that a negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR. Further, any potential term sheet upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule is authorized. (84 FR 3910, 3950)

In response, several commenters expressed their support for the negotiated rulemaking process and its inclusion in the Process Rule. (*See, e.g.,* A.O. Smith, No. 127, at p. 5; AGA, No. 114, at p. 26; CEC, No. 121, at p. 13) In supporting the inclusion of negotiated rulemaking in the Process Rule, CEC stated that negotiated rulemakings open up the discussion between interested parties on challenging but resolvable issues in potential standards or test procedures, reduce the risk of litigation on the rule, allow for public input, and reduce DOE's burden in having to prepare multiple regulatory documents through the ordinary rulemaking process. (CEC, No. 121, at p. 13) GWU, on the other hand, commented that notice-and-comment procedures are more likely to produce meaningful public participation at a more effective time in the process than a negotiated rulemaking process. (GWU, No. 132, at 10).

DOE recognizes that, as GWU alluded, a negotiated rulemaking puts the onus on the public to participate in the rulemaking process in a different manner than through traditional notice-and-comment rulemaking. However, DOE believes that this concern is greatly mitigated by the benefits to the data gathering and analytical process that are accomplished through face-to-face discussion of complex technical issues that occur through negotiated rulemaking. The agency is committed to setting aside a portion of each ASRAC working group meeting to receive input and data from non-members (*i.e.,* the public). Further, DOE agrees with the benefits cited by CEC and the Process Rule is amended to include a section on negotiated rulemaking.

With regards to appointing a convener, AGA commented that the Process Rule should make clear that, prior to initiating a negotiated rulemaking, DOE will, pursuant to the APA, appoint a convener to: (i) Identify persons who will be significantly affected by a proposed rule; and (ii) conduct discussions with such persons to identify their issues of concern and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. (AGA, No. 114, at pp. 26–27) CEC was neutral on whether to engage a convener, but cautioned DOE against using a process that would result in unnecessary delays. (CEC, No. 121, at p. 14) NPCC commented that a convener is not needed in all cases. (NPCC, No. 94, at p. 8) Lennox sought revision of section 11(a)(3) that, independent of the convener's report, DOE can still proceed with a negotiated rulemaking based on the five proposed criteria. (Lennox, No. 133, at pp. 3–4)

As for the five factors DOE listed previously that would weigh in favor of a negotiated rulemaking, the Joint Commenters reiterated their support for the factors, while CEC recommended that the five factors be used as a balancing test rather than as a strict set of requirements for whether a negotiation would work. (Joint Commenters, No. 112, at p. 11; CEC, No. 121, at p. 14) CEC and the CA IOUs also recommended excluding the criterion limiting negotiated rulemakings to

[25] This process is conducted in accordance with the requirements of the Negotiated Rulemaking Act (''NRA''), Public Law 104–320 (5 U.S.C. 561–570).

products/equipment that have already undergone one or more rounds of rulemaking. (CEC, No. 121, at p. 14; CA IOUs, No. 124, at p. 14)

DOE notes that these five factors are not a required check-list for convening a negotiated rulemaking. Rather, they are simply additional factors (to the convener's report) that will help DOE determine if a negotiated rulemaking is appropriate. With regards to comments that DOE should eliminate the factor limiting negotiated rulemakings to products/equipment that have already undergone one or more rounds of rulemaking, DOE notes that this factor is not a requirement and it does not exclude newly covered products from being the subject of a negotiated rulemaking. Further, DOE believes that there is an advantage to focusing negotiated rulemakings on products/equipment that already have standards as DOE will already have a good grasp on which parties should be included in the working group and manufacturers will already be familiar with DOE's regulatory scheme. On the other hand, if DOE engages in negotiated rulemaking for newly covered products, DOE may be able to gather data and information about the product and vet issues applicable to such product more effectively than through traditional notice and comment rulemaking. This is why these factors are listed as considerations rather than requirements.

In regards to DOE's proposal that an independent, neutral facilitator (who cannot be a DOE employee) be present at all ASRAC working group meetings, several commenters expressed their support. For example, Acuity stated that a neutral, qualified facilitator is essential for a successful negotiated rulemaking process. A facilitator helps ensure that processes are followed and that all participants have an equal opportunity to contribute to the discussion. (Acuity, No. 95, at p. 6) Similarly, BWC commented that use of an experienced facilitator will enable the working group to . . . work towards an amenable consensus. (BWC, No. 103, at p. 4) DOE agrees with these comments as it has found independent, neutral facilitators to be essential in moving working group discussions along and reaching consensus.

With respect to DOE's proposal that a dedicated portion of each ASRAC working group meeting will be set aside to receive input and data from non-members of the ASRAC working group, AGA commented that allowing for public comment before the working group will help ensure the participation of all relevant interests in the process. (AGA, No. 114, at p. 27). DOE agrees with this comment.

Finally, DOE received numerous comments on its proposal that any negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR, but instead a proposed rule that complies with the provisions of EPCA, under which the rule is authorized. The majority of commenters opposed this proposal. For example, ACEEE stated that a negotiated rulemaking should be able to result in a Direct Final Rule. If the outcome of a formal negotiated rulemaking meets the statutory requirements for a Direct Final Rule, the Department should be able to use that process to issue the standard. Banning it makes a consensus agreement less likely. (ACEEE, No. 123, at p. 2) The Joint Commenters generally agreed with DOE's negotiated rulemaking proposals with the exception of DOE's proposed discontinuance of DFRs. (Joint Commenters, No. 112, at p. 11) NPCC commented that abandoning the use of direct final rules in all cases—rather than retaining the flexibility to use DFRs when appropriate following a negotiated rulemaking—will simply result in prolonging the agency process, increasing the agency's own costs often to no useful end, and increasing the regulatory process burden on manufacturers and other stakeholders rather than reducing it. (NPCC, No. 94, at p. 8) Some commenters did express support for DOE's proposed plan to separate DFRs and negotiated rulemakings. GWU commented that the decision to separate DFRs and negotiated rulemaking and establish that the outcome of negotiated rulemaking would be a proposed rule are positive developments. (GWU, No. 132, at p. 10) AGA also supports DOE separating DFRs from negotiated rulemakings and requiring that the outcome of a negotiated rulemaking be a proposed rule, subject to a comment period. (AGA, No. 114, at p. 27)

As stated in the February 2019 NOPR, DOE is modifying its negotiated rulemaking process to be more consistent with the NRA which contemplates that the committee will transmit to the agency a report containing a proposed rule (or more applicable in DOE's use of the process, a term sheet specifying the potential standard levels to be incorporated into a proposed rule). If the Department determined to act on the term sheet, it would be in the form of a proposed rule open for notice and comment rather than a direct final rule.

M. Other Revisions and Issues

1. DOE's Analytical Methodologies, Generally

After considering the many comments on its analytical methodology in the Process Rule RFI, DOE explained in the Process Rule NOPR its plan to convene an expert independent peer review (consistent with OMB's Information Quality Bulletin for Peer Review [26]) of its assumptions, models, and methodologies to ensure that its approach is designed to provide projections that are sufficiently rigorous for their intended use. 84 FR 3910, 3936–3938 (Feb. 13, 2019). The goals of the peer review are to assess whether any changes are needed to the agency's analytical methodologies and potentially to the Process Rule. In order to ensure that the analytical models and approaches that DOE regulatory uses are as up-to-date and accurate as possible, DOE committed to undertaking a recurring peer review of the Department's analytical methods at least once every 10 years. DOE tentatively concluded that the investment of resources in both immediate and long-term peer review by the Department and interested parties would help improve the overall rulemaking process and ensure the credibility and validity of the results of that process. DOE also committed to making its peer review available to the public, and during its initial peer review meeting on November 19–20, 2019, provided the public with an opportunity to observe and raise issues for peer reviewers' consideration. The Process Rule NOPR went on to identify and discuss 12 potential focus areas for the peer review, including:

- Analytical time horizon(s)
- Baseline efficiency estimates
- Consumer choice model
- Emissions analysis
- Fuel switching analysis
- Indirect employment effects
- Marginal manufacturer mark-up
- Product price forecasts
- Product performance
- Subgroup analysis
- Use of proprietary data
- Welfare analysis and deadweight loss

DOE requested comments and other relevant information on these topics, as well as other related issues which stakeholders wish to raise. The Department explained that any potential changes to the Process Rule that might be appropriate based on the results of the peer review and any methodological

[26] 70 FR 2664 (Jan. 14, 2005) (Available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2005/m05-03.pdf).*

updates would be addressed in a subsequent proceeding. (For a more detailed discussion of DOE's past and planned peer reviews, please consult the relevant discussion in the February 13, 2019 Process Rule NOPR at 84 FR 3910, 3936–3938.)

In response to the Process Rule NOPR, DOE received a variety of comments from approximately 22 discrete commenters regarding its analytical methodologies, with recommendations that, in many cases, that are both detailed and specific. These submissions generally fell into one of several discrete areas—peer review, DOE's analytical methodologies generally (*e.g.,* transparency of models and assumptions, public access to data, discount rates, marginal energy prices, life-cycle cost and payback period issues, the screening analysis, use of proprietary data, the Social Cost of Carbon), and the walk-down approach to standard-setting.

For the reasons discussed subsequently, DOE has decided as part of this final rule to move forward with a peer review of its analytical methodologies, models, and assumptions, so DOE will summarize and respond to the peer review comments it received on the Process Rule NOPR in the paragraphs below. Likewise, DOE will summarize and respond to the comments on its proposed walk-down approach to standard setting, because any upcoming energy conservations standards rulemaking would confront that part of the rulemaking process and require a path forward. However, the Department is not addressing the other substantive comments on and critiques of its analytical methodologies and models in this final rule, because those are the types of issues that will be addressed during the course of the peer review and stakeholders will have a separate opportunity to weigh in on that proceeding. Relevant comments on those topics submitted to the docket for this rulemaking will be referred to the independent expert peer reviewers to be addressed as part of their charge in that separate proceeding.

a. Peer Review

As noted previously, peer review was a topic of discussion in the Process Rule NOPR, because DOE identified that approach as a suitable and effective way to evaluate the concerns raised by various stakeholders about the agency's analytical methodologies. 84 FR 3910, 3936–3938 (Feb. 13, 2019). The Department foresees both an immediate peer review of its analytical methodologies, as well as recurring peer review over a longer term (*e.g.,* every 10 years). Overall, commenters on the Process Rule NOPR expressed support for DOE's plans to conduct a peer review of it analytical methodologies, although one commenter (Spire) expressed some misgivings as to the Department's ability to conduct such review in a fair and effective fashion. The following comments focused on the peer review itself (rather than the subject matter to be addressed by the peer review).

A number of commenters expressed general support for DOE's planned peer review of its analytical methodologies, including Acuity and NAFEM. (Acuity, No. 95, at p. 6; NAFEM, No. 122 at p. 7) APGA also expressed support for a peer review, which it believes will allow stakeholders to have assurance that the standards development process is based on sound scientific and economic data and methods. (APGA, March 21, 2019 Public Meeting Transcript at p. 15) Likewise, Energy Solutions stated that it supports DOE's plans for peer review, suggesting that product price forecasts should be one of the focus areas for that review. (Energy Solutions, April 11, 2019 Public Meeting Transcript at p. 156)

Other commenters stated support for DOE's planned peer review and followed up with additional thoughts and recommendations regarding that process. Some of those commenters focused on the peer review to be conducted in the near term, while others concentrated on the long-term, recurring peer review, and some addressed both.

Focusing on the need for an immediate peer review, AGA recommended that DOE conduct a peer review of its assumptions, models, and methodologies as soon as possible to ensure that its processes are current. By not conducting peer reviews in a timely manner, AGA argued that the Department deprives the public of certain regulatory protections—such as standards based on current scientific information that has been tested impartially and deemed appropriate and reliable by a group of relevant experts. For example, the commenter stated that the regulatory guidelines established by the Office of Management and Budget (OMB) require a peer review of any changes to scientific data and/or methodologies used in the development of rules or regulations. Specifically, AGA noted that OMB's Final Information Quality Bulletin for Peer Review requires each Federal agency to conduct a peer review of all influential scientific information that the agency intends to disseminate. Because the Technical Support Documents (TSDs) that the Department relies on when issuing a proposed and final standard contain influential scientific information that DOE has disseminated, AGA concluded that such information should be peer reviewed and up-to-date. AGA also considered the long term and expressed support for the Department conducting a peer review, at least once every ten years, of its assumptions, models, and methodologies to ensure that its approach is designed to provide reasonable, accurate projections. (AGA, No. 114 at pp. 28–29)

Likewise focusing on the immediate peer review, the Joint Commenters and AHRI strongly urged DOE not to delay in commencing its peer review of its analytical methodologies. (Joint Commenters, No. 112 at p. 12; AHRI, April 11, 2019 Public Meeting Transcript at p. 157) The Joint Commenters asserted that the current DOE methodologies are seriously flawed. Furthermore, the Joint Commenters stated that a sound peer review process should be conducted by a third-party panel, not by DOE. (Joint Commenters, No. 112 at p. 12) In furtherance of this point, the Joint Commenters suggested several principles to guide the peer review process including: (1) The composition of the peer review panels must include people who are technically competent to review economic, cost, energy, and other matters. The composition of the panels should be determined in a public process with advice and comment from the public on the panels' composition; (2) The members of the peer review panels should conform to the standards for ''Highly Influential Scientific Assessments;'' (3) The peer review panels should not be constrained by the twelve topics identified by DOE, but these should instead be viewed as a minimum scope. The peer review panels should look at DOE's analytical processes with a clean slate. Additional topics for consideration may include consumer discount rates, the use of learning and experience curves in projecting future product prices, mark-ups across the total chain from factory to consumer, and the definition of maximum technically feasible product configuration; (4) The peer review panels should hold hearings to help guide them in determining which topics they should pursue and what alternatives they should consider; and (5) The peer review panels should present their tentative findings for public review and comment prior to finalizing their reports. (Joint Commenters, No. 112 at p. 13–14)

Lennox and AHRI echoed some of the points raised by the Joint Commenters. Lennox commented that DOE's peer review should be transparent, with stakeholders such as industry allowed to provide input, and peer review panels should present their tentative findings for public review and comment prior to finalizing their reports. (Lennox, No. 133 at pp. 8–9) Although commending DOE on beginning a peer review process, AHRI made a similar point urging the Department to open up the process of selecting a peer review panel by getting interested parties to comment on the charter and the candidates for the peer review panel. AHRI added that it does not agree that one of the 12 focus areas should be incremental margins at the manufacturer level, a concept which it believes is flawed and should be removed. (AHRI, April 11, 2019 Public Meeting Transcript at pp. 146–148) Instead, AHRI recommended that peer review should look at the whole modeling effort. (AHRI, April 11, 2019 Public Meeting Transcript at p. 158)

Regarding long-term peer review, APGA stated that it is in favor of a recurring peer review of DOE's analytical assumptions, models, and methodologies, at least once every 10 years, so as to ensure that such analyses are based on sound scientific and economic data. The commenter stated that such approach is consistent with OMB's regulatory guidelines and its Final Information Quality Bulletin for Peer Review. However, APGA reiterated its belief that DOE's models are too complex and burdensome and urged replacing the current complicated life-cycle cost analysis with a simple payback analysis based on real numbers''. (APGA, No. 106 at pp. 10–12)

Finally, Spire's comments reflected some skepticism of DOE's efforts to conduct a peer review of its analytical methodologies and urged caution to ensure a fair and balanced outcome. More specifically, one representative of Spire criticized peer review as a useless appendage of the past. (Spire, April 11, 2019 Public Meeting Transcript at p. 145) However, another Spire representative expressed mixed feelings about peer review, suggesting that it can be helpful with some types of issues but stating that there are a lot of issues where it is not suitable. (Spire, April 11, 2019 Public Meeting Transcript at pp. 149–150) Spire indicated that a peer review within the context of setting standards for regulated appliances continues to be problematic when DOE selects ''experts'' whose interests are already aligned with EERE's ''clean energy'' mission. As a result, the commenter suggested that DOE should eliminate peer reviews until fundamental changes are made, such as reconvening its general purpose advisory board as laid out in the 1996 Process Rule. (Spire, No. 139 at p. 7) (DOE notes that it is unclear what Spire is referring to here.) Spire argued that the peer review process under DOE's current approach would not have identified in a timely manner the means by which DOE uses to justify a given standard through its LCC analyses. (Spire, No. 139 at p. 8) Spire added that the multiple adverse effects it identified in its comments would have cumulative impacts on consumers as the time period between peer reviews lengthens. Rather than conduct periodic peer reviews, Spire recommended that DOE should adopt a ''Continual Improvement Process'' to change the frequency of reviews and reconsider the make-up of its advisory committee, given what the commenter characterizes as ASRAC's current lack of ''requisite diversity.'' (Spire, No. 139 at pp. 9–10) As part of its suggestion that DOE apply a continuous improvement approach, Spire stressed that there should be independent review of the agency's ''misuse'' of Monte Carlo simulations, as well as other DOE methodologies that Spire alleged distort the Department's determinations and drive unwarranted increases in energy efficiency. (Spire, No. 139 at p. 10)

In response, DOE appreciates the many thoughtful comments it received on peer review of its analytical methodologies, models, and assumptions. The Department agrees with the commenters as to the importance of using the best available scientific, technical, and economic data that contribute to it decision-making when setting energy conservation standards. Because such standards typically generate significant public benefits and costs to the regulated community, it is incumbent upon DOE to utilize the best available data and practices in developing such standards. Given the passage of time since the last peer review of the Appliance Standards Program, DOE has commenced a new peer review, but it also plans to conduct an ongoing, periodic peer review on a 10-year cycle. Because the technical support documents for energy conservation standards rulemakings contain influential scientific/technical/economic information that underpins DOE's standards, it is crucial that such information be current, validated, and of high quality. Although it is DOE's position that its data, methods, and models already meet the requirements of OMB Circular A–4 [27] and the Information Quality Act,[28] the Department is committed to ensuring that its analytical models and methodologies continue to meet a high standard of integrity and to be based on sound scientific methods and principles. DOE believes that peer review advances this objective and is consistent with the principles of good government, and consequently, the agency is moving expeditiously to commence its next review. Such action should also satisfy DOE's obligations under OMB's Final Information Quality Bulletin for Peer Review.

DOE further agrees with commenters that this peer review should be part of an open and transparent process, with opportunities for public input and public availability of the recommendations made by the reviewers. The Department also agrees that the peer review should be conducted by independent, third-party experts drawn from the relevant disciplines. DOE would make clear that the peer reviewers are not limited to consideration of the 12 topic areas mentioned in the Process Rule NOPR, but they instead have license to conduct a comprehensive review of the models, methodologies, and assumptions used in DOE's rulemakings. Those peer reviewers would be free to consider relevant subjects presented by DOE, public comments, and other stakeholder input, as well as those identified by their own initiative. DOE will also ensure that there is an opportunity for public engagement with the peer reviewers as part of this process. The Department believes that such approach will ensure that it is receiving an objective and unbiased assessment of its analytical methodologies and models, while inspiring public confidence along those same lines. To this end, DOE has contracted with the National Academy of Sciences (NAS) to independently conduct its peer review. All information and announcements regarding this peer review, including the group's charter, topics to be addressed, announcements of public meetings, and availability of the final peer review report, are available via the NAS website. Any necessary changes to the Process Rule arising from the peer review and methodological updates will be addressed in a separate proceeding.

[27] Available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[28] Section 515 of Public Law 106–554. OMB issued final guidelines to implement the Information Quality Act on February 22, 2002 (67 FR 8452) (available at: *https://www.govinfo.gov/content/pkg/FR-2002-02-22/pdf/R2-59.pdf*).

DOE disagrees with Spire as to the value of a peer review of DOE's analytical methodologies, and the agency expects that an independently conducted peer review, as DOE envisions and presents here, will alleviate many of Spire's concerns. In addition, DOE notes that it is not officially adopting Spire's recommendation for a ''continual improvement process,'' although the Department is always open to constructive feedback about its processes. Interested parties are free to raise methodological issues as part of their public comments on various rulemakings or to bring the matter to DOE's attention through other correspondence. DOE will carefully consider such comments, and in appropriate cases where the agency finds merit, it may take action outside the normal 10-year peer review cycle. In such cases, options might include immediate corrective action, initiation of rulemaking, or early commencement of the next peer review cycle.

b. Walk-Down

In the Process Rule NOPR, DOE specifically sought comment on its ''walk-down'' approach to assessing different potential standards. DOE explained that using this approach, DOE starts from the most stringent choice to determine both economic justification and technological feasibility by ''walking-down'' through the available choices by stringency until arriving at the first choice that meets all of the statutory criteria. In the proposal, DOE noted that economic theory suggests that the most logical way to determine if a particular option is ''economically justified'' is to compare it to the full range of available choices, rather than just one baseline. Applying economic theory, DOE proposed at 10 CFR part 430, subpart C, appendix A, sec. (7)(e)(2)(G) to require the Secretary to determine whether a candidate/trial standard level would be economically justified when compared to the full range of other feasible TSLs. The proposal stated that in making this determination, the Secretary is to consider whether an economically rational consumer would choose a product meeting the candidate/trial standard level over products meeting the other feasible TSLs levels after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. If an economically rational consumer would not choose the candidate TSL after considering these factors, it would be rejected as economically unjustified. This approach would recognizes that the ''economic justification'' of any particular option depends on a broader comparison of economic attributes relative to other available options, rather than relative to just one baseline, particularly one that is likely to be of little relevance to a consumer when choosing which product(s) are economically justified for their purchase. Rather that person is likely to be focused on the set of actually available products at the time of purchase, rather than some hypothetical baseline representing the set of products that would have been available in the absence of the standard (including perhaps the model currently being replaced). DOE sought public comment on its proposal to refine the ''walk-down'' approach to require determinations of economic justification to consider comparisons of economically relevant factors across TSLs, consistent with both economic theory and the actual purchasing behavior of rational consumers. (84 FR 3910, 3938)

DOE received a substantial amount of comment on its proposal related to the walk-down and as a consequence is issuing a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** to further clarify amendments to the walk-down approach. Although one commenter supported DOE's proposal as presented (APGA), the rest of the comments on this topic generally ranged from neutral (citing a lack of information necessary to comment and move forward) to strongly negative (arguing that the proposed approach would be illegal under EPCA). These comments are summarized below, followed by DOE's response.

Alone among the commenters, APGA expressed unqualified support for DOE's proposal to modify its walk-down approach to standard setting. The commenter explained how it has long complained that DOE uses a materially-flawed analysis which the commenter argued overstates potential benefits of standards and underestimates their costs, thereby failing to meet EPCA's requirements for economic justification. APGA stated that in order to determine whether a potential standard is economically justified, it should be compared to the full range of available consumer choices reflected by the entire suite of TSLs. (APGA, No. 106 at pp. 12–13)

A number of other commenters expressed varying degrees of theoretical support for potential modifications to DOE's walk-down but concluded that the Process Rule NOPR did not present enough detail or explanation to support a change at this time. Among this group, AHAM stated that because DOE's walk-down proposal was not sufficiently clear and fully articulated, it was not in a position to comment at this time, but it added that the concept should not be discarded. However, AHAM concluded that just because the walk-down proposal is not fully developed, that should not slow down consideration and finalization of the rest of the Process Rule proposal. (AHAM, April 11, 2019 Public Meeting Transcript at p. 169) Similarly, a representative for AHAM, AHRI, and the Joint Commenters stated that it is impossible to evaluate DOE's walk-down proposal and that commenters would need more information before they could do so, such as by the agency publishing an example as to how the revised process would work. (Everett Shorey, April 11, 2019 Public Meeting Transcript at p. 174)

NYU Law stated that DOE's proposed replacement of its walk-down approach with an ''economically rational consumer'' test is insufficiently defined and inadequately justified. NYU Law noted the following reasons to support its opinion: The Department vaguely alludes to ''economic theory'' but provides no citations; it does not detail how it is defining a ''rational consumer'' or how the test will be conducted; it does not explain whether or how the new test will weigh important social externalities; and it does not provide any illustrations or guidance on how the new test will compare to the old one. Accordingly, the commenter concluded that DOE has failed to sufficiently justify its proposal and has not provided the public with enough information to offer meaningful comments. (NYU Law, No. 119, at p. 1)

Likewise, NAFEM stated that it is not expressing any view as to the proposed ''walk-down'' approach specifically. However, NAFEM commented generally that it does support approaches that evaluate customer choice based on models that are economically viable with commercially available technologies contemporaneously with the review, rather than purely theoretical models based on technologies that may or may not be available in the future. (NAFEM, No. 122 at p. 7)

NEMA stated that while it is not opposed to considering the behavior of consumers as part of the walk-down to determine the economic justification of potential standards, it would need to know more about how such approach would work in regulatory practice. NEMA expressed concern that different perspectives about the ''rational consumer'' are capable of being variably

applied, and consequently, it recommended that DOE approach this issue on a case-by-case basis in rulemakings where there is an opportunity for notice and comment. Thus, NEMA suggested that these principles would need to evolve before being incorporated into the Process Rule. (NEMA, No. 107 at pp. 7–8)

Southern Company characterized the Process Rule NOPR's walk-down proposal as a major improvement, particularly since it deemed consumer discount rates to have been significantly underestimated in the past. (Southern Company, April 11 Public Meeting Transcript at p. 162) However, Southern Company ventured that the topic of the walk-down proposal is likely to be very intertwined with methodological issues that are being handled in a separate proceeding, and the commenter added that it would like to see a separate proceeding conducted every three or four years on the economic assumptions that are being used in different rulemakings. (Southern Company, April 11 Public Meeting Transcript at pp. 170) Spire expressed support for these comments of Southern Company, echoing the need for further details and perhaps a definition of ''economically rational consumer.'' [29] (Spire, April 11, 2019 Public Meeting Transcript at p. 163) Nonetheless, Spire viewed DOE's proposal as an attempt to improve the *status quo* which has prevailed for many years. (Spire, April 11, 2019 Public Meeting Transcript at p. 168)

Similarly, AHRI stated that it would be interested to see what DOE comes up with and what it thinks is advisable to consider in terms of the walk-down proposal. The trade association concluded that the walk-down proposal does not currently provide enough information to allow it to offer meaningful comment, although the organization noted that it looks forward to subsequently seeing the agency's analysis and a more formal proposal. (AHRI, April 11, 2019 Public Meeting Transcript at pp. 165–166) AHRI commented that it does not think the walk-down approach is statutorily mandated, and it also pointed out that the language ''maximum improvement in energy efficiency that is technologically feasible and economically justified'' only applies to consumer products, not to commercial equipment. Thus, AHRI suggested that DOE has more flexibility with commercial equipment and that it has the authority to reconsider its economic justification analysis. (AHRI, April 11, 2019 Public Meeting Transcript at pp. 172–173)

The Joint Commenters expressed their support for a full consideration of the consumer choice frameworks used by the DOE, including both the current ''walk-down'' and alternatives, as well as the random assignment of base-case efficiencies currently used in the life-cycle costing analysis. These commenters made clear that they are not taking a position on the proposed ''walk-down'' approach and alternatives until all possible approaches have been reviewed in the context of how they would affect particular analyses. According to the Joint Commenters, the complexity and subtlety of translating theoretical approaches to practical situations are high and fraught with unintended consequences. Thus, the Joint Commenters suggested that this subject should be addressed during the peer review process. (Joint Commenters, No. 112 at p. 14)

The balance of the comments opposed DOE's walk-down proposal to move from its current analytical methodology and walk-down standards selection process to an ''economically rational consumer'' test, as presented in the Process Rule NOPR, for a variety of reasons. (ASE, No. 108 at pp. 6–7; ACEEE, April 11, 2019 Public Meeting Transcript at pp. 171–172; ASAP, et al., No. 126 at pp. 15–16; AGs Joint Comment, No. 111 at pp. 15–16; Earthjustice, No. 134 at p. 5; NRDC, No. 131 at pp. 15–17; NPCC, No. 94 at p. 8; Cal-IOUs, No. 124 at p. 14; PG&E, April 11, 2019 Public Meeting Transcript at pp. 164–165; Southern California Edison, April 11, 2019 Public Meeting Transcript at p. 222; CEC, No. 121 at p. 14; CT–DEEP, No. 93 at p. 4)

More specifically, many commenters were concerned that DOE did not define the term ''economically rational consumer'' in the NOPR. (ASE, No. 108 at pp. 6–7; ACEEE, April 11, 2019 Public Meeting Transcript at pp. 171–172) ASAP (and others) argued that particularly because DOE did not define that key term, it is unclear precisely what DOE is proposing for a revised walk-down methodology, so the organization does not know how to comment. (ASAP, April 11, 2019 Public Meeting Transcript at pp. 166–167; AGs Joint Comment, No. 111 at pp. 15–16; NRDC, No. 131 at pp. 15–17) ACEEE added that if DOE were to choose to move forward with this concept, a supplemental NOPR would be required. (ACEEE, April 11, 2019 Public Meeting Transcript at pp. 171–172)

Even if the term ''economically rational consumer'' were to be defined, some of the commenters expressed concerns with any such attempt. For example, ASAP, et al. argued that seeking to define who a ''rational consumer'' is and to assess what choices such a person would make would be fraught with problems, and the commenter reminded DOE that the NOPR provided no information about how DOE would make such determinations. (ASAP, et al., No. 126 at pp. 15–16) The AGs Joint Comment likewise stated that there is widespread skepticism surrounding the concept of the ''economically rational consumer'' because economists and social scientists recognize that many times consumers act irrationally, so this theory may not reflect real-world conditions. (AGs Joint Comment, No. 111 at pp. 15–16) NRDC argued that there are varying academic opinions regarding the decisions consumers make, whether an economically rational consumer exists, and the value of such a construct, so much energy and money could be lost if a standard is rejected simply because a consumer were to make an irrational choice under such test. (NRDC, No. 131 at pp. 17) Furthermore, NRDC asserted that the Process Rule NOPR's efforts to advance the concept of an economically rational consumer overlook the fact that not all consumers purchase their appliances or equipment (*i.e.,* renters), so the commenter questioned how, under this type of approach, DOE would account for the benefits of standards to low-income people or renters who would not necessarily be making purchasing decisions. (NRDC, April 11, 2019 Public Meeting Transcript at p. 164) Similarly, CT–DEEP opposed DOE's proposal walk-down approach based on what it characterized as a hypothetical and arbitrary 'economically rational consumer,' arguing that modern economic theory suggests that such consumer does not truly exist. (CT–DEEP, No. 93 at p. 4)

PG&E stated that the concept of a rational consumer is a difficult one to quantify and that it could potentially contribute error to DOE's analyses. More specifically, PG&E argued that the proposed change to the walk-down would add complexity to the analysis, and with more complexity would come the possibility of more mistakes. Furthermore, the commenter ventured that the relevant information may be unknown and would then require estimation. (PG&E, April 11, 2019 Public Meeting Transcript at pp. 164) Southern California Edison made a similar point that the proposal

[29] Although the transcript shows the commenter referring to an ''environmentally-rational consumer,'' DOE assumes that Spire meant to say ''economically-rational consumer'' in this context.

surrounding the rational consumer looks very difficult to quantify, which runs counter to the goal of making DOE's process more transparent. (Southern California Edison, April 11, 2019 Public Meeting Transcript at p. 222)

Several commenters in this group questioned how DOE could meet its statutory obligations under EPCA while following this new approach. ASE and ACEEE argued that Congress has mandated that the Department set standards at the maximum level that is technologically feasible and economically justified, and has specified seven considerations to be balanced in determining what is economically justified; the statute does not direct DOE to choose the most economically justified level. (ASE, No. 108 at pp. 6–7; ACEEE, April 11, 2019 Public Meeting Transcript at pp. 171–172; ACEEE, No. 123 at p. 4) ASAP, et al. explained its understanding of how DOE has implemented the current process by first looking at the ''max-tech'' level and evaluating whether that level is economically justified; if DOE concludes that that level is not economically justified, it proceeds to the next-highest level and makes the same evaluation until reaching a level (if any) that the Department determines is economically justified. The commenter expressed its opinion that the process used to date implements what the statute requires. Specifically, by starting at the ''max-tech'' level and working its way down, ASAP, et al. argued that the Department ensures that it does in fact adopt the maximum level that is technologically feasible and economically justified. (ASAP, et al., No. 126 at pp. 15–16) In contrast, ASAP and ASAP, et al. questioned that fact that the NOPR leaves unclear how DOE's proposed approach would fit with the statutory requirement to consider the seven factors in determining whether a standard is ''economically justified,'' except maybe factor 7 (*i.e.,* other factors the Secretary considers relevant). (ASAP, April 11, 2019 Public Meeting Transcript at pp. 166–167; ASAP, et al., No. 126 at pp. 15–16) ASAP stated that it cannot find a legal justification for the agency's proposed change to the walk-down or how one would conduct such revised walk-down from a process point of view, expressing unease with what appears to be DOE's suddenly reworking of how the entire standards process has been conducted for over 30 years. (ASAP, April 11, 2019 Public Meeting Transcript at pp. 166167) NPCC recommended that because the current walk-down approach (as described in the Process Rule NOPR) is consistent with the statutory directive that standards must be set at the maximum level of efficiency that is technically feasible and economically justified, no further refinement of this aspect of DOE's existing rulemaking process is needed. (NPCC, No. 94 at p. 8)

ACEEE argued that the current walk-down approach has a clear process of choosing the maximum improvement level required under the statute, but once the current process is abandoned in favor of a rational consumer approach, the commenter asserted that the Department would be ignoring the law, because the ''preferred'' level is not what is in the statute. (ACEEE, April 11, 2019 Public Meeting Transcript at pp. 171–172) On this point, ASAP, et al. similarly stated that DOE's proposed approach, as presented, would appear to instead hinge on whether an ill-defined ''economically rational consumer'' would choose a product meeting a certain efficiency level. (ASAP, et al., No. 126 at pp. 16) ACEEE expressed its view that the Department has not made clear how selection of a consumer's preferred level, among all the options, would yield the maximum level that meets the statutory criteria. Moreover, ACEEE argued that it is even less clear how consideration of a single consumer would incorporate, or would be incorporated with, the seven required considerations. As the Department has provided no information on how the rational consumer would make their choice, ACEEE opined that DOE's walk-down proposal also would introduce significant uncertainty and potentially arbitrary decisions for manufacturers and consumers (*e.g.,* What rational consumer will be considered, based on what financial situation, with what economic utilities? How will this be determined?). These considerations shaped ACEEE's view that the ''economically rational consumer,'' while well-studied in the economics literature, does not appear to be a concept in current Federal law, and, thus, it is a likely subject for litigation, if adopted. Consequently, ACEEE concluded that a theoretical, economically rational consumer cannot be used to choose an energy conservation standard level. (ACEEE, No. 123 at p. 4)

Still others characterized DOE's proposed walk-down approach more strongly; arguing either that the proposed approach is impermissible and illegal under EPCA or arguing that the current approach is legally mandated by EPCA. (AGs Joint Comment, No. 111 at pp. 15–16; Earthjustice, No. 134 at p. 5; NRDC, No. 131 at pp. 15–16; CEC, No. 121 at p. 14) Among this group, the AGs Joint Comment strongly disfavored DOE's use of an ''economically rational consumer,'' as arbitrary and capricious and inconsistent with EPCA. According to the AGs Joint Comment, DOE has failed to describe how it would conceive this purported rational consumer or detail how this approach would be put into practice. According to the AGs, DOE may only consider an ''economically rational consumer'' consistent with EPCA's payback presumption in 42 U.S.C. 6295(o)(2)(B)(iii), and diverging from that presumption in favor of a hypothetically economically rational consumer would violate EPCA. Furthermore, the AGs Joint Comment argued that EPCA already explains how consumer interests are to be addressed as one of the seven factors for economic justification, a consideration to be weighed but not to be valued predominantly or exclusively. (AGs Joint Comment, No. 111 at pp. 15–16)

Although Earthjustice suggested that the Process Rule NOPR's proposed changes shifting the focus of DOE's economic justification inquiry to a hypothetical ''economically rational consumer'' are not clearly explained in the NOPR, the commenter stated that any such change abandoning the walk-down approach the Department has long used to assess the economic justification for each TSL under consideration would be impermissible. Earthjustice stated that as the D.C. Circuit has explained, EPCA ''establishes a clear decision-making procedure'' that applies when DOE selects energy conservation standard levels (*citing NRDC* v. *Herrington,* 768 F.2d 1355, 1391 (D.C. Cir. 1985)). Specifically, the commenter stated that DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible, and if a standard at that level would be economically justified, DOE must set the standard there. Earthjustice added that if a standard requiring the maximum technologically feasible level would not be economically justified, DOE must set the standard at the next highest level that is both technologically feasible and economically justified. In that event, Earthjustice stated that EPCA requires DOE to explain specifically why a standard achieving the maximum technologically feasible improvement in efficiency was rejected (*citing Id.* at 1391–1392 (citations omitted)). To the extent the NOPR would substitute a different approach, the commenter

argued that that proposal is unlawful. Earthjustice stated that if that is not what DOE intended, the Department must provide stakeholders with a clear understanding of how the reliance on an ''economically rational consumer'' would change DOE's evaluation of whether a TSL is economically justified. (Earthjustice, No. 134 at p. 5) NRDC's comments used much the same logic as Earthjustice in opposing DOE's proposed ''walk-down'' approach, because in its view, such approach is prohibited by EPCA. According to NRDC, basing such decisions on an ''economically rational consumer'' is problematic for a number of reasons, particularly since EPCA does not permit DOE to prioritize an ''economically rational consumer'' test higher than other factors the agency is required to consider for economic justification. (NRDC, No. 131 at pp. 15–17)

In objecting to DOE's proposed change to the current walk-down analytical approach, the CEC argued that the factors for economic justification are described in, and limited to, those in EPCA, which makes no mention of an ''economically rational consumer'' for purposes of DOE's required analysis. Moreover, the CEC added that practical experience and results over decades of implementing the appliance efficiency program show that there is a need for efficiency standards to overcome information barriers, cost barriers, and corporate inertia that stymie the otherwise rational economic consumer. (CEC, No. 121 at p. 14)

Finally, BWC and the Cal-IOUs offered some suggestions as to other alternatives DOE might consider when revising its walk-down approach. BWC stated that it does not support DOE's proposed revised ''walk-down'' approach, but instead favors a ''walk-up'' approach that looks at the TSL just above the current standard (*i.e.,* the baseline). From there, BWC suggested that each level would be compared independently to the baseline. According to BWC, such approach would better reflect its experience that most consumers want the least expensive option that provides them the same utility as their current appliance. (BWC, No. 103 at p. 4)As an alternative to DOE's potential use of an ''economically rational consumer'' as part of the agency's analytical process (to which they objected), the Cal-IOUs instead suggested that DOE should align its approach with the one already in use in California—where energy efficiency measures are evaluated using the current standard as the baseline and to factor in natural market adoption in the measured case to prevent double-counting. (Cal-IOUs, No. 124 at p. 14)

In response, DOE recognizes that its walk-down proposal, as presented in the Process Rule NOPR, could be viewed as a fundamental shift in the way the Department has historically selected energy conservation standards for adoption. Some commenters favored further examination of the subject matter of the proposal (perhaps as part of a peer review) but stated that the lack of clarity and sufficient detail rendered them unable to express an opinion or comment further. Those commenters were clear that, while they believed DOE should look into the issues presented by the walk-down proposal, they were opposed to delaying the remainder of the Process Rule's improvements while that work was done. Others not only questioned the workability and academic underpinnings of DOE's proposal but flatly challenged the legal basis for the agency's proposed approach (citing both the statute and case precedent), suggesting that it would invite litigation.

Upon further reflection and after reviewing the public comments received on the matter, DOE has come to understand that its walk-down proposal would benefit from further elaboration and opportunity for public comment. Accordingly, DOE has decided not to finalize its proposed revised walk-down approach in this rule. Instead, elsewhere in this issue of the **Federal Register**, DOE has proposed revisions to its existing walk-down methodology together with added explanation to address some of the concerns raised by stakeholders. This supplemental proposal will revise 10 CFR part 430, subpart C, appendix A, sec. (7)(e) of the Process Rule. Specifically, the proposal clarifies that the process by which DOE selects among alternative energy efficiency standards under EPCA, satisfies the requirement that standards achieve the ''''maximum improvement in energy efficiency, or in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.'' 42 U.S.C. 6295(o)(2)(A). In response to the concerns and requests for further explanation related to the economically rational consumer mentioned in DOE's prior proposal, DOE is: (1) Clarifying how impacts are considered in determining economic justification through the seven factors specified in EPCA; and (2) explaining that the requirement to determine economic justification is based on comparisons across the full range of trail standard levels (TSLs) is consistent with EPCA. This proposal will respond to public comment requesting further clarity on DOE's initial proposal that in making the determination of economic justification, DOE would choose a TSL over other feasible TSLs after considering all relevant factors, including, but not limited to, energy savings, efficacy, product features, and life-cycle costs.

DOE encourages interested parties to review DOE's proposal and provide comment for consideration.

c. Other

In commenting on DOE's analytical methodologies, Lutron suggested that as part of the Department's analysis, DOE should assess the impacts on customers related to the potential elimination of desirable product features. According to the commenter, DOE should not promulgate rules that would eliminate features that are highly valued by customer subgroups. (Lutron, No. 137 at p. 3) In response, DOE notes that EPCA specifically addresses this issue, stating at 42 U.S.C. 6295(o)(4) that DOE may not prescribe an amended or new standard if it finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of DOE's finding. Thus, in keeping with its statutory mandate, DOE routinely evaluates the effects its potential energy conservation standards would have on identified product features and takes action consistent with 42 U.S.C. 6295(o)(4). (These same principles apply to covered commercial and industrial equipment through operation of 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), 42 U.S.C. 6313(a)(6)(C)(i), and 42 U.S.C. 6316(b).)

2. Cumulative Regulatory Burden

In the Process Rule NOPR, DOE acknowledged that its past treatment of cumulative regulatory burdens faced by regulated entities may have lacked the comprehensiveness sought by some industry stakeholders. However, DOE attempted to address these burdens in a consistent manner to ensure that it accounts for them in each of DOE's energy conservation standards rulemakings. DOE committed to improving its assessments of the potential burdens (*i.e.,* costs) faced by industry in implementing potential standards by improving its analysis. As

part of this effort, DOE stated that it will attempt to account for these potential costs through its modeling approaches, but the Department welcomed constructive feedback on particular steps it should take (consistent with its legal obligations) that would help improve its evaluation of the cumulative regulatory burdens faced by regulated entities within the energy conservation standards context. 84 FR 3910, 3939 (Feb. 13, 2019).

In response to the Process Rule NOPR, DOE received several comments on the topic of cumulative regulatory burden, primarily from individual companies and industry trade associations. Most of these commenters supported DOE's proposal to strengthen its analysis of cumulative regulatory burden, often reiterating their view of the perceived problem, stressing the importance of addressing it, and sometimes offering suggestions for how the Department can improve its process. For example, Rheem expressed strong support for DOE's efforts to improve the Department's consideration of cumulative regulatory burden and to reduce complexity as part of the standards rulemaking process. (Rheem, No. 101 at pp. 1–2) MHI expressed a similar sentiment, stating that it is critical that the process by which DOE sets rules for energy standards must carefully consider the cost impacts and work together with other Federal agencies so that cumulative regulatory costs are accounted for in the rulemaking process. (MHI, No. 130 at p. 3) These comments are discussed in the paragraphs immediately below, along with DOE's response.

As noted, DOE's past practices (and in some cases its NOPR proposal) regarding cumulative regulatory burden were criticized by a number of the commenters on the Process Rule NOPR. For example, Lennox faulted DOE's actions in recent energy efficiency rulemakings for what it characterized as the agency's consistent failure to undertake a meaningful analysis of the cumulative impacts of multiple regulations, beyond merely listing factors such as the industry conversion costs of separate rulemakings in isolation (citing DOE's supplemental notice of proposed rulemaking for residential furnaces at 81 FR 65720, 65824–65825 (Sept. 23, 2016) as an example). According to Lennox, DOE's cumulative regulatory burden analysis has often been a perfunctory exercise, identifying harms to industry and lost jobs, but failing to meaningfully weigh these harms and instead emphasizing energy saved without properly assessing whether a standard is economically justified. Lennox argued that while DOE actions impose a significant burden on manufacturers, several other Federal and State regulations may also significantly burden manufacturers of the same products. Under section 10 of the existing Process Rule (now proposed section 14(g)), DOE is to ''recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products.'' However, according to the commenter, DOE insufficiently considers the impacts of these other regulations, so the Process Rule should clarify that the cumulative impacts analysis should include all regulations that impact manufacturers of DOE-regulated products, including other Federal and State regulations (particularly regarding those States where significant volumes of equipment are distributed and regulations are rapidly evolving, such as California). (Lennox, No. 133 at p. 7)

Further, Southern California Edison stated that in DOE's rulemakings, the Department has overestimated the burden on manufacturers and taken a conservative approach. The commenter argued that manufacturers need to provide cost data to DOE in a methodical and historical manner, and the Department should consider such data. (Southern California Edison, April 11, 2019 Public Meeting Transcript at pp. 178–179) However, in contrast, Westinghouse strongly disagreed with any suggestion that DOE overestimates the costs of its rulemakings on industry. The commenter suggested that although manufacturers routinely provide data through industry associations and confidential manufacturer interviews, DOE typically underestimates costs and is not transparent as to where they get their alternate numbers that do not match those provided by manufacturers. Westinghouse went on record to state its opinion that DOE has never properly accounted for the costs of regulations in any of the rulemakings. (Westinghouse, April 11, 2019 Public Meeting Transcript at pp. 179–180)

Other commenters, such as AHAM and AHRI, expressed concerns about DOE's past cumulative regulatory burden practices but were optimistic that the Department's proposal could lead to improvements in this area. AHAM commended DOE's Process Rule proposal for its efforts to make its analysis of cumulative regulatory burden clear and explicit. DOE should always consider cumulative regulatory burden (as early in the process as possible) even if it does not ultimately change the course of regulatory action, suggesting that this concept offers a way to prioritize rulemakings in terms of allocating agency and industry resources. AHAM, April 11, 2019 Public Meeting Transcript at pp. 175–176) AHRI commenter argued that in the past, DOE has run the numbers for cumulative regulatory burden, but the Department has failed to make clear what it is doing with them. (AHRI, April 11, 2019 Public Meeting Transcript at p. 180) AHRI also stated that it also supports DOE's proposal regarding cumulative regulatory burden, and it echoed the comments of AHAM. AHRI advocated that (AHRI, April 11, 2019 Public Meeting Transcript at pp. 177–178)

Still other commenters either requested further clarification of DOE's proposal regarding cumulative regulatory burden or offered specific recommendations as to potential improvements to that process. Along this line, NAFEM requested that DOE clarify the scope of regulations it will consider in the cumulative regulatory burden analysis. The commenter stated that DOE's proposed language provides a temporal scope (*i.e.,* within three years of the compliance date of another DOE standard), but argued that there is ambiguity as to whether DOE will consider non-DOE regulations. As an example of the problems arising from an inadequate cumulative regulatory burden analysis, NAFEM challenged the last commercial refrigeration equipment (CRE) rulemaking, because DOE's analysis included equipment that used refrigerants that EPA no longer permitted. The commenter stressed that DOE should set forth procedures for ensuring robust analyses of the overall burdens and costs on all regulated entities associated with its various rulemakings. (NAFEM, No. 122 at pp. 7–8)

In response to the Process Rule NOPR, DOE received a number of recommendations as to the types of information that should be included in any cumulative regulatory burden analysis conducted by the Department. For example, Lennox recommended that improvements to the Process Rule should include an assessment of the generally known regulatory burdens and systematic analysis of the cumulative impacts of any new or amended regulation, including economic modelling to show how multiple regulatory actions impact manufacturers and employment related to DOE-regulated products. (Lennox, No. 133 at p. 7) More specifically, BWC urged DOE to consider cumulative regulatory burden from a domestic standpoint at the Federal, State, and regional/local level. According to the commenter,

some of those requirements—such as certain emission limits (*e.g.,* Ultra-Low NO_X for the California Air Quality Management or Air Pollution Control Districts)—can significantly affect allocation of manufacturer resources. BWC also stated that DOE should account for situations where manufacturers might have multiple rulemakings, possibly of different product types, going on at the same time. The commenter added that when manufacturers are forced to spend most of their limited resources on regulatory changes, it inhibits work on new, higher-efficiency products. (BWC, No. 103 at p. 4)

NAFEM stated that DOE should include within its burden review the scope all of the regulations, even from other Federal agencies, that affect the viability of the equipment DOE is targeting at the TSLs. Specifically, NAFEM argued that the Regulatory Flexibility Act (RFA) requires that regulations from other Federal agencies must be reviewed, noting that the Small Business Administration (SBA) publishes the RFA Guide as a tool for Federal agencies to use to help ensure compliance with the RFA and related laws and Executive Orders (providing in relevant part that ''[r]ules are conflicting when they impose two conflicting regulatory requirements on the same classes of industry''). (NAFEM, No. 122 at pp. 7–8)

Commenters also discussed the mechanism for considering the information obtained through the cumulative regulatory burden analysis. Relatedly, the Joint Commenters urged DOE to modify its current rulemaking process so as to incorporate the financial results of the current cumulative regulatory burden analysis directly into the Manufacturer Impact Analysis. They suggested that this can be done by adding the combined costs of complying with multiple regulations into the product conversion costs in the Government Regulatory Impact Analysis (GRIM) model. The Joint Commenters argued that this would be an appropriate approach to include the costs to manufacturers of responding to and monitoring regulations, noting that in the past, AHRI has submitted such information to DOE. (Joint Commenters, No. 112 at p. 14)

Energy Solutions stated that although it does not object to DOE's cumulative regulatory burden analysis, it recommends that such review should not be included in the life-cycle cost analysis. (Energy Solutions, April 11, 2019 Public Meeting Transcript at p. 180)

NAFEM also stated that DOE should incorporate a comprehensive process into its Process Rule that fairly and adequately implements the RFA, that fosters engagement with the SBA Office of Advocacy, and that contemplates either different standards or more reasonable compliance deadlines for small business manufacturers subject to EPCA standards. (NAFEM, No. 122 at pp. 7–8) AHRI also commented that cumulative regulatory burden might be included in the Regulatory Flexibility Act (RFA) analysis, and it urged DOE to consider relevant governmental actions beyond its own regulations. (AHRI, April 11, 2019 Public Meeting Transcript at pp. 177–178)

Finally, certain commenters focused on the types of impacted entities that should be examined under DOE's cumulative regulatory burden analysis, which has typically focused on manufacturers of the products/equipment subject to new or amended energy conservation standards. Spire made the point that regulatory burden is not limited to manufacturers, and other entities, such as utilities, also face significant regulatory burdens. Accordingly, Spire cautioned DOE not to limit its consideration of cumulative regulatory burdens to manufacturers. (Spire, April 11, 2019 Public Meeting Transcript at p. 177) NAFEM added that as part of its cumulative regulatory burden analysis, DOE should ensure that there are no disproportional impacts on small businesses. (NAFEM, No. 122 at pp. 7–8)

In response, DOE is both cognizant of and sensitive to the cumulative regulatory burden faced by regulated parties subject to the Department's energy conservation standards. As DOE fulfills its statutory mandate under EPCA, it is obligated to consider the economic impacts of potential standards on manufacturers; however, the Department's understanding of those impacts is arguably incomplete unless one assesses the overall regulatory environment facing the relevant industry. In addition to the energy conservation standard at issue in a given rulemaking, a manufacturer or industry may be simultaneously subject to other DOE appliance standards rulemakings, regulations of other Federal agencies, as well as State and regional/local regulatory requirements. Assembling and analyzing data relevant to examining cumulative regulatory burden is a complex task. DOE has generally sought to examine other appliance standards rulemakings coming into effect within three years of the anticipated compliance date of the standard under development, as well as other Federal, State, and local regulations of which it is aware and which are expected to have a significant impact. Nonetheless, DOE acknowledges that its cumulative regulatory burden analysis has not been as comprehensive nor its impacts as transparent as some might have liked. The Department also recognizes the negative effects that excessive regulatory burdens can have on corporate resource allocations. While DOE avers that cumulative regulatory burden was one of the factors the agency weighed carefully when considering potential energy conservation standards, it is committed to working towards the development of a more robust and transparent approach going forward.

DOE agrees with AHRI that the inquiry into cumulative regulatory burden should begin as early in the rulemaking process as possible, and the Department continues to welcome data and information regarding such burdens during comment opportunities at the various stages of a standards rulemaking. To NAFEM's point, DOE does strive to carefully and fully consider the impacts of its rulemakings on small entities through its analysis under the Regulatory Flexibility Act (RFA) and related Executive Orders. Although cumulative regulatory burden is certainly a consideration in that context, it is a matter of more global concern to all manufacturers subject to the energy conservation standards at issue. Consequently, DOE does not believe that the RFA analysis would be the appropriate locus for a broad consideration of cumulative regulatory burden. In response to NAFEM's other comments regarding small businesses, DOE notes that it cannot set differentiated standards under EPCA (*e.g.,* one set of requirements applicable to small businesses and another set of requirements applicable to large manufacturers). Any test procedure or energy conservation standard DOE promulgates must be equitable to all industry participants, meaning that all participants, regardless of size, must be held to the same testing and energy conservation standards criteria. However, additional compliance flexibilities may be available to small businesses through other means. For example, individual manufacturers may petition DOE for a waiver of the applicable test procedures. (*See* 10 CFR 430.27) Furthermore, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not

longer than 24 months after the effective date of a final rule establishing the standard. (*See* 42 U.S.C. 6295(t); 10 CFR part 430, subpart E) Additionally, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details. Regarding NAFEM's comment about engagement with the SBA Office of Advocacy, DOE notes that that office closely follows and regularly participates in DOE's appliance standards rulemakings, and the Department always appreciates SBA's involvement and insights.

As a general path forward, DOE expects that the scope and timeframe for the cumulative regulatory burden analysis, as well as related economic models, will be among the topics examined in depth by peer reviewers. Based upon the results and conclusions of that peer review, DOE may take further action, as necessary, to modify its processes accordingly.

The issue of the specific mechanism for considering cumulative regulatory burden in DOE's standard-setting process is an interesting question which will likely require further consideration and study. To date and as noted previously, DOE has considered cumulative regulatory burden as a factor contributing to the economic impacts on manufacturers, which is one of the criteria for assessing the economic justification of a potential energy conservation standard. The Joint Commenters' suggestion to somehow incorporate a quantitative assessment of cumulative regulatory burden into the MIA through DOE's GRIM model will have to be evaluated further. Regarding the cautionary statement of Energy Solutions not to include assessment of cumulative regulatory burden as part of the life-cycle cost (LCC) analysis, the Department agrees that the two are not linked. The LCC analysis estimates of consumer benefits, whereas cumulative regulatory burden involves manufacturer costs. Regarding the best mechanism for incorporating cumulative regulatory burden into DOE's standard-setting process (including the specific suggestions raised by these commenters), the Department has once again concluded that this matter would benefit from examination by the peer reviewers who will be examining the analytical methodologies underpinning the Appliance Standards Program.

Finally, in response to Spire's comment regarding the cumulative regulatory impacts on utilities, DOE notes that the Appliance Standards Program regulates covered products and equipment constructed and/or imported and certified by manufacturers. DOE's program does not directly regulate entities such as utilities, although they may experience some ancillary effects. However, DOE is open to exploring potential impacts of its Appliance Standards Program on non-manufacturer third parties as part of the peer review of DOE's analytical processes and addressing such impacts as necessary and appropriate.

3. Should DOE conduct retrospective reviews of the energy savings and costs of energy conservation standards?

At the January 9, 2018 Process Rule RFI public meeting and also in the Process Rule NOPR, DOE solicited feedback as to whether it should conduct a retrospective review of the energy savings and costs for its current standards as well as associated costs and benefits as part of any pre-rulemaking process that it ultimately adopts. 84 FR 3910, 3939 (Feb. 13, 2019). In responding to the numerous comments on this topic, DOE acknowledged that a broad and comprehensive retrospective review of DOE's current and past energy conservation standards could provide significant data for DOE to consider as part of future standards rulemakings. The Department stated that while it recognizes the potential benefits of conducting this type of retrospective review on a periodic basis, it also recognizes that it faces limits on its own resources to conduct the broad and comprehensive analyses that would be needed to collect and analyze this information. Accordingly, DOE stated that it is continuing to evaluate the prospect of conducting these types of reviews, including on a longer-term (*e.g.,* 10-year) basis but has not, as of yet, reached a final decision as to how to proceed. DOE did note that its proposed early assessment processes do incorporate an element of retrospective review. That is, by beginning a potential proceeding to amend existing energy conservation standards or test procedures for a product by asking if anything has changed since issuance of the last standard or test procedure, DOE will be seeking input in what effectively amounts to a retrospective review of the impact and effectiveness of its most recent regulatory action for the product at issue. (*Id.* at 84 FR 3940.)

Commenters on the Process Rule NOPR expressed divergent viewpoints on the need to conduct a retrospective review in the context of DOE's appliance standards rulemaking process. The following commenters supported DOE's use of a retrospective review as a mechanism to improve the quality and effectiveness of the agency's rulemakings. BWC recommended that DOE conduct a retrospective review to determine whether products and markets have materialized as the Department anticipated in its rulemaking, and if not, that DOE investigate to understand why its previous analysis was incorrect. (BWC, No. 103 at p. 5) Similarly, Signify expressed support for the concept of retrospective reviews to see what past rulemakings actually accomplished and to save time and money by avoiding iterative rulemakings that are not realizing significant energy savings. (Signify, No. 116 at p. 2) APGA also supported DOE's use of routine retrospective reviews generally. (APGA, No. 106 at p. 13)

GWU emphasized retrospective review as essential to making DOE's standards rulemaking process more effective and transparent. GWU argued that because DOE relies heavily on assumptions about future prices of energy and other goods, opportunity costs, and producer and consumer preferences, it is reasonable for DOE to assess the outcomes and effects of its past rulemaking so as to better inform its next rulemaking. According to GWU, such review would allow DOE to measure the efficacy of its assumptions and to use a real (rather than hypothesized) baseline in its next set of rulemaking analyses. In addition to reviewing existing standards and analytical assumptions, GWU also sees the potential for reviewing how new standards are established by building in metrics, indicators, and timelines at the rule's outset. (GWU, No. 132 at pp. 11–12)

AGA expressed its belief that DOE should not commence a new minimum energy efficiency standards process until the existing standards have been reviewed. According to AGA, an effective retrospective review would include objective, verifiable quantification, and if done right, this sort of retrospective review should enhance DOE's modeling and analyses and should avoid any material flaws in DOE's current modeling. If a retrospective review demonstrates that a substantial percentage of high-efficiency appliances exceeding the current standard within the type (or class) already exists, the commenter reasoned

that no new minimum standard would be needed. AGA further stated that it understands that DOE has limited resources to conduct a retrospective review and is still evaluating how to effectively proceed. In the meantime, AGA commented that the retrospective review can occur during the comment period of the applicable early stakeholder process. AGA argued that interested parties can and should provide data demonstrating changes since the issuance of the last standard or test procedure, and the impact and effectiveness of its most recent regulatory action for the product at issue. According to AGA, the Department, as part of the Process Rule, should commit to such retrospective reviews when data is submitted as part of the stakeholder process. (AGA, No. 114 at p. 30)

Citing Executive Order 13563 (particularly section 6 of that Order which contains retrospective review requirements), Spire expressed support for the idea of DOE performing a retrospective analysis of its rules. (Spire, April 11, 2019 Public Meeting Transcript at p. 186; Spire, No. 139 at p. 24) Spire argued that retrospective review should be conducted almost every time you are considering new efficiency standards to see how well estimates of claimed consumer savings have done. (Spire, April 11, 2019 Public Meeting Transcript at p. 182) The commenter suggested that retrospective reviews should be conducted on a continuous basis, rather than sporadically. (Spire, No. 139 at p. 10) Spire also criticized DOE's use of Energy Information Agency (EIA) data by asserting that these data routinely over-estimate consumer gas price increases and under-estimates electricity price increases, and it argued that DOE's reliance on these data should be subject to retrospective review. Spire also suggested that the appropriate length of time for analysis should be the useful lifetime of the product under consideration. (Spire, No. 139 at p. 22)

Other commenters cautioned against the initiation of a comprehensive retrospective review, which they characterized as a complex and costly endeavor. However, even these commenters generally supported the type of more limited retrospective review proposed as part of the early assessment provisions in DOE's Process Rule NOPR. Among this group of commenters, the Joint Commenters stated that they do not support a separate retrospective review process, arguing that trying to determine what actually happened following the implementation of standards is an incredibly complicated process and that there is no public data to support such an analysis. In addition, the Joint Commenters explained that the cost to manufacturers to develop this data is very substantial, as the information is not readily available and is highly proprietary and confidential. (Joint Commenters, No. 112 at p. 15) Along these lines, a consultant to AHAM/AHRI and the Joint Commenters, alerted any potential peer reviewers that looking at manufacturer costs is an expensive and difficult process. The commenter took issue with the notion that DOE's price forecasts are incorrect and that DOE has underestimated manufacturing costs, arguing that there is no data to support that conclusion. (Everett Shorey, April 11, 2019 Public Meeting Transcript at pp. 185–186)

However, the Joint Commenters did support a review of what has changed in the cost or energy savings projections for the design options considered in previous standards. If nothing or very little has changed, then the Joint Commenters suggested that the presumption should be that the existing standards are appropriate, and DOE should not make a change. These commenters concluded that it should be determinative that DOE concluded in the previous rulemaking that no more-stringent standard met its own criteria. (Joint Commenters, No. 112 at p. 15)

Lennox agreed that the Process Rule NOPR's proposed early assessment for rulemakings already contains an element of retrospective review and that requiring a formal retrospective review for all rulemakings would unnecessarily burden DOE and manufacturers alike. Moreover, Lennox stated that EPCA already requires an extensive economic justification test (*e.g.,* 42 U.S.C. 6295(o)). As a result, Lennox reasoned that a full and burdensome retrospective review of market impacts some six years or more before a rulemaking is not necessarily relevant to determining whether a standard under consideration is economically justified, but instead, DOE should make common sense inquiries such as what, if anything, has changed since a previous DOE appliance efficiency standards final rule for that product was adopted. The commenter stated that this seems in line with the Process Rule NOPR approach on this issue, and to that extent Lennox concurs. (Lennox, No. 133 at p. 6)

A few other commenters expressed support for a more limited or targeted form of retrospective review. On this topic, NEMA stated that it would like to see the models and other forecasting tools put to the test in order to assess how they performed and how accurate such forecasting was in actual application. (NEMA, April 11, 2019 Public Meeting Transcript at p. 184) Southern Company remarked that retrospective review looks good in theory, but it wondered how it would work out in practice. Due to statutory cycles (6 and 7 years), Southern Company reasoned that it is difficult to judge the impact of the last standard, and it reiterated the need for good documentation of assumptions made in rulemakings. (Southern Company, April 11, 2019 Public Meeting Transcript at p. 183) Although BHI pointed out that most project management systems conclude with a lessons learned session to identify administrative issues that hindered the completion of the project, the company did not recommend a retrospective review. However, BHI does recommend reviewing and documenting principles and procedures that have resulted in effective rulemaking processes. (BHI, No. 135 at p. 7)

Finally, United Cool Air raised an example of why it presumably thinks retrospective review would be necessary in the context of DOE energy conservation standards rulemakings. More specifically, United Cool Air set forth a number of allegations regarding DOE's past approaches with respect to the Process Rule. In particular, it highlighted what it characterized as illegal efforts by DOE to avoid the current requirements of 10 CFR part 430, subpart C, appendix A. In its view, that approach resulted in the fabrication of data to enable DOE to ''rush through'' dozens of new regulations. (UCA–1, No. 96 at p. 1) The commenter cited to what it believed was evidence that DOE did not have any record of collecting data that the agency purportedly had collected. (*See* UCA–1, No. 96, at p. 1 and related attachments comprising of: (1) A FOIA request to DOE seeking the identities of the five small businesses that DOE had noted in a published **Federal Register** document related to certification requirements for commercial HVAC, water heater, and refrigeration equipment manufacturers, and (2) the agency's response stating that no responsive documents were found (EERE–2017–BT–STD–0062–0096 (''FOIA Request for 5 Small Business Names'' and ''Final Letter'')))) United Cool Air also alleged that small businesses are not being informed of the new regulations being developed or having any input into them, which have led to small businesses being harmed. (UCA–1, No. 96 at p. 1) Furthermore, the company added that the standards being developed only apply to large

manufacturers who have greater resources compared to small businesses (*i.e.,* 1–250 employees). (UCA–1, No. 96 at p. 1)

In response, DOE notes that the comments on retrospective review—as diverse as they were—all seemed to agree that an understanding of the impacts of the Department's past regulations (and the predictive power of the analytical tools employed in support of the adoption of those regulations) could contribute to more targeted and less burdensome regulations in the future. The disagreement among commenters seemed to center on whether it would be feasible to generate the requisite data for such an analysis (which may be proprietary, if it exists at all) and to do so in a cost-effective fashion. If those hurdles are surmounted, further questions arise as to the proper scope of the retrospective review (*e.g.,* whether to assess the effectiveness of the Appliance Standards Program as a whole, of an individual product/equipment type over time, or of a specific, most recent rulemaking) and the appropriate frequency of such review (*e.g.,* every ten years, prior to the next round of rulemaking for a given product, on a continuous basis). However, most commenters appeared to favor an early assessment analysis of the technological and market developments since the last standards rulemaking, which would be a limited but practical form of retrospective review.

DOE is in full accord with such sentiments regarding the potential benefits of retrospective review. It would be valuable to understand the impacts of the Department's past regulatory actions and the predictive power of its analytical tools, thereby enhancing the quality and effectiveness of DOE's rulemakings and conserving resources by avoiding iterative rulemakings resulting in standards that do not realize significant energy savings. The Department also agrees with GWU that given DOE's reliance on assumptions about future prices of energy and other goods, opportunity costs, and producer and consumer preferences, it would be reasonable to assess the outcomes and effects of its past rulemakings so as to better inform its next rulemaking. As GWU suggests, such review may allow DOE to measure the efficacy of its assumptions and to use a real (rather than hypothesized) baseline in its next set of rulemaking analyses.

After carefully considering these comments, DOE has decided, at least initially, to bifurcate its approach to retrospective review of its past appliance standards rulemakings. One aspect of this approach can be commenced immediately. Namely, through its early assessment process, the agency believes it is possible to conduct a timely and useful assessment of developments since the last rulemaking for the product/equipment in question. To this end, DOE welcomes comments, data, and other information on costs, prices, shipments, and other relevant factors, such that the Department might refine its analyses and models to better prospectively capture the real world impacts of its standards. Along with this useful feedback, stakeholders may provide other information to suggest that the technologies, costs, or energy use profiles for the product/equipment at issue have not changed, such that amended standards are unlikely to be cost-justified, or information suggesting just the opposite. (DOE does not agree with the Joint Commenters that a presumption to this effect is appropriate, given the variety of relevant data to be considered, but instead, the Department would undertake such assessment in each individual case based upon the information before it.) DOE believes that this is a practical mechanism for the near term, because DOE faces a number of statutory deadlines for rulemaking actions, so it cannot simply hold rulemaking in abeyance until a comprehensive retrospective review is completed, as AGA suggested.

The other, more long-term aspect of DOE's approach to retrospective analysis will involve consideration of retrospective review as a topic under the peer review of DOE's analytical methodologies used in the Appliance Standards Program. The peer reviewers will examine the feasibility of and options for conducting a comprehensive retrospective review of the Department's past appliance standards rulemakings, either at a programmatic or individual product level. Peer reviewers will consider the scope, costs, and anticipated benefits of such retrospective review(s) and seek to ensure that results generated are objective and verifiable to the maximum extent practicable. As GWU suggested, in addition to reviewing existing standards and analytical assumptions, peer reviewers might also consider how new standards are established by building in metrics, indicators, and timelines at a rule's outset. An examination of the efficacy of DOE's models, assumptions, forecasting, timeframe for analysis, and the documentation of principles and procedures all might fall within the ambit of the peer reviewers' work vis-à-vis retrospective review. After carefully considering the results and recommendations coming out of such peer review, DOE will consider what further actions, if any, should be undertaken in this area.

Regarding other matters raised by commenters on retrospective review, DOE does not agree with AGA's suggestion that if a retrospective review demonstrates that a substantial percentage of high-efficiency appliances exceeding the current standard within the type (or class) already exists, then no new minimum standard would be needed. The criteria for promulgating energy conservation standards are established under EPCA (*i.e.,* significant energy savings, technological feasibility, and economic justification) and do not hinge on the percentage of high-efficiency products in the marketplace. DOE must follow its statutory mandate for standard setting and may not substitute other criteria or tests along the lines the commenter suggests.

DOE likewise does not agree with Spire's criticism of DOE's use of EIA data in its analyses. Although Spire asserts that these data overestimate consumer gas price increases and underestimate electricity price increases, the Department has entertained these arguments in past rulemakings and found them to be unproven and without merit. EIA data are based on sound scientific and economic principles, and they are used on a government-wide basis for a variety of regulatory analyses, which are not limited to DOE. Thus, DOE does not agree that the totality of EIA data should be subjected to retrospective review or that the Department should otherwise be limited in its use of such data.

Finally, in response to United Cool Air, DOE appreciates the commenter's interest in the Department's shared goal of increasing the transparency of its decision-making and public participation through this revised Process Rule. DOE cannot readily address the particulars of the commenter's concerns about the prior rulemaking it mentioned, although the Department suspects that it may have involved proprietary data obtained under nondisclosure agreement(s), the type of information which would not be subject to release under FOIA. DOE respectfully disagrees with United Cool Air's contention that DOE has not considered small businesses in its rulemakings (as its RFA analysis demonstrates), and contrary to the commenter's assertions, DOE's energy conservation standards are applicable to all manufacturers of the covered

product or covered equipment that is the subject of a rulemaking, regardless of the size of that manufacturer. DOE's proposals are published in the **Federal Register**, and thus, they are publicly available to all interested stakeholders, including small businesses. DOE encourages public participation and maintains a transparent process with open public meetings and the opportunity for public comment on its proposals and other rulemakings documents which are published in the **Federal Register**. DOE fully addresses public comments on its proposal in the final rule.

4. Certification, Compliance, and Enforcement (CCE)-Related Issues

While certification, compliance, and enforcement (CCE) are important standards-related matters for DOE, regulated entities, and other interested stakeholders, DOE's Process Rule NOPR explained in response to CCE-related comments on its Process Rule RFI that such matters are largely beyond the scope of the current proceeding. However, DOE stated that it is willing to evaluate this topic in further detail through separate rulemaking. (84 FR 3910, 3940) The Department acknowledged that in 2010–2011 when DOE changed its CCE requirements for all products in a single rulemaking, that process was unwieldy, particularly given the level of interest from various parties and volume of comments received (*see* 76 FR 38287 (June 30, 2011) [30]). In the Process Rule NOPR, DOE explained that its plan is to address changes to its CCE regulations, and related provisions in 10 CFR parts 430 and 431, in separate rulemakings with separate public meetings to help manage comments and to allow DOE to consider industry-specific issues in a more focused format. DOE stated that it may ultimately adopt different provisions for different products based on comments and would make appropriate changes to regulatory text to be more general or product-specific in a final rule. (84 FR 3910, 3940 (Feb. 13, 2019))

Despite DOE's pronouncement that the Department would be addressing CCE-related issues in separate rulemakings, DOE did received a few further comments on this issue. More specifically, Acuity argued that DOE should streamline and modernize its CCE processes, as improvements in these areas will help bolster any improvements to the Process Rule in terms of reducing unnecessary regulatory burdens and serving the Program's purposes. (Acuity, No. 95 at p. 7) NEMA similarly encouraged DOE to continue working on ways to refine the CCE process, including doing more to ensure that products coming through ports of entry are compliant. (NEMA, April 11, 2019 Public Meeting Transcript at pp. 189–190) Finally, at the April 11, 2019 public meeting, AHRI sought clarification as to whether DOE would do one global rulemaking when updating its CCE regulations or making changes as individual energy conservation standards and test procedures are done. In this context, AHRI expressed support for an industry-by-industry approach to addressing CCE. (AHAM, April 11, 2019 Public Meeting Transcript at pp. 190–191) At that public meeting, DOE responded that the agency expects to now examine CCE-related issues on an industry-by-industry basis. (DOE, April 11, 2019 Public Meeting Transcript at p. 191)

In response, DOE affirms its commitment to continue examining its CCE regulations and consider amending those regulations, as necessary, through future rulemaking, and it will reconsider the substance of these comments in such venues, including the port-of-entry issue raised by NEMA. In short, however, DOE agrees with Acuity that improvements to DOE's CCE regulations have the potential to complement the improvement made to the Process Rule through this final rule. The Department notes that it expects to address CCE-related issues on an industry-by-industry basis in the context of individual product/equipment rulemakings, for the reasons previously stated.

5. Other Issues

DOE also received a number of comments on its Process Rule NOPR that did not fit neatly into any of the categories discussed previously, so those issues are set forth and addressed here.

Preemption

Acuity sought a clear statement from DOE on the preemptive effects of a ''no amended standard'' or ''no new standard'' determination. In the commenter's view, these situations should trigger Federal preemption, and States should be prohibited from imposing their own regulations regarding a given covered product. (Acuity, No. 95 at p. 7) In response, EPCA explicitly addresses the preemptive effects of regulatory actions taken by DOE under the Appliance Standards Program, and DOE acts in accordance with those provisions. Specifically, with certain limited exceptions, the general rule of preemption for energy conservation standards, before Federal standards have become effective, is that no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product, shall be effective with respect to such covered product. (42 U.S.C. 6297(b)) In addition, under 42 U.S.C. 6295(ii), there is a specific preemption provision that applies to new coverage determinations, certain lamps (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps), battery chargers, external power supplies, and refrigerated beverage vending machines, which provides that the preemption provisions of 42 U.S.C. 6297 apply to products for which energy conservation standards are to be established under subsections (l), (u), and (v) of 42 U.S.C. 6295 beginning on the date on which a final rule is issued by DOE, but any State or local standard prescribed or enacted for the product before the date on which the final rule is issued shall not be preempted until the energy conservation standard established under subsection (l), (u), or (v) of 42 U.S.C. 6295 for the product takes effect.

Similarly, with certain limited exceptions, the general rule of preemption when Federal standards become effective for the product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such covered product. (42 U.S.C. 6297(c)) DOE may waive Federal preemption in appropriate cases consistent with the provisions of 42 U.S.C. 6297(d). In addition, the statute also provides that a State (and its political subdivisions) requiring testing or labeling regarding the energy consumption or water use of any covered product may do so only if such requirements are identical to those established pursuant to 42 U.S.C. 6293 and 42 U.S.C. 6294, respectively. These same provisions generally apply to covered commercial and industrial equipment through operation of 42 U.S.C. 6316, except for the provisions at 42 U.S.C. 6295(ii) which only apply to consumer products.

Specific Products Recommended for Regulatory Review

AHRI requested that DOE address four regulatory concerns (as set forth in five exhibits submitted as part of AHRI's written comments) in future rulemakings or, preferable, by

[30] Docket Number EERE–2010–BT–CE–0014, *https://www.regulations.gov/docket?D=EERE-2010-BT-CE-0014.*

interpretive rule. These topics included: (1) Furnace fan test procedure clarifications; (2) Central air-conditioning and heat pump test procedure calculation corrections; (3) Water heater recovery energy efficiency calculations; and (4) Instantaneous water heater test procedure tolerances. (AHRI, No. 117 at p. 1) In response, DOE appreciates stakeholder efforts to make the Department aware of identified problems with its energy conservation standards or test procedure regulations. The Appliance Standards Program will examine the exhibits submitted by AHRI to determine what actions, if any, are necessary.

Effective Date vs. Compliance Date Clarifications

The CEC supported DOE's attempt to distinguish between ''effective dates'' and ''compliance dates'' but noted that the terms are not clearly distinguished in the statute. As a result, it asserted that DOE's efforts could lead to further confusion rather than clarity. The CEC added that DOE's definition of a compliance date for a test procedure is inconsistent with EPCA's requirement that newly prescribed or established test procedures take effect for representation of energy efficiency or energy use 180 days after that procedure has been prescribed or established. Consequently, the CEC asserted that DOE's proposed approach would be invalid under EPCA. (*See* 42 U.S.C. 6293(c)(2)) (CEC, No. 121 at pp. 14–15) In response, DOE appreciates that the CEC recognizes the difficulty that the agency, regulated entities, and other interested stakeholders have had in distinguishing between ''effective dates'' and ''compliance dates'' under relevant provisions of EPCA. However, contrary to what the CEC suggests, DOE does not believe that allowing such confusion to persist should be the preferred option. Instead, DOE has sought to clarify this matter in the Process Rule through a dedicated section 12. DOE has received many questions along these lines over the years, and the Department has sought to foster a general understanding that the ''effective date'' is the point at which a rule becomes legally operative after publication in the **Federal Register** (typically 60 days after publication) and that the ''compliance date'' is the point at which regulated entities must meet the requirements of the rule. DOE's inclusion of such provision in the Process Rule has not altered the approach the agency has historically taken when dealing when giving meaning to the somewhat unclear statutory language. DOE does not agree with the CEC's assessment that its clarifications run afoul of section 323(c)(2) of EPCA (42 U.S.C. 6293(c)(2)); instead, section 12 of the Process Rule is integrally linked to that statutory provision. To be clear, DOE is not expanding the 180-day timeframe that regulated entities have to begin making representations consistent with a new or amended test procedure after publication in the **Federal Register**. Consequently, DOE is adopting the proposed Process Rule provisions for distinguishing between effective dates and compliance dates in this final rule.

Judicial Review

GWU urged DOE to consider strengthening its commitments toward process improvement by making the agency accountable in court. Although GWU noted that DOE's proposal removed the prior provision precluding judicial review, it suggested that the agency should consider an affirmative statement subjecting itself to judicial review, a step which studies have shown improves the quality of agency analyses. (GWU, No. 132 at pp. 3–4) In response, DOE does not believe it necessary to include a specific judicial review provision in the Process Rule, because a comprehensive judicial review provision for covered consumer products already exists at 42 U.S.C. 6306 (which is extended to covered commercial and industrial equipment through 42 U.S.C. 6316(a) and (b)). This provision applies to final rules for energy test procedures, labelling, and conservation standards, and it had been used by litigants on a number of occasions. Consequently, a separate judicial review provision in the Process Rule would be largely redundant of the existing statutory provision. Agencies cannot create judicial review when Congress has not provided it.

Manufactured Housing

MHAAR requested that in any final Process Rule, DOE expressly apply all pertinent procedural protections and safeguards set out in its Process Rule NOPR to any manufactured housing energy conservation standards or revisions to those standards, or any applicable test procedures developed pursuant to section 413 (42 U.S.C. 17071) of the Energy Independence and Security Act of 2007 (EISA 2007). MHAAR pointed out that DOE's proposal does not specifically reference standards development and/or testing procedures under section 413 of EISA 2007, concerning energy conservation standards for Federally-regulated manufactured homes. The commenter stated that because the proposed Process Rule applies to DOE's Appliance Standards program and both the previously proposed June 17, 2016 DOE standards for such homes (81 FR 39756) and the currently pending proposed energy standards for manufactured homes set forth in the August 3, 2018 NODA (83 FR 38073) derive directly from a negotiated rulemaking process conducted by and within the DOE Appliance Standards Program, the pertinent provisions of the Process Rule should apply. (MHAAR, No. 115 at pp. 2–3)

In response, DOE's authority for manufactured housing is derived from free-standing authority in EISA 2007, which is separate and apart from the EPCA provisions governing the Appliance Standards Program. DOE's Process Rule is strictly focused on the Appliance Standards Program and related provisions of EPCA. Consequently, DOE does not find it appropriate to conflate these two programs or the procedures that apply to them. Furthermore, DOE notes that its manufactured housing rule is currently the subject of litigation in the U.S. District Court for the District of Columbia, so the Department does not wish to undertake any action that would impact its position in that case.

Market-Based Approach to Energy Conservation Standards

Samsung responded to DOE's indication in the Process Rule NOPR that it would continue to contemplate additional topics to update the Process Rule. Along those lines, the commenter encouraged DOE to consider a pilot market-based approach to energy conservation standards rulemaking when considering other potential revisions to the Process Rule. Samsung pointed out that in 2018, DOE considered such innovative approach in the Appliance and Equipment Standards Program Design (82 FR 56181(Nov. 28, 2017), and it urged DOE to further pursue that concept that allows the market to drive energy efficiency, which helps consumers save money. (Samsung, No. 129 at p. 2) In response, DOE appreciates the commenter's suggestion to further consider market-based approaches to energy conservation standards rulemaking. The Department is currently reviewing the comments it received on the November 2017 RFI and evaluating potential next steps.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339 (Jan. 30, 2017). That Order states that the policy of the Executive Branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. More specifically, the Order provides that it is essential to manage the costs associated with the governmental imposition of requirements necessitating private expenditures of funds required to comply with Federal regulations. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). The Order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

To implement these Executive Orders, the Department, among other actions, issued a request for information (RFI) seeking public comment on how best to achieve meaningful burden reduction while continuing to achieve the Department's regulatory objectives. 82 FR 24582 (May, 30, 2017). In response to this RFI, the Department received numerous and extensive comments pertaining to DOE's Process Rule.

C. Economic Analysis

DOE estimated cost savings for the final Process Rule by quantifying the reduction in administrative burden that results from new streamlined rulemaking procedures, namely, the energy savings threshold. DOE quantified these savings by identifying each of its previous rulemakings that would not have met the final threshold and tallying the total administrative burden associated with each. DOE quantified the average administrative burden per rulemaking and forecast how many rulemakings per year are likely to be affected in the future.

In July 2019, DOE published in the **Federal Register** a notice of data availability (NODA) outlining the energy savings of each of its energy conservation standards issued since 1989. DOE used these data, which were available for public comment, to identify rules that would be affected by a potential threshold at the max tech and the adopted standard level. Based on this review, DOE expects that approximately half of the rulemakings that fail to meet the significant energy threshold will do so at the outset of rulemaking (*i.e.* the RFI/NODA stage) and half will do so at the proposed rule (*i.e.,* the NOPR/NOPD) stage.

DOE assessed administrative burden by aggregating the key regulatory documents in each regulatory docket and estimating the average word count using several samples from each docket. For regulations that include several different product types, DOE broke out the portion of the docket attributable to the product in question.

DOE used methodology established by the U.S. Food and Drug Administration (FDA) to estimate the administrative burden of reading DOE regulatory documents. DOE additionally estimates the administrative burden of attending public meetings and submitting comments. The Department of Health and Human Services provides guidelines regarding the reading speed of regulation reviewers, which assumes a normal distribution with a mean of 225 words per minute.[31] DOE estimated administrative burden at the mean reading speed and at one standard deviation to provide a range.

In implementing this guideline, FDA recognizes that due to the complexity of some rules multiple individuals may read a rule for a single stakeholder (for example, 2 lawyers for a small firm or 4 lawyers for a large firm).[32] The National Small Business Association's (NSBA) 2017 Small Business Regulations Survey further states that although 72 percent of small firms report having read through proposed regulations, the majority of those who do so (63 percent) report that they have to comply with the rules they read only half of the time, or less frequently.[33] This indicates that the number of comments submitted on a given rule, or even the number of affected stakeholders, may not adequately capture the number of people who bear administrative burden from DOE's rulemakings. In light of the FDA estimate above and NSBA survey data, DOE conservatively estimates that 1.75 people read a proposed rule for every comment submitted to the docket.

The NSBA survey also provides data on the number of hours it takes small business to submit comments.[34] DOE uses the weighted average of these survey data to estimate the average time it takes a small business to submit a comment on a DOE regulation. DOE assumes that other stakeholders, such as trade associations, spend approximately 10 hours on writing and submitting comments (to include time spend collecting data from members and potential test follow-up).

DOE monetizes the cost savings using the cost of labor to represent the opportunity cost of participating in a rulemaking. For industry wages, we use 2016 mean wage estimates from the Bureau of Labor Statistics' National Industry-Specific Occupational Employment and Wage Estimates for the household appliance manufacturing industry. The table below shows the mean hourly wages, the fully loaded wages, and the public meeting and public comment-weighted wages that are used in this analysis. (For example, DOE assumes that compliance officers are less involved in attending public meetings than they are in reading and commenting on regulations.)

---

[31] *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf* Table 4.1.

[32] U.S. Food & Drug Administration. Premarket Tobacco Product Applications and Recordkeeping Requirements: Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis. Docket No. FDA–2019–N–2854. Page 35. *https://www.fda.gov/about-fda/economic-impact-analyses-fda-regulations/premarket-tobacco-product-applications-and-recordkeeping-requirements-proposed-rule-preliminary.*

[33] 2017 NSBA Small Business Regulations SURVEY. Page 10. *https://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf.*

[34] 2017 NSBA Small Business Regulations SURVEY. Page 11. *https://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf.*

NAICS Occupation 335200 (Household Appliance Manufacturing)	Mean hourly wage	Fully-loaded wage
Management Occupations	$63.97	$127.94
Compliance Officers	23.90	47.80
Engineers	41.14	82.28
Lawyers *	83.73	167.46

DOE anticipates that the changes finalized in this rule will reduce total administrative burdens by between $53.5 million and $59.7 million (undiscounted) for annualized cost savings of between $0.5 million to $0.6 million, discounted at 7%.

TABLE NUMBER—TOTAL AND ANNUALIZED COST SAVINGS

	Low-end	Primary estimate	High-end
Total Savings (2016$):	$53,505,672	$56,189,431	$59,698,963
NPV, 3%	16,907,207	17,755,245	18,864,219
NPV, 7%	7,634,859	8,017,811	8,518,595
Annualized Savings (7%)	534,440	561,247	596,302

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

Because this final rule does not directly regulate small entities but instead only imposes procedural requirements on DOE itself, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

E. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this final rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

F. Review Under the National Environmental Policy Act of 1969

In this document, DOE revises its Process Rule, which outlines the procedures DOE will follow in conducting rulemakings for new or amended energy conservation standards and test procedures for covered consumer products and commercial/industrial equipment. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that

have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it 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. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

H. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this final rule will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

M. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy

action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this final rule.

N. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE is committing in this proceeding to engage in a new peer review of its analytical methodologies.

O. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures.

Signed in Washington, DC, on December 31, 2019.

Daniel R Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 430 and 431 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix A to subpart C of part 430 is revised to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

1. Objectives

This appendix establishes procedures, interpretations, and policies that DOE will follow in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act (EPCA). This appendix applies to both covered consumer products and covered commercial/industrial equipment. The Department's objectives in establishing these procedures include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. Under the procedures established by this appendix, DOE will seek early input from interested parties in determining whether establishing new or amending existing energy conservation standards will result in significant savings of energy and is economically justified and technologically feasible. In the context of test procedure rulemakings, DOE will seek early input from interested parties in determining whether—

(1) Establishing a new or amending an existing test procedure will better measure the energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product/equipment during a representative average use cycle or period of use (for consumer products); and

(2) Will not be unduly burdensome to conduct.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards and test procedure development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. Further, DOE will offer the opportunity to provide input on the prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

(c) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. Under the procedures in this appendix, DOE will eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will have a material adverse impact on the utility of the product, or if the design option will have a material adverse impact on safety or health. DOE will also eliminate from consideration proprietary

design options that represent a unique pathway to achieving a given efficiency level. This screening will be done at the outset of a rulemaking.

(d) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary programs can be used most effectively. DOE will continue to support voluntary efforts by manufacturers, retailers, utilities, and others to increase product/equipment efficiency.

(e) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate social and private costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers, and others, as well as the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. Pursuant to this appendix, the analyses will consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate social and private costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers. The Department will also conduct appropriate analyses to assess the impact that new or amended test procedures will have on manufacturers and consumers.

(f) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible.

(g) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the various interests affected by such standards.

2. Scope

The procedures, interpretations, and policies described in this appendix apply to rulemakings concerning new or revised Federal energy conservation standards and test procedures, and related rule documents (*i.e.,* coverage determinations) for consumer products in Part A and commercial and industrial equipment under Part A–1 of the Energy Policy and Conservation Act (EPCA), as amended, except covered ASHRAE equipment in Part A–1 are governed separately under section 9 in this appendix.

3. Mandatory Application of the Process Rule

The rulemaking procedures established in this appendix are binding on DOE.

4. Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;

(4) Incremental DOE resources required to complete the rulemaking process;

(5) Other relevant regulatory actions affecting the products/equipment;

(6) Stakeholder recommendations;

(7) Evidence of energy efficiency gains in the market absent new or revised standards;

(8) Status of required changes to test procedures; and

(9) Other relevant factors.

(b) DOE will offer the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

5. Coverage Determination Rulemakings

(a) DOE has discretion to conduct proceedings to determine whether additional consumer products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292 and 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312 for commercial/industrial equipment)

(b) If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.

(c) DOE will publish its final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking (*i.e.,* DOE will not issue any Requests for Information (RFIs), Notices of Data Availability (NODAs), or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product/equipment prior to finalization of the coverage determination). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. Specifically, DOE will finalize coverage for a product/equipment at least 180 days prior to publication of a proposed rule to establish a test procedure. And, DOE will complete the test procedure rulemaking at least 180 days prior to publication of a proposed energy conservation standard.

(d) If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to expand or reduce the scope of coverage, a new coverage determination process will be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.

(a) *Early Assessment.* (1) As the first step in any proceeding to consider establishing or amending any energy conservation standard, DOE will publish a document in the **Federal Register** announcing that DOE is considering initiating a rulemaking proceeding. As part of that document, DOE will solicit submission of related comments, including data and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would be cost effective, economically justified, technologically feasible, or would result in a significant savings of energy. Based on the information received in response to the notice and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard or an amended test procedure. If DOE determines that a new or amended standard would not satisfy applicable statutory criteria, DOE would engage in notice and comment rulemaking to issue a determination that a new or amended standard is not warranted. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard, as discussed further in paragraph (a)(2) of this section.

(2) If the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a Framework Document and Preliminary Analysis, or an Advance Notice of Proposed Rulemaking (ANOPR). Requests for Information (RFI) and Notices of Data Availability (NODA) could be issued, as appropriate, in addition to these preliminary-stage documents.

(3) In those instances where the early assessment either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes the preliminary stages of a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy. Therefore, DOE will examine the potential costs and benefits and energy savings potential of a new or amended energy conservation standard at the

preliminary stage of the rulemaking. DOE notes that it will, consistent with its statutory obligations, consider both cost effectiveness and economic justification when issuing a determination not to amend a standard.

(b) *Significant Savings of Energy.* (1) In evaluating the prospects of proposing a new or amended standard—or in determining that no new or amended standard is needed—DOE will first look to the projected energy savings that are likely to result. DOE will determine as a preliminary matter whether the rulemaking has the potential to result in ''significant energy savings.'' If the rulemaking passes the significant energy savings threshold, DOE will then compare these projected savings against the technological feasibility of and likely costs necessary to meet the new or amended standards needed to achieve these energy savings.

(2) Under its significant energy savings analysis, DOE will examine both the total amount of projected energy savings and the relative percentage decrease in energy usage that could be obtained from establishing or amending energy conservation standards for a given covered product or equipment. This examination will be based on the applicable product or equipment type as appropriate and will not be used to selectively examine classes or sub-classes of products and equipment solely for the purposes of projecting whether potential energy savings would satisfy (or not satisfy) the applicable thresholds detailed in this rule. Under the first step of this approach, the projected energy savings from a potential maximum technologically feasible (''max-tech'') standard will be evaluated against a threshold of 0.3 quads of site energy saved over a 30-year period.

(3) If the projected max-tech energy savings does not meet or exceed this threshold, those max-tech savings would then be compared to the total energy usage of the covered product or equipment to calculate a potential percentage reduction in energy usage.

(4) If this comparison does not yield a reduction in site energy use of at least 10 percent over a 30-year period, the analysis will end, and DOE will propose to determine that no significant energy savings would likely result from setting new or amended standards.

(5) If either one of the thresholds described in paragraphs (b)(3) or (b)(4) of this section is reached, DOE will conduct analyses to ascertain whether a standard can be prescribed that produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings (using the same criteria of either 0.3 quad of aggregate site energy savings or a 10-percent decrease in energy use, as measured in quads—both over a 30-year period) at the level determined to be economically justified.

(6) In the case of ASHRAE equipment, DOE will examine the potential energy savings involved across the equipment category at issue.

(c) *Design options*—(1) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-proposal stages of the rulemaking, interested parties may be consulted to provide information on key issues through a variety of rulemaking documents. The preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (ANOPR). Requests for Information (RFI) and Notice of Data Availability (NODA) could also be issued, as appropriate.

(2) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (c)(3) of this section and the policies stated in section 7 of this Appendix (*i.e. Policies on Selection of Standards*). The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR documents. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (d) of this section.

(3) *Factors for screening of design options.* The factors for screening design options include:

(i) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(ii) Practicability to manufacture, install and service. If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(iii) Adverse Impacts on Product Utility or Product Availability.

(iv) Adverse Impacts on Health or Safety.

(v) Unique-Pathway Proprietary Technologies. If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

(d) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.

(1) *Identification of engineering analytical methods and tools.* DOE will select the specific engineering analysis tools (or multiple tools, if necessary to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (c) of this section, DOE will select the candidate standard levels for further analysis.

(e) *Pre-NOPR Stage*—(1) *Documentation of decisions on candidate standard selection.*

(i) If the early assessment and screening analysis indicates that continued development of a standard is appropriate, the Department will publish either:

(A) A notice accompanying a framework document and, subsequently, a preliminary analysis or;

(B) An ANOPR. The notice document will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(ii) If DOE determines at any point in the pre-NOPR stage that no candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, that conclusion will be announced in the **Federal Register** with an opportunity for public comment provided to stakeholders. In such cases, the Department will proceed with a rulemaking that proposes not to adopt new or amended standards.

(2) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For such documents, DOE will determine whether a public hearing is appropriate.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

(f) *Analysis of impacts and selection of proposed standard level.* After the pre-NOPR stage, if DOE has determined preliminarily that a candidate standard level is likely to

produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools if necessary to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(4) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) Impacts on manufacturers. The analysis of private manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, plant closures, and loss of capital investment.

(ii) Private Impacts on consumers. The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; consideration of changes to product utility, changes to purchase rate of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs; and loss of utility.

(iii) Impacts on competition, including industry concentration analysis.

(iv) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(v) National energy, economic, and employment impacts. The analysis of national energy, economic, and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(vi) Impacts on the environment. The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, and impacts on pollution control costs.

(vii) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(viii) New information relating to the factors used for screening design options.

(g) *Notice of Proposed Rulemaking*—(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket on *http://www.regulations.gov.* As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 75 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306).

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a Supplemental Notice of Proposed Rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(h) *Final Rule.* The Department will publish a Final Rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR, and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

7. Policies on Selection of Standards

(a) *Purpose.* (1) Section 5 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section. These policies are intended to elaborate on the statutory criteria provided in 42 U.S.C. 6295 of EPCA.

(2) The procedures described in this section are intended to assist the Department in making the determinations required by EPCA and do not preclude DOE's consideration of any other information consistent with the relevant statutory criteria. The Department will consider pertinent information in determining whether a new or revised standard is consistent with the statutory criteria.

(b) *Screening design options.* These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially-viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost/benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options that have payback periods that exceed the median life of the product or which result in life-cycle cost increases relative to the base case, using typical fuel costs, usage, and private discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in this Appendix, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the pre-NOPR documents and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy-efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Pre-NOPR Stage.* New information provided in public comments on any pre-NOPR documents will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts.

(e) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified.

(1) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A candidate/trial standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. (o)(3)(B)) For a standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

(2) *Considerations in assessing economic justification.*

(i) The following considerations will guide the application of the economic justification criterion in selecting a proposed standard:

(A) If the Department determines that a candidate/trial standard level would result in a negative return on investment for the industry, would significantly reduce the value of the industry, or would cause significant adverse impacts to a significant subgroup of manufacturers (including small manufacturing businesses), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(B) If the Department determines that a candidate/trial standard level would be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(C) If the Department determines that a candidate/trial standard level would have a significant adverse impact on the environment or energy security, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(D) If the Department determines that a candidate/trial standard level would not result in significant energy conservation, that standard level will be presumed not to be economically justified.

(E) If the Department determines that a candidate/trial standard level is not practicable to manufacture or has a negative impact on consumer utility or safety, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(F) If the Department determines that a candidate/trial standard level is not consistent with the policies relating to consumer costs in paragraph (c)(1) of this section, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(G) If the Department determines that a candidate/trial standard level will have significant adverse impacts on a significant subgroup of consumers (including low-income consumers), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(H) If the Department of Energy and the Department of Justice determine that a candidate/trial standard level would have significant anticompetitive effects, that standard level will be presumed not to be economically justified unless the Department of Energy determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(ii) DOE will, consistent with paragraph (f) of this section, account for the views expressed by the Department of Justice regarding a given proposal's effects on competition.

(iii) The basis for a determination that triggers any presumption in paragraph (e)(2)(i) of this section and the basis for a determination that an applicable presumption has been rebutted will be supported by substantial evidence in the record and the evidence and rationale for making these determinations will be explained in the NOPR.

(iv) If none of the policies in paragraph (e)(2)(i) of this section is found to be dispositive, the Department will determine whether the benefits of a candidate standard level exceed the burdens considering all the pertinent information in the record.

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether issuance of a new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings or whether any change to the proposed standard level is needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in this section, will be used to guide the selection of the final standard level or a determination that no new or amended standard is justified.

8. Test Procedures

(a) *General.* As with the early assessment process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure rulemakings. DOE will follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of amended energy conservation standards. Consequently, DOE will publish a notice in the **Federal Register** whenever DOE is considering initiation of a rulemaking to amend a test procedure. In that notice, DOE will request submission of comments, including data and information on whether an amended test procedure rule would:

(1) More accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use without being unduly burdensome to conduct; or

(2) Reduce testing burden. DOE will review comments submitted and, subject to statutory obligations, determine whether it agrees with the submitted information. If DOE determines that an amended test procedure is not justified at that time, it will not pursue the rulemaking and will publish a notice in the **Federal Register** to that effect. If DOE receives sufficient information suggesting an amended test procedure could more accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct, reduce testing burden, or the information received is inconclusive with regard to these points, DOE would undertake the preliminary stages of a rulemaking to amend the test procedure,

as discussed further in the paragraphs that follow in this section.

(b) *Identifying the need to modify test procedures.* DOE will identify any necessary modifications to established test procedures prior to initiating the standards development process. It will consider all stakeholder comments with respect to needed test procedure modifications. If DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it would provide further opportunities for early public input through **Federal Register** documents, including NODAs and/or RFIs.

(c) *Adoption of Industry Test Methods.* DOE will adopt industry test standards as DOE test procedures for covered products and equipment, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle.

(d) *Issuing final test procedure modification.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards.

(e) *Effective Date of Test Procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

(a) EPCA provides that ASHRAE equipment are subject to unique statutory requirements and their own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards and test procedures for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to standards and test procedures applicable to such equipment. Not later than 180 days after the amendment of the standard, the Secretary will publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, not later than 18 months after the date of publication of the amendment to ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, or amend the test procedure referenced in ASHRAE Standard 90.1 for the equipment at issue to be consistent with the applicable industry test procedure, respectively, unless—

(1) DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified; or

(2) The test procedure would not meet the requirements for such test procedures specified in EPCA. In such case, DOE must adopt the more stringent standard not later than 30 months after the date of publication of the amendment to ASHRAE/IES Standard 90.1 for the affected equipment.

(b) For ASHRAE equipment, DOE will adopt the revised ASHRAE levels or the industry test procedure, as contemplated by EPCA, except in very limited circumstances.

With respect to DOE's consideration of standards more-stringent than the ASHRAE levels or changes to the industry test procedure, DOE will do so only if it can meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold. Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified, or, in the case of test procedures, that the industry test procedure does not meet the EPCA requirements. DOE will make this determination only after seeking data and information from interested parties and the public to help inform the Agency's views. DOE will seek from interested stakeholders and the public data and information to assist in making this determination, prior to publishing a proposed rule to adopt more-stringent standards or a different test procedure.

(c) DOE's review in adopting amendments based on an action by ASHRAE to amend Standard 90.1 is strictly limited to the specific standards or test procedure amendment for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. Thus, when undertaking a review as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined in this section, to issue a standard more stringent than the existing standard for the equipment at issue.

10. Direct Final Rules

(a) A direct final rule (DFR), as contemplated in 42 U.S.C. 6295(p)(4), is a procedural mechanism separate from the negotiated rulemaking process outlined under the Negotiated Rulemaking Act (5 U.S.C. 563). DOE may issue a DFR adopting energy conservation standards for a covered product provided that:

(1) DOE receives a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view,'' which does not include DOE as a member of the group. At a minimum, to be ''fairly representative of relevant points of view'' the group submitting a joint statement must include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, as appropriate, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.''

(2) This paragraph (a)(2) describes the steps DOE will follow with respect to a DFR.

(i) DOE must determine whether the energy conservation standard recommended in the joint proposal is in accordance with the requirements of 42 U.S.C. 6295(o) or section 342(a)(6)(B) as applicable. Because the DFR provision is procedural, and not a separate grant of rulemaking authority, any standard issued under the DFR process must comply fully with the provisions of the EPCA subsection under which the rule is authorized. DOE will not accept or issue as a DFR a submitted joint proposal that does not comply with all applicable EPCA requirements.

(ii) Upon receipt of a joint statement recommending energy conservation standards, DOE will publish in the **Federal Register** that statement, as submitted to DOE, in order to obtain feedback as to whether the joint statement was submitted by a group that is fairly representative of relevant points of view. If DOE determines that the DFR was not submitted by a group that is fairly representative of relevant points of view, DOE will not move forward with a DFR and will consider whether any further rulemaking activity is appropriate. If the Secretary determines that a DFR cannot be issued based on the statement, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

(iii) Simultaneous with the issuance of a DFR, DOE must also publish a NOPR containing the same energy conservation standards as in the DFR. Following publication of the DFR, DOE must solicit public comment for a period of at least 110 days; then, not later than 120 days after issuance of the DFR, the Secretary must determine whether any adverse comments ''may provide a reasonable basis for withdrawing the direct final rule,'' based on the rulemaking record. If DOE determines that one or more substantive comments objecting to the DFR provides a sufficient reason to withdraw the DFR, DOE will do so, and will instead proceed with the published NOPR (unless the information provided suggests that withdrawal of that NOPR would likewise be appropriate). In making this determination, DOE may consider comments as adverse, even if the issue was brought up previously during DOE-initiated discussions (*e.g.* publication of a framework or RFI document), if the Department concludes that the comments merit further consideration.

11. Negotiated Rulemaking Process

(a)(1) In those instances where negotiated rulemaking is determined to be appropriate, DOE will comply with the requirements of

the Negotiated Rulemaking Act (NRA) (5 U.S.C. 561–570) and the requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). To facilitate potential negotiated rulemakings, and to comply with the requirements of the NRA and the FACA, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). Working groups can be established as subcommittees of ASRAC, from time to time, and for specific products/equipment, with one member representative from the ASRAC committee attending and participating in the meetings of a specific working group. (Consistent with 5 U.S.C. 565(b), committee membership is limited to 25 members, unless the agency determines that more members are necessary for the functioning of the committee or to achieve balanced membership.) Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement developed through the negotiated rulemaking.

(2) DOE will use the negotiated rulemaking process on a case-by-case basis and, in appropriate circumstances, in an attempt to develop a consensus proposal before issuing a proposed rule. When approached by one or more stakeholders or on its own initiative, DOE will use a convener to ascertain, in consultation with relevant stakeholders, whether the development of the subject matter of a potential rulemaking proceeding would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter. A neutral, independent convenor will identify issues that any negotiation would need to address, assess the full breadth of interested parties who should be included in any negotiated rulemaking to address those issues, and make a judgment as to whether there is the potential for a group of individuals negotiating in good faith to reach a consensus agreement given the issues presented. DOE will have a neutral and independent facilitator, who is not a DOE employee or consultant, present at all ASRAC working group meetings.

(3) DOE will base its decision to proceed with a potential negotiated rulemaking on the report of the convenor. The following additional factors militate in favor of a negotiated rulemaking:

(i) Stakeholders commented in favor of negotiated rulemaking in response to the initial rulemaking notice;

(ii) The rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data;

(iii) The current standards have already been amended one or more times;

(iv) Stakeholders from differing points of view are willing to participate; and

(v) DOE determines that the parties may be able to reach an agreement.

(4) DOE will provide notice in the **Federal Register** of its intent to form an ASRAC working group (including a request for nominations to serve on the committee), announcement of the selection of working group members (including their affiliation), and announcement of public meetings and the subject matter to be addressed.

(b) DOE's role in the negotiated rulemaking process is to participate as a member of a group attempting to develop a consensus proposal for energy conservation standards for a particular product/equipment and to provide technical/analytical advice to the negotiating parties and legal input where needed to support the development of a potential consensus recommendation in the form of a term sheet.

(c) A negotiated rulemaking may be used to develop energy conservation standards, test procedures, product coverage, and other categories of rulemaking activities.

(d) A dedicated portion of each ASRAC working group meeting will be set aside to receive input and data from non-members of the ASRAC working group. This additional opportunity for input does nothing to diminish stakeholders' ability to provide comments and ask relevant questions during the course of the working group's ongoing deliberations at the public meeting.

(e) If DOE determines to proceed with a rulemaking at the conclusion of negotiations, DOE will publish a proposed rule. DOE will consider the approved term sheet in developing such proposed rule. A negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR. Further, any potential term sheet upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule is authorized. DOE cannot accept recommendations or issue a NOPR based upon a negotiated rulemaking that does not comply with all applicable EPCA requirements, including those product- or equipment-specific requirements included in the provision that authorizes issuance of the standard.

12. Principles for Distinguishing Between Effective and Compliance Dates

(a) *Dates, generally.* The effective and compliance dates for either DOE test procedures or DOE energy conservation standards are typically not identical and these terms should not be used interchangeably.

(b) *Effective date.* The effective date is the date a rule is legally operative after being published in the **Federal Register**.

(c) *Compliance date.* (1) For test procedures, the compliance date is the specific date when manufacturers are required to use the new or amended test procedure requirements to make representations concerning the energy efficiency or use of a product, including certification that the covered product/equipment meets an applicable energy conservation standard.

(2) For energy conservation standards, the compliance date is the specific date upon which manufacturers are required to meet the new or amended standards for applicable covered products/equipment that are distributed in interstate commerce.

13. Principles for the Conduct of the Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product/equipment. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the reduction in energy use or improvement in energy efficiency that can be expected from individual design options as discussed in paragraphs (b) and (c) of this section. From this efficiency/cost relationship, measures such as payback, life-cycle cost, and energy savings can be developed. The Department will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information, and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. The Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying, or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product/equipment. A base case configuration or starting point will be established, as well as the order and combination/blending of the design options to be evaluated. DOE will then perform the engineering analysis and develop the cost-efficiency curve for the product/equipment. The cost efficiency curve and any necessary models will be available to stakeholders during the pre-NOPR stage of the rulemaking.

14. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely private impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. This section describes the principles that will be used in conducting future manufacturing impact analyses.

(b) *Issue identification.* In the impact analysis stage (section 5(d)), the Department will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of

manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their current and historical relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product/equipment characteristics and retail markets including manufacturer market shares and market concentration; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total private cost impacts, including product/equipment-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product/equipment models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor, and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product/equipment sales, features, prices, and cost recovery.* In order to make manufacturer cash-flow calculations, it is necessary to predict the number of products/equipment sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products/equipment sold and on typical features of models sold. Past analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: actual shipment and pricing experience; data from manufacturers, retailers, and other market experts; financial models, and sensitivity analyses. The possible impacts of candidate/trial standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate/trial standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, with input from interested parties, as appropriate. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices, and sales volumes;

(2) Cash flows, by year; and

(3) Other measures of impact, such as revenue, net income, and return on equity, as appropriate. DOE also notes that the characteristics of a typical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative Impacts of Other Federal Regulatory Actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products or equipment. DOE will analyze and consider the impact on manufacturers of multiple product/equipment-specific regulatory actions. These factors will be considered in setting rulemaking priorities, conducting the early assessment as to whether DOE should proceed with a standards rulemaking, assessing manufacturer impacts of a particular standard, and establishing compliance dates for a new or revised standard that, consistent with any statutory requirements, are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product or equipment manufacturers within approximately three years of the compliance date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products/equipment that are components of other products/equipment subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(1) *Key modeling and analytical tools.* In its assessment of the likely impacts of standards on manufacturers, the Department will use models that are clear and understandable, feature accessible calculations, and have clearly explained assumptions. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

(2) [Reserved]

15. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products/equipment to the consumer. See paragraph (c) of section 6.

(b) *Impacts on product/equipment availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products/equipment generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of Justice review.* As required by law, the Department will solicit the views of the Department of Justice on any lessening of competition likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of Justice at earlier stages in the standards development process to seek its preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate/trial standard levels among different subgroups of consumers. The Department will consider impacts on significant segments of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period, and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department also

performs sensitivity and scenario analyses when appropriate. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate/trial standard level would result in a substantial increase in product/equipment first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will assess the likely impacts of such a standard on low-income households, product/equipment sales and fuel switching, as appropriate.

16. Consideration of Non-Regulatory Approaches

The Department recognizes that non-regulatory efforts by manufacturers, utilities, and other interested parties can result in substantial efficiency improvements. The Department intends to consider the likely effects of non-regulatory initiatives on product/equipment energy use, consumer utility and life-cycle costs, manufacturers, competition, utilities, and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers, and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities, or others to such non-regulatory efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing—where possible—appropriate compliance dates for new or revised standards, and in considering DOE support of non-regulatory initiatives.

17. Cross-Cutting Analytical Assumptions

In selecting values for certain cross-cutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current Annual Energy Outlook (AEO) published by the Energy Information Administration (EIA).

(b) *Analytic time length.* The appliance standards analyses will use two time lengths—30 years and another time length that is specific to the standard being considered such as the useful lifetime of the product under consideration. As a sensitivity case, the analyses will also use a 9-year regulatory time line in analyzing the effects of the standard.

(c) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current AEO. The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(d) *Product/equipment-specific energy-efficiency trends, without updated standards.* Product/equipment-specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(e) *Price forecasting.* DOE will endeavor to use robust price forecasting techniques in projecting future prices of products.

(f) *Private Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE typically uses a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(g) *Social Discount Rates.* Social discount rates as specified in OMB Circular A–4 will be used in assessing social effects such as costs and benefits.

(h) *Environmental impacts.* (1) DOE calculates emission reductions of carbon dioxide, sulfur dioxide, nitrogen oxides, methane, nitrous oxides, and mercury likely to be avoided by candidate/trial standard levels based on an emissions analysis that includes the two components described in paragraphs (h)(2) and (3) of this section.

(2) The first component estimates the effect of potential candidate/trial standard levels on power sector and site combustion emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide. DOE develops the power sector emissions analysis using a methodology based on DOE's latest Annual Energy Outlook. For site combustion of natural gas or petroleum fuels, the combustion emissions of carbon dioxide and nitrogen oxides are estimated using emission intensity factors from the Environmental Protection Agency.

(3) The second component of DOE's emissions analysis estimates the effect of potential candidate/trial standard levels on emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide due to ''upstream activities'' in the fuel production chain. These upstream activities include the emissions related to extracting, processing, and transporting fuels to the site of combustion as detailed in DOE's Fuel-Fuel-Cycle Statement of Policy (76 FR 51281 (August 18, 2011)). DOE will consider the effects of the candidate/trial standard levels on these emissions after assessing the seven factors required to demonstrate economic justification under EPCA. Consistent with Executive Order 13783, dated March 28, 2017, when monetizing the value of changes in reductions in CO_2 and nitrous oxides emissions resulting from its energy conservation standards regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, DOE ensures, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A–4 of September 17, 2003 (Regulatory Analysis).

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 4. Section 431.4 is added to subpart A to read as follows:

§ 431.4 Procedures, interpretations, and policies for consideration of new or revised energy conservation standards and test procedures for commercial/industrial equipment.

The procedures, interpretations, and policies for consideration of new or revised energy conservation standards and test procedures set forth in appendix A to subpart C of part 430 of this chapter shall apply to the consideration of new or revised energy conservation standards and test procedures considered for adoption under this part.

[FR Doc. 2020–00023 Filed 2–13–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 31 February 14, 2020

Part III

The President

Notice of February 13, 2020—Continuation of the National Emergency With Respect to the Southern Border of the United States

Federal Register
Vol. 85, No. 31
Friday, February 14, 2020

Presidential Documents

Title 3—

The President

Notice of February 13, 2020

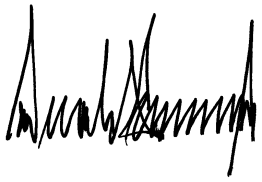
Continuation of the National Emergency With Respect to the Southern Border of the United States

On February 15, 2019, by Proclamation 9844, I declared a national emergency concerning the southern border of the United States to deal with the border security and humanitarian crisis that threatens core national security interests.

The ongoing border security and humanitarian crisis at the southern border of the United States continues to threaten our national security, including the security of the American people. The executive branch has taken steps to address the crisis, but further action is needed to address the humanitarian crisis and to control unlawful migration and the flow of narcotics and criminals across the southern border of the United States.

For these reasons, the national emergency declared on February 15, 2019, and the measures adopted on that date to respond to that emergency, must continue in effect beyond February 15, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Proclamation 9844 concerning the southern border of the United States.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
February 13, 2020.

[FR Doc. 2020–03212
Filed 2–13–20; 11:15 am]
Billing code 3295–F0–P

Reader Aids

Federal Register

Vol. 85, No. 31

Friday, February 14, 2020

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5903–6022 3
6023–6418 4
6419–6730 5
6731–7190 6
7191–7442 7
7443–7652 10
7653–7852 11
7853–8128 12
8129–8372 13
8373–8716 14

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9983 6698
9984 6709
9985 6715
9986 6717
9987 6719
Executive Orders:
13903 6721
13904 6725
Administrative Orders:
Notices:
Notice of February 13, 2020 8715
Orders:
Order of February 10, 2020 8129
Presidential Determinations:
No. 2020–05 of January 6, 2020 6731

5 CFR

Proposed Rules:
532 8205
1650 8482
2641 7252

7 CFR

Ch. I 7443
210 7853
220 7853
226 7853
1464 8131
1471 6419
Proposed Rules:
930 6102
984 7669

10 CFR

430 8626
431 8626
Proposed Rules:
Ch. I 6103
429 6102
430 ..... 6102, 8483
590 7672

12 CFR

204 7855
600 6421
604 6421
622 6023
Ch. X 6733
Proposed Rules:
303 7453
337 7453

13 CFR

103 7622
120 7622
121 7622
302 8373
315 8373
Proposed Rules:
119 7254
125 6106
134 7893

14 CFR

25 ..... 6025, 6026, 6028
39 ..... 6738, 6741, 6744, 6747, 6749, 6752, 6755, 6757, 7191, 7653, 7655, 7857, 7860, 7863, 7865, 7868, 8145, 8148, 8150, 8153, 8383, 8386
71 ..... 6030, 6422, 7192, 7445, 7447, 7871, 8388
97 ..... 7194, 7195
Proposed Rules:
21 5905
39 ..... 5906, 6107, 6110, 7256, 7894, 7897, 7899, 8207, 8209
71 ..... 6115, 6118, 7472, 7474, 7681, 8212
382 6448

15 CFR

2013 7448
Proposed Rules:
287 7258
922 8213

16 CFR

Proposed Rules:
453 8490

17 CFR

201 6270
240 ..... 6270, 6359

18 CFR

11 6760
40 ..... 7197, 8155, 8161
Proposed Rules:
40 6831

19 CFR

Ch. I 6044, 7214
12 ..... 7204, 7209, 7214, 8389
351 6031

20 CFR

404 7661
408 7661
416 7661

21 CFR

101 6045
866 7215
Proposed Rules:
573 7682

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

S. 153/P.L. 116–115
Supporting Veterans in STEM Careers Act (Feb. 11, 2020; 134 Stat. 106)
Last List February 10, 2020

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.