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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0198; Product Identifier 2020–NM–018–AD; Amendment 39–19859; AD 2020–05–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report of an incorrect version of EASy ''Top-Level System'' operational software installed in the avionics system due to use of an improper CD–ROM. This AD requires ensuring that the correct versions of the operational software and CD–ROM are installed, and doing corrective action if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective March 26, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 26, 2020.

The FAA must receive comments on this AD by April 27, 2020.

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

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

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0198.

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–2020–0198; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0014, dated January 29, 2020 (''EASA AD 2020–0014'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes.

This AD was prompted by a report of an incorrect version of EASy ''Top-Level System'' operational software loaded into the avionics system due to the use of an improper CD–ROM. The FAA is issuing this AD to address misleading information and erroneous guidance affecting the functional capabilities of the avionics system, which could result in reduced control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0014 describes procedures for ensuring that correct versions of EASy ''Top-Level System'' operational software and CD–ROM are installed. EASA AD 2020–0014 also describes procedures for applicable corrective actions, which include amending the applicable airplane flight manual (AFM) to limit the use of the software during descent, and installing the correct version of the operational software and CD–ROM, which eliminates the need for the AFM revision.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0014 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0014 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0014 that is required for compliance with EASA AD 2020–0014 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0198.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because misleading information and erroneous guidance affecting the functional capabilities of the avionics system could result in reduced control of the airplane. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0198; Product Identifier 2020–NM–018–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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.

Costs of Compliance

The FAA estimates that this AD affects 59 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$5,015

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 7 work-hours × $85 per hour = $595	$0	$595

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

2020–05–10 Dassault Aviation: Amendment 39–19859; Docket No. FAA–2020–0198; Product Identifier 2020–NM–018–AD.

(a) Effective Date

This AD becomes effective March 26, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0014, dated January 29, 2020 (''EASA AD 2020–0014'').

(d) Subject

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

(e) Reason

This AD was prompted by a report of an incorrect version of EASy ''Top-Level System'' operational software installed in the avionics system due to use of an improper CD–ROM. The FAA is issuing this AD to address misleading information and erroneous guidance affecting the functional capabilities of the avionics system, which could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0014.

(h) Exceptions to EASA AD 2020–0014

(1) Where EASA AD 2020–0014 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0014 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0014 specifies to submit certain information and send a ''wrong CD–ROM'' to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0014, dated January 29, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0014, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0198.

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

Issued on March 2, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–04999 Filed 3–6–20; 4:15 pm]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0457; FRL–10006–21–Region 4]

Air Plan Approval; Georgia; Revisions to Aerospace VOC Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on June 6, 2019, for the purpose of updating Georgia's rule titled *Volatile Organic Compound (VOC) Emissions from Aerospace Manufacturing and Rework Facilities.* EPA is taking final action on this Georgia SIP revision because it is consistent with the Clean Air Act (CAA or Act).

DATES: Effective March 11, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0457. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

GA EPD submitted a SIP revision, through a letter dated June 6, 2019, to EPA for review and approval into the Georgia SIP. The revision contains changes to Georgia's air quality rules in Rule 391–3–1–.02(2)(kkk). More specifically, the submission amends reasonably available control technology (RACT) requirements applicable to VOC emissions from aerospace manufacturing and rework facilities at Georgia Rule 391–3–1–.02(2)(kkk). The rule changes incorporate EPA's December 7, 2015 (80 FR 76152) revisions to the National Emission Standards for Hazardous Air Pollutants. The changes in the June 6, 2019, submittal replicate updates made to 40 CFR part 63, subpart GG, and are compliant with the State's RACT requirements. Furthermore, EPA does not foresee any emissions increase from this SIP revision. See EPA's January 13, 2020 (85 FR 1796) Notice of Proposed Rulemaking (NPRM) for further detail on the changes made in the June 6, 2019, submittal and EPA's rationale for approving these revisions. Comments were due on or before February 12, 2020. EPA received no comments on the NPRM. Therefore, EPA is approving the changes in this action.

II. Incorporation by Reference

In this document, 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 Georgia Rule 391–3–1–.02(2)(kkk) entitled ''VOC Emissions from Aerospace Manufacturing and Rework Facilities,'' state effective February 17, 2019, which incorporates revisions to the emission standards for specialty coatings, allows for annual purchase records of certain coatings, exempts two additional application methods, and updates definitions. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 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]

III. Final Action

EPA is approving the Georgia SIP revision to Rule 391–3–1–.02(2)(kkk), ''VOC Emissions from Aerospace Manufacturing and Rework Facilities,'' submitted on June 6, 2019. EPA has evaluated Georgia's submittal and determined that it meets the applicable requirements of the CAA and EPA regulations.

IV. Statutory and Executive Order Reviews

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

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

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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

action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 24, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

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 L—Georgia

■ 2. In § 52.570 amend the table in paragraph (c), by revising the entry for ''391–3–1–.02(2)(kkk)'' under ''Emission Standards'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
391–3–1–.02(2)	Emission Standards			
* *	*	*	* *	*
391–3–1-.02(2)(kkk)	VOC Emissions from Aerospace Manufacturing and Rework Facilities.	2/17/19	3/11/20 [Insert citation of publication].	
* *	*	*	* *	*

* * * * *

[FR Doc. 2020–04654 Filed 3–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0503; FRL–10006–32–Region 4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the Georgia and North Carolina State Implementation Plan (SIP) submissions provided on September 24, 2018, and September 27, 2018, respectively. The submissions pertain to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP submission to establish that state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Georgia and North Carolina each made the required SIP submissions to assure that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA has in this action determined that the Georgia and North Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is effective April 10, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0503. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS

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

This action is approving Georgia's September 24, 2018, SIP submission provided to EPA through the Georgia Environmental Protection Division (GA EPD), and North Carolina's September 27, 2018,[2] SIP submission provided to EPA through the North Carolina Department of Environmental Quality (NC DEQ) with respect to most of the applicable requirements of the 2015 8-hour ozone NAAQS. In this action, EPA is not acting upon the submissions with respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states, and the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), EPA is addressing these provisions in separate rulemaking actions.

In a notice of proposed rulemaking (NPRM) published on December 30, 2019 (84 FR 71866), EPA proposed to approve Georgia and North Carolina SIP submissions provided on September 24, 2018, and September 27, 2018, respectively, for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before January 29, 2020.

II. Response to Comment

EPA received two comments on the NPRM, one in support of the action and one opposed to the action. Both comments are included in the docket for this final rule, and the adverse comment is addressed below.

Comment: The Commenter states that ''EPA fails to explain whether either state has submitted an approved Emergency Episode plan pursuant to Subpart H under section 110(a)(2)(G). Both states have at least one area that is classified as Priority 1 for Hydrocarbons under Part 52.571 or 52.1771, as they apply to each state. EPA must explain where these emergency episode plans are in each states' SIPs or disapprove the States' section 110(a)(2)(G) submission.''

Response: EPA disagrees with the commenter. Section 110(a)(2)(G) requires SIPs to ''provide for authority comparable to that in section 7603 [303] of this title and adequate contingency plans to implement such authority.'' Section 303 of the CAA authorizes the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' EPA's September 13, 2013 ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' explains that EPA interprets section 110(a)(2)(G) to impose two requirements for purposes of an infrastructure SIP submission.[3] First, a state's submission should identify the relevant statutes or regulations that provide the air agency or official with authority comparable to that of the EPA Administrator under section 303.[4] [5] Second, the state's implementation plan is required to include an adequate contingency plan to meet the requirements of 40 CFR part 51, subpart H.

The Commenter expresses concern about the states' compliance with the second 110(a)(2)(G) requirement—an adequate contingency plan to meet the requirements of 40 CFR part 51, subpart H. Specifically, the Commenter questions whether the Georgia and North Carolina SIPs contain the required subpart H emergency episode plan and contends that EPA failed to explain whether either state has such a plan. In the NPRM at 84 FR 71872, EPA cited to the emergency episodes and contingency plan in Georgia's existing SIP, which is Air Quality Control Rule 391–3–1–.04, ''Air Quality Control Episodes.'' This rule authorizes the GA EPD Director to proclaim an air pollution alert, warning, or emergency; and authorizes the Director to require the owner, operator or lessee of any source to prepare, submit, and implement a plan to reduce air contaminants when notified of an air pollution alert, warning, or emergency. Similarly, EPA explained in the NPRM at 84 FR 71872, that North Carolina's existing SIP contains an emergency episode and contingency plan in 15A NCAC 2D .0300, ''Air Pollution Emergencies.'' This rule authorizes the NC DEQ Director to proclaim an air pollution alert, warning, or emergency; requires larger source to develop actions plans; lists other abatement measures; and provides that such plans and measures must be implemented when an alert, warning or emergency has been declared.

EPA notes that Georgia Air Quality Control Rule 391–3–1–.04, ''Air Quality Control Episodes,'' and North Carolina 15A NCAC 2D .0300, ''Air Pollution Emergencies'' are already approved into each state's respective SIP.[6] Thus, contrary to Commenter's assertion, EPA identified each state's SIP-approved emergency episode plan in the NPRM. The Commenter did not provide any information to suggest that either Georgia's or North Carolina's existing SIP-approved rules were inadequate or otherwise suggest that these states lacked authority comparable to that in CAA section 303.

III. Final Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to contribution to nonattainment or interference with

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

[2] The September 27, 2018, SIP submission provided by NC DEQ's Division of Air Quality (DAQ) was received by EPA on October 10, 2018.

[3] *See* ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' September 13, 2013, p. 47.

[4] EPA explains that the best practice is for the statutory or regulatory provisions that provide authority comparable to section 303 to be included in the SIP, but provides that an air agency may choose not to include such provision in the SIP, in which case the submission should provide a reference or citation to the authority provisions, along with a narrative explanation of how they meet the requirements of this element.

[5] A discussion of how Georgia and North Carolina have authority comparable to CAA section 303 is found in the NPRM at 84 FR 71872.

[6] In footnote 3 of the NPRM (84 FR 71867), EPA explained that regulations cited to in the NPRM as Georgia's Air Quality Control Rule and North Carolina's NCAC have been approved into the SIP, unless otherwise indicated.

maintenance in other states, and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), EPA is approving Georgia's and North Carolina's September 24, 2018, and September 27, 2018, SIP submissions for the 2015 8-hour ozone NAAQS. EPA is approving Georgia's and North Carolina's infrastructure SIP submissions for certain requirements related to the 2015 8-hour ozone NAAQS because the submissions are consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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 May 11, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: February 27, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. Section 52.570, is amended in paragraph (e) by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	Georgia	9/24/2018	3/11/2020, [Insert citation of publication].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J).

Subpart II—North Carolina

■ 3. Section 52.1770, is amended in paragraph (e) by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation	Explanation
*	*	*	*	* * *
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	9/27/2018	3/11/2020	[Insert citation of publication].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J).

[FR Doc. 2020–04855 Filed 3–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2017–0629; FRL–10006–10–OAR]

RIN 2060–AT81

Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act prohibits knowingly venting or releasing ozone-depleting and substitute refrigerants in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration. In 2016, the EPA amended the regulatory refrigerant management requirements and extended requirements that previously applied only to refrigerants containing an ozone-depleting substance to substitute refrigerants that are subject to the venting prohibition (*i.e.,* those that have not been exempted from that prohibition) such as hydrofluorocarbons. Based on changes to the legal interpretation that supported that 2016 rule, this action revises some of those requirements—specifically, the appliance maintenance and leak repair provisions—so they apply only to equipment using refrigerant containing an ozone-depleting substance.

DATES: This final rule is effective on April 10, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0629. All documents in the docket are listed on the *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. All other publicly available docket materials are available electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; by telephone: (202) 343–9055; or by email: *arling.jeremy@epa.gov.* More information can also be found at: *https://www.epa.gov/section608.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What is the National Recycling and Emission Reduction Program?

Section 608 of the Clean Air Act (CAA), titled ''National Recycling and Emission Reduction Program,'' has three main components. First, section 608(a) requires the EPA to establish standards and requirements regarding the use and disposal of class I and class II substances.[1] The second component, section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, section 608(c), prohibits the knowing venting, release, or disposal of ODS refrigerants[2] and their substitutes[3] in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration (IPR). The EPA refers to this third component as the ''venting prohibition.'' Section 608(c)(1) establishes the venting prohibition for ODS refrigerants effective July 1, 1992, and it includes an exemption from this prohibition for ''[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose'' any such substance. Section 608(c)(2) extends 608(c)(1) to substitute refrigerants, effective November 15, 1995. Section 608(c)(2) also includes a provision that allows the Administrator to exempt a substitute refrigerant from the venting prohibition if he or she determines that such venting, release, or disposal of a substitute refrigerant ''does not pose a threat to the environment.''[4]

The EPA first issued regulations under section 608 of the CAA on May 14, 1993 (58 FR 28660, ''1993 Rule''), to establish the national refrigerant management program for ODS refrigerants recovered during the service, repair, or disposal of air-conditioning and refrigeration appliances. The 1993 Rule required that persons servicing air-conditioning and refrigeration equipment containing ODS refrigerants observe certain practices that reduce emissions. It established

[1] A class I or class II substance is an ozone-depleting substance (ODS) listed at 40 CFR part 82, subpart A, appendix A or appendix B, respectively. This document refers to class I and class II substances collectively as ozone-depleting substances, or ODS.

[2] The term ''ODS refrigerant'' as used in this document refers to any refrigerant or refrigerant blend in which one or more of the components is a class I or class II substance.

[3] The term ''substitute'' is defined at § 82.152.

[4] The EPA is using the term ''non-exempt substitute'' in this document to refer to substitute refrigerants that have not been exempted from the venting prohibition under CAA section 608(c)(2) and § 82.154(a) in the relevant end-use. Similarly, the term ''exempt substitute'' refers to a substitute refrigerant that has been exempted from the venting prohibition under section 608(c)(2) and § 82.154(a) in the relevant end-use. A few exempt substitutes have been exempted from the venting prohibition in all end-uses.

requirements for refrigerant recovery equipment, reclaimer certification, and technician certification, and also restricted the sale of ODS refrigerant so that only certified technicians could purchase it. In addition, the 1993 Rule required that ODS be removed from appliances prior to disposal, and that all air-conditioning and refrigeration equipment using an ODS be provided with a servicing aperture or process stub to facilitate refrigerant recovery. The 1993 Rule also established a requirement to repair leaking appliances containing more than 50 pounds of ODS refrigerant. The rule set an annual leak rate of 35 percent for commercial refrigeration appliances and IPR and 15 percent for comfort cooling appliances. If the applicable leak rate is exceeded, the appliance must be repaired within 30 days. Further, consistent with CAA section 608(c)(1), the 1993 Rule included a regulatory provision prohibiting the knowing venting or release of ODS refrigerant by any person maintaining, servicing, repairing, or disposing of an appliance. (58 FR 28714; 40 CFR 82.154(a) (1993)). It also provided that such releases would be considered *de minimis,* and therefore not subject to the prohibition, if they occurred when certain regulatory requirements were followed. (40 CFR 82.154(a) (1993)).

The EPA revised these regulations, which are found at 40 CFR part 82, subpart F (''subpart F''), through subsequent rulemakings published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), August 8, 1995 (60 FR 40420), July 24, 2003 (68 FR 43786), March 12, 2004 (69 FR 11946), January 11, 2005 (70 FR 1972), April 13, 2005 (70 FR 19273), May 23, 2014 (79 FR 29682), April 10, 2015 (80 FR 19453), and November 18, 2016 (81 FR 82272).

In the April 2005 rulemaking, the EPA revised the regulatory venting prohibition in § 82.154, so that it also applied to non-exempt substitute refrigerants, and included such substitutes in the regulatory provision implementing the *de minimis* exemption, so that it exempted ''*de minimis* releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes'' from the prohibition. (70 FR 19278). However, in contrast to how these regulations applied to ODS refrigerants, they did not provide that releases of non-exempt substitute refrigerants would be considered *de minimis* if certain regulatory requirements were followed.

Additionally, the 2004 and 2005 rules exempted certain substitute refrigerants from the venting prohibition either in specific end uses or in all end uses. (*See* 69 FR 11953–11954; 70 FR 19278; § 82.154(a) (2005)). The EPA has periodically updated this list of exemptions from the venting prohibition in the regulations at § 82.154(a) since 2005. The EPA also issued proposed rules to revise the regulations in subpart F on June 11, 1998 (63 FR 32044), elements of which were not finalized, and on December 15, 2010 (75 FR 78558), no elements of which were finalized. A more detailed history of these regulatory updates can be found at 81 FR 82275.

On November 18, 2016, the EPA published a rule updating existing refrigerant management requirements and extending the full set of the subpart F refrigerant management requirements, which prior to that rule applied only to ODS refrigerants,[5] to non-exempt substitute refrigerants, such as hydrofluorocarbons (HFCs) and hydrofluoroolefins (HFOs) (81 FR 82272, ''2016 Rule''). The 2016 Rule also clarified how regulated entities could avail themselves of the *de minimis* exemption for non-exempt substitutes. (*See, e.g.,* 81 FR 82283–82285). Among the subpart F requirements extended to non-exempt substitute refrigerants in the 2016 Rule were provisions that restrict the servicing of appliances and the sale of refrigerant to certified technicians, specify the proper evacuation levels before opening an appliance, require the use of certified refrigerant recovery and/or recycling equipment, require that refrigerant be removed from appliances prior to disposal, require that appliances have a servicing aperture or process stub to facilitate refrigerant recovery, require that refrigerant reclaimers be certified to reclaim and sell used refrigerant, and establish standards for technician certification programs, recovery equipment, and quality of reclaimed refrigerant. The 2016 Rule also extended the appliance maintenance and leak repair provisions, currently codified at § 82.157, to appliances that contain 50 or more pounds of non-exempt substitute refrigerant. For ease of reference, in this document the EPA uses the terms ''leak repair provisions'' or ''leak repair requirements'' interchangeably to refer to all of the provisions at § 82.157. Included in these leak repair provisions are requirements to conduct leak rate calculations when refrigerant is added to an appliance, repair an appliance that leaks above the threshold leak rate applicable to that type of appliance, conduct verification tests on repairs, conduct periodic leak inspections on appliances that have exceeded the threshold leak rate, report to the EPA on chronically leaking appliances, retrofit or retire appliances that are not repaired, and maintain related documentation to verify compliance. The regulatory changes in the 2016 Rule became effective on January 1, 2017, but the revisions to the leak repair provisions had a compliance date of January 1, 2019 to allow time for the regulated community to prepare for those changes. (81 FR 82343). The 2016 Rule additionally made numerous revisions to improve the efficacy of the refrigerant management program as a whole, such as revisions of regulatory provisions for increased clarity and readability, and removal of provisions that had become obsolete.

Two industry coalitions, the National Environmental Development Association's Clean Air Project (NEDA/CAP) and the Air Permitting Forum (APF), filed petitions for judicial review of the 2016 Rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and the cases have been consolidated. (*See NEDA/CAP* v. *EPA,* No. 17–1016 (D.C. Cir. filed January 17, 2017); *APF* v. *EPA,* No. 17–1017 (D.C. Cir. filed January 17, 2017)). The Chemours Company, Honeywell International Inc., the Natural Resources Defense Council, and the Alliance for Responsible Atmospheric Policy are participating as intervenor-respondents in that litigation, in support of the 2016 Rule. In addition, APF has filed a petition with the EPA for administrative reconsideration of the 2016 Rule. The petition for reconsideration is available in the docket for this action and raises several issues regarding changes made in the 2016 Rule, such as the EPA's statutory authority for its decision in the 2016 Rule to expand the scope of the refrigerant management requirements—including, but not limited to, leak repair requirements—to cover non-exempt substitute refrigerants. Honeywell International Inc. submitted a document styled as a response to APF's petition for reconsideration, which is also available in the docket for this action.

B. Does this action apply to me?

Categories and entities potentially affected by this action include those who own or operate refrigeration and

[5] The only subpart F requirements that applied to substitute refrigerants prior to the 2016 Rule were the venting prohibition and certain exemptions from that prohibition, as set forth in § 82.154(a).

air-conditioning appliances. Potentially affected entities include, but are not limited to, the following:

TABLE 1—POTENTIALLY AFFECTED ENTITIES

Category	North American Industry Classification System (NAICS) code	Examples of regulated entities
Industrial Process Refrigeration (IPR).	111, 11251, 11511, 21111, 2211, 2212, 2213, 311, 3121, 3221, 3222, 32311, 32411, 3251, 32512, 3252, 3253, 32541, 3256, 3259, 3261, 3262, 3324, 3328, 33324, 33341, 33361, 3341, 3344, 3345, 3346, 3364, 33911, 339999.	Owners or operators of refrigeration equipment used in agriculture and crop production, oil and gas extraction, ice rinks, and the manufacture of frozen food, dairy products, food and beverages, ice, petrochemicals, chemicals, machinery, medical equipment, plastics, paper, and electronics.
Commercial Refrigeration.	42374, 42393, 42399, 4242, 4244, 42459, 42469, 42481, 42493, 4451, 4452, 45291, 48422, 4885, 4931, 49312, 72231.	Owners or operators of refrigerated warehousing and storage facilities, supermarkets, grocery stores, warehouse clubs, supercenters, convenience stores, and refrigerated transport.
Comfort Cooling	45211, 45299, 453998, 512, 522, 524, 531, 5417, 551, 561, 6111, 6112, 6113, 61151, 622, 7121, 71394, 721, 722, 813, 92.	Owners or operators of air-conditioning equipment used in the following: Hospitals, office buildings, colleges and universities, metropolitan transit authorities, real estate rental & leased properties, lodging and food services, property management, schools, and public administration or other public institutions.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, or organization could be affected by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F and the revisions below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What action is the agency taking?

The EPA reviewed the 2016 Rule, focusing in particular on whether the agency had the statutory authority to extend the full set of subpart F refrigerant management regulations to non-exempt substitute refrigerants, such as HFCs and HFOs. Based on that review, Administrator Pruitt signed a letter on August 10, 2017 stating that the EPA is ''planning to issue a proposed rule to revisit aspects of the 2016 Rule's extension of the 40 CFR part 82, subpart F refrigerant management requirements to non-exempt substitutes.'' [6] Consistent with that letter, in 2018 the agency proposed to withdraw the extension of the provisions at § 82.157 to appliances using only non-exempt substitute refrigerants.[7] (83 FR 43922). As discussed above, these provisions include requirements related to appliance maintenance and leak repair. This action finalizes that proposed withdrawal and will relieve businesses from having to repair leaks, conduct leak inspections, and keep records for appliances containing only substitute refrigerant.

The 2018 proposal also requested comment on whether to withdraw the 2016 Rule's extension of the full set of subpart F provisions to non-exempt substitute refrigerants. Subpart F includes provisions that restrict the servicing of appliances and the sale of refrigerant to certified technicians, specify the proper evacuation levels before opening an appliance, require the use of certified refrigerant recovery and/or recycling equipment, require that refrigerant be removed from appliances prior to disposal, require that appliances have a servicing aperture or process stub to facilitate refrigerant recovery, require that refrigerant reclaimers be certified to reclaim and sell used refrigerant, and establish standards for technician certification programs, recovery equipment, and quality of reclaimed refrigerant (40 CFR part 82, subpart F). In this action the EPA is not making any changes to the subpart F provisions other than (1) limiting the applicability of the leak repair provisions in § 82.157 to appliances that use ODS refrigerants or a blend containing ODS refrigerants and (2) correspondingly clarifying that the reference to § 82.157 in § 82.154(a)(2)(i) (the regulatory provision implementing the *de minimis* exemption to the venting prohibition) only applies for appliances that contain ODS refrigerants (including in a blend). Consistent with the proposal, this action does not change any of the regulatory requirements for ODS in 40 CFR part 82, subpart F.

D. What is the agency's authority for taking this action?

This action is based on changes to a legal interpretation of the EPA's authority under CAA section 608 that supported the extension of the leak repair requirements at § 82.157 to non-exempt substitute refrigerants in the 2016 Rule. As described in greater detail in Section II below, the EPA concludes that, as a legal matter, the 2016 Rule's extension of the leak repair requirements to non-exempt substitute refrigerants exceeded the EPA's statutory authority under CAA section 608. Accordingly, the EPA is rescinding the 2016 Rule's extension of the leak repair requirements to non-exempt substitutes. However, the EPA continues to interpret section 608 as providing the agency some authority to regulate substitutes. That includes authority to issue regulations that interpret, explain, and enforce the venting prohibition and the *de minimis* exemption under section 608(c) or that are necessary to fulfill the purposes set forth in section 608(a)(3) (*i.e.,* to reduce the use and emission of ODS to the lowest achievable level or to maximize the recapture and recycling of ODS). Because the extension of the non-leak repair provisions in subpart F to non-exempt substitute refrigerants remains within the scope of the EPA's authority under 608 under the revised statutory interpretation described in this action, the extension of those requirements is not being rescinded.

[6] Letter from the EPA to National Environmental Development Association's Clean Air Project and the Air Permitting Forum (Aug. 10, 2017), *available at www.epa.gov/sites/production/files/2017-08/documents/608_update_letter.pdf* and in the docket to this rule.

[7] Ozone-depleting refrigerants and appliances that contain or use any amount of ODS continue to be subject to all applicable subpart F requirements, including those in § 82.157.

E. What are the incremental costs and benefits of this action?

Although this action is based on changes in the EPA's statutory interpretation, the agency is providing a summary of incremental costs and benefits associated with this action for purposes of transparency and public information. Using a 7% discount rate, agency analyses indicate that rescinding the extension of the leak repair provisions to non-exempt substitutes reduces the burden associated with the 2016 Rule by approximately $39 million per year. The EPA also estimates this rule will increase the need to purchase non-exempt substitute refrigerant for leaking appliances, at an overall cost of approximately $15 million per year. Thus, incremental compliance savings and increased refrigerant costs combined are estimated to be a reduction of at least $24 million per year. These estimates are somewhat lower if a 3% discount rate is used. The EPA estimates that this action will result in forgone annual greenhouse gas (GHG) emissions reductions benefits of about 3 million metric tons of carbon dioxide equivalent ($MMTCO_2e$). This rule will not result in an increase in ODS emissions.

Table 2 presents a summary of the annual costs, forgone emission reductions, and benefits associated with rescinding the extension of the leak repair provisions to non-exempt substitutes, using a 7% or a 3% discount rate, respectively.

TABLE 2—ANNUAL COSTS AND BENEFITS

	Rescinding extension of leak repair provisions to non-exempt substitutes	
	7% Discount rate	3% Discount rate
Cost Savings (Burden Reduction)	$38,958,000	$35,264,000.
Total Cost (Refrigerant Replacement)	−$14,874,000	−$14,874,000.
Net Cost Savings	$24,084,000	$20,390,000.
Forgone Emissions Reductions (non-monetized disbenefit)	2.946 $MMTCO_2e$	2.946 $MMTCO_2e$.

Additional discussion of these analyses can be found in Section III of this document and in the *Analysis of the Economic Impact of the Proposed 2018 Revisions to the National Recycling and Emission Reduction Program* in the docket.

II. The Final Rule

A. Legal Background and the 2016 Rule

This action results from the EPA's decision to revisit aspects of the 2016 Rule's extension of the 40 CFR part 82, subpart F refrigerant management requirements to non-exempt substitutes. That process resulted in changes to the legal interpretation supporting the 2016 Rule, which are reflected in this action. For context, we begin by summarizing the key statutory provisions and the EPA's view of its legal authority as presented in the 2016 Rule. The discussion of the EPA's statutory authority to extend refrigerant management requirements to non-exempt substitute refrigerants in the 2016 Rule focused primarily on CAA section 608, especially on sections 608(c) and 608(a). (*See generally* 81 FR 82284–82288).

Section 608(a) requires the EPA to establish standards and requirements regarding the use and disposal of class I and class II substances. With regard to refrigerants, under sections 608(a)(1) and 608(a)(2), the EPA is required to promulgate regulations establishing standards and requirements for the use and disposal of class I and class II substances, respectively, during the service, repair, or disposal of air-conditioning and refrigeration appliances and IPR.[8] Section 608(a)(3) provides that regulations under section 608(a) are to include requirements to reduce the use and emission of ODS to the lowest achievable level, and to maximize the recapture and recycling of such substances. Section 608(a)(3) further provides that ''[s]uch regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section [612] or any combination of the foregoing.'' [9]

Section 608(c) establishes a self-effectuating prohibition, commonly called the ''venting prohibition.'' [10] Section 608(c)(1), effective July 1, 1992, makes it unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or IPR to knowingly vent, release, or dispose of any ODS used as a refrigerant in such equipment in a manner that permits that substance to enter the environment. Section 608(c)(1) also includes an exemption from this prohibition for ''[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose'' of such a substance. Section 608(c)(2) states that, effective November 15, 1995, ''paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or [IPR] which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment.'' The EPA interprets section 608(c)(2)'s extension of section 608(c)(1) to substitute refrigerants to extend both the prohibition on venting and the *de minimis* exemption to non-exempt substitute refrigerants. This is a long-held position which the EPA is not revisiting in this action. (*See, e.g.,* 69 FR 11949, March 12, 2004; and 70 FR 19274–19275, April 13, 2005). Section 608(c) does not expressly provide that the EPA may write regulations under that section. Section 301, however, states that the ''Administrator is

[8] We note that section 608(a) is not limited to refrigerants, and that the EPA has applied its authority under section 608(a) to establish or consider regulations for ODS in non-refrigerant applications. *See, e.g.,* 63 FR 11084.

[9] While section 608(a)(3) provides that the regulations issued under section 608(a) ''may include requirements to use alternative substances (including substances which are not class I or class II substances), . . . or to promote the use of safe alternatives pursuant to section [612]'', the EPA is not relying upon these provisions in 608(a)(3) in this document, as the regulatory changes effected by the 2016 Rule, which today's action partially rescinds, do not relate to requirements to use substitutes or promote their use pursuant to section 612. (In implementing Title VI, the EPA has at times used the terms ''alternative'' and ''substitute'' interchangeably. *See, e.g.,* 81 FR 86779, n.1; 81 FR 82276, 82291.) Furthermore, the EPA did not rely on these authorities in 608(a)(3) in extending the refrigerant management requirements to substitute refrigerants in the 2016 Rule, and it is not relying on them in addressing the underlying questions of statutory interpretation at issue here.

[10] In this context, the EPA uses the term ''self-effectuating'' to mean that the statutory prohibition on venting is itself legally binding even in the absence of implementing regulations.

authorized to prescribe such regulations as are necessary to carry out his functions under [the Clean Air Act].''

In the 2016 Rule, the EPA interpreted section 608 of the CAA as being ambiguous with regard to the agency's authority to establish refrigerant management regulations for non-exempt substitute refrigerants because Congress had not precisely spoken to this issue. Accordingly, the EPA took the view that it had the discretion under *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984), to interpret section 608 as providing the EPA with authority to extend all aspects of its refrigerant management regulations under section 608 to non-exempt substitute refrigerants, including those regulations that had previously only applied to ODS refrigerants. (*See* 81 FR 82283). The 2016 Rule explained that section 608(a) expressly requires the EPA to issue regulations that apply to class I and class II substances, but it does not expressly address whether the EPA could establish the same refrigerant management practices for substitute substances. On the other hand, section 608(c)(2) explicitly mentions substitute refrigerants and directly applies the provisions for ODS refrigerants in section 608(c)(1) to them. The 2016 Rule noted that this created a tension in the regulatory scheme for substitute refrigerants because the regulated community is subject to the prohibition on knowing venting, releasing, or disposing of non-exempt substitute refrigerants while maintaining, servicing, repairing, or disposing of air conditioning and refrigeration equipment but at the same time section 608(a) does not direct the EPA to promulgate regulations requiring the regulated community to recover non-exempt substitute refrigerant prior to servicing or disposing of such equipment or to engage in any of the practices or behaviors that the EPA has established to minimize the emission and release of ODS refrigerants during such maintenance, service, repair, or disposal. The 2016 Rule further explained that while the subpart F regulations made clear that ODS refrigerant releases would be considered *de minimis* if (and only if) certain regulatory requirements were followed, the rules did not provide any such clarity regarding what practices regulated parties must follow to qualify for the *de minimis* exemption, and thereby comply with the venting prohibition, for non-exempt substitute refrigerants. (*See* 81 FR 82284).

In the 2016 Rule, the EPA grounded its authority for the extension of refrigerant requirements to non-exempt substitute refrigerants largely on section 608(c), which the EPA interpreted to provide it authority to promulgate regulations that interpret, explain, and enforce the venting prohibition and the *de minimis* exemption as they apply to non-exempt substitute refrigerants. (*See* 81 FR 82283–82284). In reaching this interpretation, the EPA relied in part on a policy rationale that by establishing a comprehensive and consistent framework that applies to both ODS and non-exempt substitute refrigerants, the 2016 Rule would provide clarity to the regulated community concerning the measures that should be taken to comply with the venting prohibition for non-exempt substitutes and would thus reduce confusion and enhance compliance for both ODS and non-exempt substitutes. The EPA further explained its view in the 2016 Rule that the extension of requirements under section 608 to non-exempt substitutes was also supported by section 608(a) because having a consistent regulatory framework for non-exempt substitutes and ODS is expected to reduce emissions of ODS refrigerants. In addition, the EPA located supplemental authority for the 2016 Rule in section 301(a), which provides authority for the EPA to ''prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions'' under the Act. *Id.* Further, the EPA identified section 114, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, as providing supplemental authority to extend the recordkeeping and reporting requirements to non-exempt substitutes. *Id.*

B. The EPA's Reassessment of Its Legal Authority Under Section 608

The EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, the EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the agency provides a reasoned explanation. *See, e.g., Encino Motorcars LLC* v. *Navarro,* 136 S.Ct. 2117, 2125 (2016). The authority to reconsider prior decisions exists in part because the EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). This is true when, as is the case here, review is undertaken ''in response to . . . a change in administrations.'' *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services,* 545 U.S. 967, 981 (2005). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017). Similarly, the fact that an agency has previously adopted one interpretation of a statute does not preclude it from later exercising its discretion to change its interpretation. *National Cable & Telecommunications Ass'n,* 545 U.S. at 981. In addition, an agency may ''justify its policy choice by explaining why that policy 'is more consistent with statutory language' than alternative policies.'' *Encino Motorcars,* 136 S.Ct. at 2127 (quoting *Long Island Care at Home Ltd.* v. *Coke,* 551 U.S. 158, 175 (2007)). The CAA complements the EPA's inherent authority to reconsider prior rulemakings by providing the agency with broad authority to prescribe regulations as necessary to carry out the agency's functions under the CAA in section 301(a).

In this action the agency has reassessed the 2016 Rule's assertion of legal authority to extend the full set of subpart F requirements to non-exempt substitute refrigerants under CAA section 608. While the agency is retaining aspects of the interpretation that supported the 2016 Rule, it is revising that interpretation in some important respects for greater consistency with the statutory text, structure, and purposes, as described below. As in the 2016 Rule, the EPA continues to interpret section 608 as being ambiguous with regard to the agency's authority to establish refrigerant management regulations for non-exempt substitute refrigerants. Sections 608(a)(1) and (2) explicitly require the EPA to promulgate regulations regarding the use and disposal of ODS but as these provisions make no mention of substitutes they neither expressly preclude nor expressly authorize regulation of substitutes for the purpose of achieving the ODS goals of those provisions. Section 608(c)(2) does expressly mention substitute refrigerants, but that provision focuses on prohibiting knowing releases of substitute refrigerants in the course of specific activities (maintenance, service, repair, and disposal) and on providing an exemption for *de minimis* releases without specifying the mechanisms for carrying out this prohibition and exemption. Thus, Congress did not precisely delineate in section 608 the scope of the EPA's authority to regulate substitute refrigerants by issuing refrigerant management regulations.

The EPA also continues to believe that it is reasonable to interpret both sections 608(a) and (c) as providing authority that could support the extension of certain subpart F

requirements to non-exempt substitute refrigerants. The EPA maintains the position that section 608(c) is reasonably construed as providing the agency discretionary authority to interpret, explain, and enforce the venting prohibition and the *de minimis* exemption for substitute refrigerants, as section 608(c)(2) incorporates both the prohibition and the exemption and applies them to substitutes. Thus, these are both elements in the statutory regime that the EPA is entrusted to administer for substitute refrigerants. The fact that Congress extended the *de minimis* exemption for ''releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance'' to substitutes under section 608(c)(2) but did not specify what practices or actions should be taken to qualify for this exemption, creates a statutory ambiguity that the EPA can resolve through regulation. However, section 608(c) is limited in the scope of releases and activities it addresses: It specifically covers knowing venting, release, or disposal of substitute refrigerants in the course of maintaining, servicing, repairing, or disposing of appliances. To the extent that the subpart F provisions extended to non-exempt substitutes in the 2016 Rule address the potential for such releases during one of these covered activities, those provisions continue to be within the scope of the EPA's authority under section 608(c) under the interpretation supporting this action.

As for section 608(a), section 608(a)(3) requires the agency to issue regulations that reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such substances. While section 608(a)(3) contains discretionary language about what requirements those regulations *may* include, it does not contain any more specific mandates about *how* the required objectives should be achieved. Given this ambiguity, the EPA reasonably interprets section 608(a) to provide authority to issue regulations that reduce the use and emission of ODS to the lowest achievable level or that maximize the recapture and recycling of such substances, even if the regulations do not directly regulate ODS. Thus, as in the 2016 Rule, to the extent that the extension of certain subpart F requirements to non-exempt substitutes is necessary to achieve the purposes set forth in section 608(a)(3) (*i.e.,* reducing the use and emission of ODS to the lowest achievable level or maximizing the recapture and recycling of such substances), the EPA concludes that the extension is within the ambit of its authority under section 608(a).

In contrast to the 2016 Rule, however, the EPA has concluded that its statutory authority under section 608, taking that authority as a whole, does not extend as far with respect to substitutes as it does with respect to ODS. This conclusion is supported by the text and structure of section 608. The fact that Congress specifically included the term ''substitutes'' in section 608(c) but not in sections 608(a)(1) or (2), contrasted with the express references to ODS (class I and class II substances) in both subsections, suggests that the EPA's authority to address substitutes under section 608 is more limited than its authority to address ODS. If Congress had intended to convey authority to the EPA to promulgate the same, full set of refrigerant management requirements for substitutes as for ODS, it is reasonable to expect that Congress would have expressly included substitutes in sections 608(a)(1) or (2), as it did for section 608(c)—but it did not. In addition, the differences in the verbs used in section 608(a) (authorizing regulations related to the ''use and disposal'' of ODS ''including use and disposal during service, repair, or disposal'' of appliances) compared to those used in section 608(c) (prohibiting knowing releases ''in the course of maintaining, servicing, repairing, or disposing'' of appliances) further supports the conclusion that Congress envisioned that the regulations under section 608(a) would affect a broader range of activities than those under section 608(c), as regulations under section 608(a) could address any use or disposal of ODS, rather than being limited to particular activities.

In sum, while the EPA continues to interpret section 608 to provide some authority to regulate substitute refrigerants, the EPA now reads sections 608(a) and (c) together to determine that its authority is more limited for substitute refrigerants than for ODS. In addition, the EPA continues to interpret CAA section 301(a), which provides that the EPA may ''prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions'' under the Act, to supplement its authority to issue regulations necessary to address substitute refrigerants under section 608(c). Further, the agency continues to interpret CAA section 114, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, as providing supplemental authority to extend the subpart F recordkeeping and reporting requirements to non-exempt substitutes.

C. The EPA Lacked Authority Under Section 608 To Extend Leak Repair Requirements To Substitute Refrigerants

Applying the interpretive framework described in Section II.B above, the EPA has re-examined whether the 2016 Rule's extension of the leak repair requirements to appliances that contain only substitute refrigerants was within its authority under section 608, either as (1) an appropriate means of interpreting, explaining, and enforcing the venting prohibition and the *de minimis* exemption under section 608(c), or (2) as regulations that are necessary to fulfill the purposes of section 608(a) to reduce the use and emission of ODS to the lowest achievable level or to maximize the recapture and recycling of ODS. As described further below, based on that legal analysis, the agency concludes that the extension of the leak repair requirements to non-exempt substitute refrigerants exceeded the EPA's legal authority under section 608 because it relied on an unreasonable interpretation of that authority. Consequently, the EPA determines that the extension of the leak repair requirements to non-exempt substitute refrigerants must be rescinded and is finalizing that rescission in this action. This rescission is also consistent with the agency's view that the scope of its authority under section 608 is more limited for substitutes than for ODS, and the EPA today is finalizing changes to its subpart F regulations to conform those regulations to its interpretation of the statute.

i. Section 608(c)

To justify the extension of the leak repair requirements to non-exempt substitute refrigerants in the 2016 Rule, the EPA reversed its longstanding position that ''topping off'' leaking appliances was not knowing venting or a knowing release of refrigerant in the course of maintaining, servicing, repairing, or disposing of an appliance within the meaning of section 608(c). The EPA's historic position, and the one that the agency is returning to through this action, is that refrigerant released during the normal operation of an appliance is generally not subject to the venting prohibition.

When establishing the original leak repair provisions in 1993, the EPA stated that:

> [T]he venting prohibition itself, which applies to the maintenance, service, repair, and disposal of equipment, does not prohibit ''topping off'' systems, which leads to emissions of refrigerant during the use of equipment. The provision on knowing releases does, however, include the situation in which a technician is practically certain

that his or her conduct will cause a release of refrigerant during the maintenance, service, repair, or disposal of equipment. Knowing releases also include situations in which a technician closes his or her eyes to obvious facts or fails to investigate them when aware of facts that demand investigation. [58 FR 28672.]

In the 2016 Rule, the EPA changed the agency's interpretation of the venting prohibition as part of the rationale that supported applying the leak repair requirements to non-exempt substitute refrigerants. The EPA stated in the 2016 Rule that it:

concludes that its statements in the 1993 Rule presented an overly narrow interpretation of the statutory venting prohibition. Consistent with the direction articulated in the proposed 2010 Leak Repair Rule, EPA is adopting a broader interpretation. When refrigerant must be added to an existing appliance, other than when originally charging the system or for a seasonal variance, the owner or operator necessarily knows that the system has leaks. At that point the owner or operator is required to calculate the leak rate. If the leaks exceed the applicable leak rate for that particular type of appliance, the owner or operator will know that absent repairs, subsequent additions of refrigerant will be released in a manner that will permit the refrigerant to enter the environment. Therefore, EPA interprets section 608(c) such that if a person adds refrigerant to an appliance that he or she knows is leaking, he or she also violates the venting prohibition unless he or she has complied with the applicable practices referenced in § 82.154(a)(2), as revised, including the leak repair requirements, as applicable. [81 FR 82285.] [11]

The EPA now concludes that this 2016 interpretation was unreasonable and that extending the leak repair provisions to substitute refrigerants exceeded the scope of the agency's authority under section 608(c)(2). The leak repair provisions include requirements to determine whether an appliance is leaking above the threshold leak rate applicable to that type of appliance, to repair an appliance that leaks above the applicable leak rate, and to conduct verification tests and periodic leak inspections on appliances that have exceeded the threshold leak rate, as well as requirements to retrofit or retire appliances that are not repaired and recordkeeping and reporting requirements. The 2016 interpretation is an unreasonable reading of section 608(c)(2) because the refrigerant releases from such leaks typically occur during the normal operation of the appliance, rather than ''in the course of maintaining, servicing, repairing, or disposing of'' an appliance. The operational leaks that trigger the leak repair provisions may take the form of a slow leak that results in the need to add refrigerant, and such releases occur in the weeks or months prior to the servicing event. Leaks may also result from an unintended catastrophic failure, which leads to a subsequent service event to recharge the appliance. Neither of these types of releases typically occur in the course of maintaining, servicing, repairing, or disposing of an appliance. Rather, in these situations the release of refrigerant typically occurs before the servicing event, and the owner or operator may not be aware of the release until it affects equipment performance. The EPA has always understood that few appliances are leak-free, which further supports the notion that leaks commonly occur during the normal operation of an appliance, rather than during appliance maintenance, service, repair, or disposal.[12] The EPA has also recognized that ''[t]his is particularly likely for larger and more complicated appliances like those subject to the subpart F leak repair provisions.'' (81 FR 82313).

In addition, while the 2016 Rule cited various dictionary definitions of the term ''maintain'' to support an interpretation that the inclusion of the concept of maintenance in section 608(c) covered a broad range of activities involved in preserving equipment in normal working order (*see* 81 FR 82291), the EPA does not believe that Congress intended the statutory term ''maintaining'' in section 608(c) to include the normal operation of an appliance. Congress did use broad language in 608(a) (''use . . . of class I and class II substances'') that encompasses activities during normal operation of appliances. If Congress had intended for 608(c) to apply to normal operations, it could have included the term ''use'' in section 608(c), as it did in section 608(a)—but it did not. In addition, the term appears in section 608(c) as part of a group with three other terms (''servicing, repairing, or disposing'') that are distinct from normal operation of an appliance. Thus, reading the term in the overall context of section 608, the EPA does not believe that it is reasonable to interpret ''maintaining'' to include the normal operation of the appliance.

The EPA is accordingly returning to the agency's reasonable interpretation of 608(c) with respect to leaks, which had been long-held until it was revised in the 2016 Rule. Based on this change in interpretation, the EPA therefore concludes that the leak repair provisions apply to activities and releases that are too distinct from those identified in section 608(c) to provide the EPA with regulatory authority to extend the leak repair regulations to non-exempt substitute refrigerants.[13]

The EPA notes that under this interpretation the venting prohibition under section 608(c) would continue to apply to actions taken in the course of maintaining, servicing, repairing, or disposing of appliances containing non-exempt substitute refrigerant, including those containing 50 or more pounds of such refrigerant. For example, knowing release from cutting refrigerant lines when disposing of an appliance is prohibited. Similarly, opening an appliance to repair a component without first isolating it and recovering the refrigerant would typically lead to a knowing release of refrigerant to the environment during the service, maintenance, or repair of an appliance and thus would also be prohibited. It is also possible that some ''topping off'' may occur in an appliance with a leak that is so visible, audible, or frequent that adding refrigerant to the appliance creates the practical certainty that the refrigerant will be released contemporaneously with the servicing event to add refrigerant and therefore may constitute a knowing release subject to the venting prohibition. For example, hearing hissing or noticing a ruptured line while continuing to add refrigerant to an appliance would constitute a knowing release. However, the EPA has no information to suggest that this occurs in a substantial number of situations, and the mere possibility of such an event does not justify a blanket interpretation that ''topping off'' an appliance that has leaked, absent adherence to the requirements at § 82.157, is necessarily and *per se* a violation of 608(c).

[11] The EPA did not finalize the 2010 leak repair proposal (75 FR 78558). As noted in the 2016 Rule (81 FR 82275), the EPA withdrew the 2010 proposal in the 2016 rulemaking and re-proposed elements on the 2010 proposal in the notice of proposed rulemaking (80 FR 69461) for the 2016 Rule.

[12] Recognizing that appliances can leak during their normal operation, § 82.157(g) requires periodic leak inspections of appliances with 50 or more pounds of refrigerant that have been repaired after leaking above the applicable threshold rate. Automatic leak detection equipment is also allowed in lieu of inspections for such appliances, or portions of such appliances.

[13] Furthermore, the leak repair provisions are not sufficiently related to ''good faith attempts to recapture and recycle or safely dispose'' of refrigerant under the *de minimis* exemption in section 608(c) for that provision to provide independent authority for the extension of the leak repair requirements to non-exempt substitute refrigerants.

ii. Section 608(a)

The EPA stated in the preamble to the 2016 Rule that the agency's authority for extending the refrigerant management regulations to substitute refrigerants is based in part on section 608(a), in light of the corresponding reductions in ODS emissions and increases in ODS recapture and recycling that are expected to result from requiring consistent practices for ODS and substitute refrigerants. (81 FR 82288). In part, this was based on the potential for cross-contamination, refrigerant mixing, and related releases from ODS appliances in the absence of consistent practices. The response to comments for the 2016 Rule [14] also noted, in the context of explaining the EPA's authority for the revisions to § 82.157, that providing a consistent standard for ODS and non-exempt substitute refrigerants would reduce emissions of ODS by reducing the incidence of failure to follow the requirements for ODS appliances due to refrigerant confusion. However, in neither discussion did the EPA address whether, if all other subpart F requirements were extended to non-exempt substitutes, it would be necessary to also extend § 82.157 to non-exempt substitute refrigerants to serve the purposes of section 608(a), as articulated in sections 608(a)(3)(A) and (B).

After further consideration, the EPA believes that these statements in the 2016 Rule, which were advanced generally and without distinction to support extending all the subpart F requirements to non-exempt substitute refrigerants, failed to recognize that the leak repair provisions have a more attenuated connection to the purposes of section 608(a) when applied to non-exempt substitute refrigerants than do the rest of the subpart F requirements, especially once application of all the other subpart F requirements to such refrigerants is taken into account. After further consideration, the EPA believes that extending the leak repair requirements to appliances containing non-exempt substitutes is not necessary to meet the purposes of section 608(a). Because the EPA is retaining the other subpart F requirements for non-exempt substitute refrigerants, the rescission of the extension only of the leak repair requirements is unlikely to directly affect ODS emissions or the recapture and recycling of ODS. For example, since the EPA is retaining the requirement that only a certified technician can open an appliance containing non-exempt substitute refrigerant, it is unlikely that leaks in appliances with 50 or more pounds of ODS refrigerant would not be repaired because of a difference in the duty to repair between appliances containing ODS and those containing substitute refrigerants. The repair of leaks in ODS-containing appliances in this size range has been required since 1993, and owners and operators of such appliances as well as certified technicians are well aware of those requirements.

The EPA also does not believe that applying the leak repair provisions to appliances that use only non-exempt substitute refrigerants would independently reduce cross-contamination, refrigerant mixing, or related releases from an ODS appliance. As discussed further in Section II.D of this document, the agency will continue to apply the other elements of the 608 program, such as the refrigerant sales restriction, technician certification, reclamation requirements, and evacuation standards, to non-exempt substitute refrigerants, and these elements address those concerns. Taken together, the other subpart F requirements also reduce the incidence of failure to follow the requirements for ODS appliances. By contrast, application specifically of the leak repair requirements to equipment containing only substitute refrigerants would not lead to additional reductions in ODS emissions. Nor would it lead to additional increases in the recapture and recycling of ODS because there is no ODS in these appliances to be recaptured or recycled.

Thus, insofar as the 2016 Rule was grounded in an argument that section 608(a) supports the extension of the leak repair provisions to non-exempt substitute refrigerants, the EPA is withdrawing that interpretation. Accordingly, the EPA concludes that the connection between applying the leak repair requirements to appliances with only substitute refrigerants and serving the purposes in section 608(a)(3) is too tenuous to reasonably support reliance on CAA section 608(a) as a basis for authority to extend the leak repair requirements to non-exempt substitutes.

D. The EPA Had Authority Under Section 608 To Extend Subpart F Provisions Other Than Leak Repair Provisions To Substitute Refrigerants

The EPA requested comments on whether the agency should withdraw the entire extension of subpart F requirements to non-exempt substitute refrigerants in the 2016 Rule given its proposed interpretation. As described in more detail below, after considering the comments received, and analyzing the relevant provisions under the interpretive framework described in Section II.B above, the EPA concludes that, except for the leak repair provisions, the 2016 Rule's extension of the subpart F requirements to non-exempt substitute refrigerants was within the scope of its authority under section 608. Thus, aside from the rescission of the extension of the leak repair provisions discussed in Section II.C, the EPA is not withdrawing the extension of any of the non-leak repair provisions in subpart F to non-exempt substitute refrigerants.

i. Section 608(c)

The EPA is retaining the extension of the non-leak repair provisions in subpart F for non-exempt substitute refrigerants as appropriate measures to interpret, explain, and enforce the venting prohibition and the *de minimis* exemption for non-exempt substitute refrigerants under 608(c). In contrast to the leak repair requirements, the other provisions of subpart F that the EPA extended to non-exempt substitute refrigerants in the 2016 Rule relate directly to releases that necessarily occur in the course of maintaining, servicing, repairing, or disposing of an appliance. Accordingly, those provisions directly address the potential for knowing releases of non-exempt substitute refrigerants that would be within the scope of section 608(c)(2) or the application of the *de minimis* exemption to non-exempt substitute refrigerants under section 608(c)(2), and therefore are within the EPA's authority under section 608(c)(2).

The EPA has long recognized connections between the non-leak repair requirements in subpart F and the potential for releases to occur during appliance maintenance, service, repair, or disposal, and continues to do so. For example, failure to properly evacuate an appliance (§ 82.156 and § 82.158) before opening it for servicing will create the practical certainty that the refrigerant in the appliance will be released during the servicing event. The requirement that small appliances be equipped with a process stub (§ 82.154(e)(2)) facilitates the removal of refrigerant at servicing and disposal. The requirements (§§ 82.156 and 82.158) that recovery and/or recycling equipment be used during the maintenance, servicing, repair or disposal of an appliance, and that such equipment be tested and

[14] Response to Comments for the Notice of Proposed Rulemaking: Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act, pages 13–14 (pdf pages 18–19). Available at: *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0453-0226*.

certified by an EPA-approved laboratory or organization, are intended ''to ensure that recycling and recovery equipment on the market is capable of limiting emissions'' during such servicing and disposal activities. (58 FR 28682). The vapor recovery efficiency and the efficiency of noncondensable purge devices on recycling machines affect total recovery efficiency and thus how much refrigerant will be released to the environment once the appliance is opened for maintenance, servicing, repair or disposal. After a certified technician properly evacuates an appliance according to the requirements of § 82.156, any remaining refrigerant that is then released during the maintenance, service, repair or disposal of the appliance can be considered a *de minimis* release associated with good faith attempts to recycle or recover refrigerants. Similarly, disposing of an appliance without removing the refrigerant as required under § 82.155 will result in the release of any remaining refrigerant during disposal of the appliance. The EPA has long emphasized this point. When the EPA first issued the safe disposal requirements in 1993, the EPA stated: ''The Agency wishes to clarify that the prohibition on venting refrigerant includes individuals who are preparing to dispose of a used appliance.'' (58 FR 28703). The recordkeeping provisions at § 82.155(c)(2) are necessary to ensure that disposers of small appliances are adhering to the venting prohibition and the evacuation requirements. Similarly, the recordkeeping provisions at § 82.156(a)(3) ensure that technicians are adhering to the venting prohibition and evacuation requirements when disposing of mid-sized appliances. These recordkeeping requirements help ensure accountability for compliance with the venting prohibition, as well as improving the enforceability of the prohibition. With respect to the sales restriction and technician certification requirements, consistent with its long-standing view, the EPA continues to believe that ''unrestricted sales will enable untrained or undertrained technicians to obtain access to refrigerants that are likely to be used improperly in connection with servicing activities that will result in the venting of refrigerants'' (58 FR 28698) and that restricting servicing activities to technicians trained on the regulatory requirements and proper use of equipment reduces emissions and enhances compliance (*see* 58 FR 28692). Further, ''[e]ducating technicians on how to contain and conserve refrigerant effectively, curtailing illegal venting into the atmosphere'' was one of the primary reasons many technicians commented in support of the certification program when it was initially promulgated. (58 FR 28691).

Thus, the EPA continues to agree with the assessment in the 2016 Rule that these refrigerant management provisions address releases that necessarily occur in the course of maintaining, servicing, repairing, or disposing of an appliance. Accordingly, the agency concludes that the 2016 Rule's extension of these subpart F requirements to non-exempt substitute refrigerants is within the scope of the EPA's authority under CAA section 608(c)(2), because these requirements interpret, explain, or help enforce that provision's venting prohibition and the application of the *de minimis* exemption.

The EPA views the agency's authority to extend the reclamation requirements to non-exempt substitute refrigerants under section 608(c) as relating specifically to appliance servicing and disposal. By ''reclamation requirements,'' the EPA means: The requirements under § 82.164, including the requirements to reclaim used refrigerant before it is sold for use in an appliance; the requirement that reclaimed refrigerant be tested and meet AHRI Standard 700–2016, Specifications for Refrigerants (an industry developed consensus standard that the EPA has adopted into its regulations); and the requirement that reclaimers be certified by the EPA and agree to meet certain standards. The EPA interprets section 608(c), particularly the provisions relating to the servicing and disposal of appliances as described below, to provide authority that supports the extension of the reclamation requirements to non-exempt substitute refrigerants.

Section 608(c)(1) states that ''it shall be unlawful for any person in the course of maintaining, servicing, repairing, or disposing of an appliance . . . to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant . . . in a manner which permits such substance to enter the environment.'' Furthermore, the *de minimis* exemption encompasses ''releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance . . .'' As described above, the EPA interprets section 608(c)(2) to extend the prohibitions in 608(c)(1), including the restriction on releases in the course of disposing and servicing of appliances and the *de minimis* exemption, to substitute substances.

As part of the EPA's authority to interpret, explain, and enforce the venting prohibition under 608(c), the agency also has authority to address what constitutes disposal of an appliance. The agency defines ''disposal'' in Subpart F to mean ''the process leading to and including'' several listed activities, such as ''the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;'' the ''disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water'' or for reuse of its component parts; the ''vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity;'' and the ''recycling of any appliance for scrap.'' (§ 82.152).

The reclamation requirements explain how to ''recapture and recycle'' refrigerants that are recovered in the course of servicing or disposing of an appliance in lieu of releasing them into the environment. Reclamation, a process whereby used refrigerant is purified to meet required specifications and then permitted to be sold for reuse, is a means of ''recaptur[ing] and recycl[ing]'' refrigerant. The reclamation requirements have the added benefit of supporting a market in which technicians can sell recovered refrigerant to reclaimers for compensation; this provides a financial benefit to technicians who recover refrigerant during appliance disposal rather than venting it.[15]

The interpretation that the reclamation requirements directly relate to interpreting, explaining, and enforcing the prohibition on venting during appliance servicing and disposal is further supported by the fact that Congress included ''releases associated with good faith attempts to . . . recycle or safely dispose of any such substance'' in the *de minimis* exemption to the venting prohibition. This indicates that Congress clearly contemplated that certain refrigerant-related actions could be implicated by the appliance-related actions covered by the venting prohibition.

The EPA further interprets the phrase ''recycle or safely dispose of any such substance,'' when referring to either ODS or non-exempt substitute refrigerants, to include reclamation. Accordingly, the EPA believes the extension of the reclamation

[15] Much of the refrigerant recovered and sent for reclamation occurs during the disposal of an appliance. However, some refrigerant that is sent for reclamation is also recovered during the servicing of an appliance, including the retrofitting of an appliance for use with a different refrigerant.

requirements to non-exempt substitutes refrigerants is supported by 608(c) because these requirements interpret, explain, and enforce section 608(c)'s prohibition on releases of non-exempt substitute refrigerants during the servicing and disposal of appliances and the *de minimis* exemption for recycling or safely disposing of such refrigerants.

ii. Section 608(a)

The EPA also concludes that section 608(a) provides the EPA authority for the 2016 Rule's extension of the non-leak repair subpart F requirements to the extent that there is demonstrably a connection between those requirements and the purposes of 608(a), as articulated in sections 608(a)(3)(A) and (B). As the EPA concluded in the preamble to the 2016 Rule:

> This action extending the regulations under subpart F to non-exempt substitutes is additionally supported by the authority in section 608(a) because regulations that minimize the release and maximize the recapture and recovery of non-exempt substitutes will also reduce the release and increase the recovery of ozone-depleting substances. Improper handling of substitute refrigerants is likely to contaminate appliances and recovery cylinders with mixtures of ODS and non-ODS substitutes, which can lead to illegal venting because such mixtures are difficult or expensive to reclaim or appropriately dispose of. . . . In short, the authority to promulgate regulations regarding the use of class I and II substances encompasses the authority to establish regulations regarding the proper handling of substitutes where this is needed to reduce emissions and maximize recapture and recycling of class I and II substances. Applying consistent requirements to all non-exempt refrigerants will reduce complexity and increase clarity for the regulated community and promote compliance with those requirements for ODS refrigerants, as well as their substitutes. [81 FR 82286.]

The 2016 Rule discussed how failure to apply consistent standards to appliances containing non-exempt substitute refrigerants and those containing ODS refrigerants could lead to emissions of ODS (81 FR 82288). After additional consideration, the EPA affirms the potential for such inconsistent requirements to increase ODS emissions. For example, applying the sales restriction and technician certification requirements for persons servicing appliances using non-exempt substitute refrigerants reduces the possibility that refrigerant in the appliances may be misidentified or mishandled by an uncertified person attempting to service the appliance. Improper handling of non-exempt substitute refrigerants by persons lacking the requisite training may contaminate appliances and recovery cylinders with mixtures of ODS and non-ODS substitutes. Contaminated appliances may lead to equipment failures and emissions from those systems, including emissions of ODS. Contaminated refrigerant is more costly to reclaim for re-use and the only other option besides reclamation (or recycling for use by the same owner) to avoid its entry to the environment is that it be destroyed. However, the costs of reclaiming or destroying these mixed refrigerants incentivizes intentional releases, including of ODS, to the atmosphere from contaminated appliances and recovery cylinders. Applying the same requirements for servicing and disposing of appliances containing ODS and non-exempt substitute refrigerant ensures standard procedures are followed, which reduces the possibility for errors and the risk of ODS emissions associated with misidentification or mishandling of the refrigerant.

The EPA also concludes that section 608(a) provides the EPA authority for the 2016 Rule's extension of the reclamation requirements to non-exempt substitute refrigerants. The EPA established the reclamation requirement for used ODS refrigerant in 1993 to prevent equipment damage, and the resultant emissions caused by use of contaminated refrigerant in appliances, and to provide confidence in the market for used refrigerants (58 FR 28678). Because of the venting prohibition, combined with the phaseout of ODS, the EPA in 1993 anticipated a large increase in recovered refrigerant and was concerned about the risks to appliances posed by use of contaminated refrigerant. As the EPA stated in the 1993 Rule, damaged equipment would often leak during operation and would require servicing or replacement more often than undamaged equipment, increasing refrigerant emissions. Damage to equipment would also reduce consumer confidence in the quality of used refrigerant, leading to erosion of the market for used refrigerants and possibly to their release. As described further below, the 2016 Rule's extension of the reclamation requirements to non-exempt substitute refrigerants addresses these concerns and therefore furthers the goals of section 608(a)(3) to reduce the emissions of ODS and maximize the recapture and recycling of ODS.

An important aspect of the reclamation requirements is the requirement that used refrigerant be reclaimed to certain purity standards prior to sale for re-use. By requiring that used refrigerant be reclaimed prior to sale, the reclamation requirements also prohibit the immediate reuse of recovered refrigerant, with the exception of use in equipment owned by the same entity owning the equipment from which the refrigerant was removed. In 1993, the EPA expressed concern that recovered refrigerant may contain moisture, acids, oil, particulates, or other contaminants that can lead to serious damage to the equipment if it is reused without taking some action to remove these contaminants. Recovered non-exempt substitute refrigerants today contain those same contaminants as in 1993 with one significant difference: The increase in the use of substitute refrigerants, including multi-component blends, has resulted in more types of refrigerant encountered by technicians. Often ODS and non-ODS refrigerants are improperly recovered into the same recovery cylinder, leading to mixed refrigerant which contains both ODS and non-ODS. This is supported by data reported annually by EPA-certified reclaimers under § 82.164(d)(3) which show that the amount of mixed refrigerant they receive is increasing.[16] The lack of consistent reclamation requirements for non-exempt substitutes could result in confusion about what to do if there is uncertainty about the contents of a cylinder or about the proper treatment of mixtures. Equipment can be damaged, resulting in refrigerant emissions, including ODS emissions, if such mixed refrigerant is not sent for reclamation but rather sold and recharged into appliances designed for non-exempt substitute refrigerants. Reclamation requirements to remove impurities and separate mixed refrigerants reduce the likelihood of equipment failure and subsequent emissions of ODS. These requirements also promote the recycling of ODS because once it is separated from the mixed refrigerant the ODS can subsequently be reclaimed for reuse.

In addition, the combined effect of the reclamation provisions relating to EPA's certification of reclaimers, the purity standards that reclaimed refrigerant must meet, and the testing of that refrigerant to ensure it meets those standards together provide confidence in the market for used refrigerants. Reclamation is performed by private businesses and is subject to market forces. Currently these market forces provide a financial incentive to technicians to recover refrigerant and send it to a reclaimer in as pure a state as possible to maximize the

[16] These data can be found at: *https://www.epa.gov/section608/summary-refrigerant-reclamation-trends.*

compensation they receive. Absent that financial incentive, technicians may be more likely to vent the refrigerant than to send it for reclamation, which could lead to ODS emissions when the refrigerant vented is an ODS or a mixture containing ODS. These market forces also sustain an industry whose function is to reprocess used refrigerant. Reclamation is critical to achieving the goal of maximizing the recapture and recycling of ODS, as set forth in section 608(a)(3)(B). Absent reclamation, banks of ODS refrigerant found in existing equipment, in stockpiles, or mixed with other used refrigerant will instead likely be released, given the costs of destruction. In sum, the EPA concludes that the extension of the reclamation requirements to non-exempt substitutes is supported by section 608(a)(3) because extending these requirements to non-exempt substitutes serves the purposes set forth in 608(a)(3) of maximizing the recapture and recycling of ODS and reducing ODS emissions to the lowest achievable level.

In conclusion, because the application of the non-leak repair requirements to non-exempt substitute refrigerants is connected to the purposes of section 608(a)(3) via the corresponding reductions in ODS emissions and increases in ODS recapture and recycling that are expected to result from maintaining the reclamation requirements for non-exempt substitute refrigerants and retaining consistent practices for ODS and non-exempt substitute refrigerants. Therefore, the EPA concludes that the extension of these requirements is within the scope of its authority under CAA 608(a).

III. Summary and Response to Major Comments

This section summarizes many comments received on this rule, particularly those related to the EPA's legal authority to regulate substitute refrigerants under section 608, and the EPA's responses. Other comments received for this action are addressed in Sections IV and V below, as well as in the response to comments document found in the docket for this action.

A. Comments on the Scope of the Agency's Authority To Regulate Substitutes Under Section 608(c)

The EPA received multiple comments in support of the agency's authority to interpret and explain section 608(c) through the issuance of regulations. These commenters point to the text, purpose, context, and legislative history of section 608(c) to argue that the EPA has broad authority to regulate substitute refrigerants to prevent illegal venting. Most of these commenters support the EPA's view of its authority as articulated in the 2016 Rule, both for the leak repair provisions and the non-leak repair provisions in subpart F. Other commenters, however, state that the EPA's authority under 608(c) does not allow for the leak repair provisions established in the 2016 Rule. One of those commenters states that the EPA has authority to establish the non-leak repair requirements for substitutes, but not the leak repair provisions. Another one of those commenters states that the EPA's authority under 608(c) does not extend so far as to authorize regulations for substitutes that are co-extensive with the regulations required under 608(a) requirements for ODS. That commenter states that the lack of an explicit grant of authority from Congress for the EPA to establish a regulatory program for substitutes indicates that no such authority exists, arguing that Congressional silence is not a delegation of authority to regulate. Another commenter states that the EPA lacks authority to regulate substitutes in any manner under section 608(c). The commenter states that 608(c) is a self-effectuating enforceable requirement to use good management practices and does not provide the EPA with the authority to implement a regulatory program.

The agency agrees that the EPA's authority to issue regulations interpreting, explaining, and enforcing section 608(c) is not co-extensive with its authority to regulate under section 608(a). Thus, the agency disagrees with the comments that supported the view of the EPA's authority as articulated in the 2016 Rule. As explained in Section II above, the agency now interprets sections 608(a) and (c) together to determine that while these provisions are reasonably read to provide it some authority to regulate substitute refrigerants, its authority is more limited for substitute refrigerants than for ODS. In so doing, the EPA recognizes and gives weight to the fact that sections 608(a) and 608(c) differ from one another in some key respects, including the fact that 608(a)(1) and (2) expressly require the EPA to issue regulations for class I and class II substances, but include no such requirement for—or indeed any mention of—substitutes. In contrast, 608(c) does explicitly apply to substitute refrigerants, but that subsection leaves the EPA discretion as to whether to promulgate regulations implementing its provisions and is focused on preventing knowing releases of refrigerants in the course of maintaining, servicing, repairing, or disposing of appliances and on providing an exemption for *de minimis* releases without specifying the mechanisms for carrying out this prohibition and exemption. In light of these differences in wording between 608(a) and 608(c), the EPA concludes in this action that the 2016 Rule's extension of the full set of subpart F requirements to non-exempt substitute refrigerants exceeded its statutory authority under section 608 because the extension of the full set of requirements (*i.e.,* as an entirety) was inconsistent with the more limited scope of the EPA's authority under section 608 to regulate substitute refrigerants as compared with its authority to regulate ODS refrigerants. In addition, as explained in Section II of this document, the EPA has concluded that the 2016 Rule's extension of the leak repair requirements to non-exempt substitute refrigerants exceeded its authority under both sections 608(c) and 608(a). Therefore, the agency disagrees with the comments concluding that the EPA did have authority to extend the leak repair requirements to non-exempt substitute refrigerants, and agrees with the comments that the extension of these requirements exceed the agency's authority under 608(c).

To the extent that the comments are intended to suggest that any overlap between regulations under sections 608(a) and 608(c) exceeds the EPA's statutory authority, the agency disagrees. The fact that Congress required the EPA to address ODS refrigerants in a specific way under section 608(a), and then included a separate provision under 608(c) to address knowing venting, release, and disposal of ODS and substitute refrigerants during certain activities, does not demonstrate that Congress intended to preclude the EPA from implementing section 608(a) and the venting prohibition in section 608(c) by using similar requirements for ODS and substitute refrigerants, when such an approach is independently consistent with those statutory provisions. Taking such an approach does not mean that the agency is using section 608(a) to implement section 608(c), or *vice versa,* but instead simply indicates that these regulatory approaches can be justified under both section 608(a) and 608(c).[17]

[17] As explained in the 2016 Rule, the EPA continues to believe that using section 608(c) to establish similar requirements to those authorized under section 608(a) does not render section 608(a) a nullity: ''Unlike section 608(c), section 608(a) is not limited to refrigerants. EPA has applied its authority under section 608(a) to establish or consider regulations for ODS in non-refrigerant applications. As an example, in 1998, EPA issued

For example, as explained in Section II above, the EPA concludes it was within its statutory authority under both sections 608(a) and 608(c) to extend the non-leak repair provisions in subpart F to substitute refrigerants.

With regard to the comments that the EPA does not have regulatory authority under section 608(c) either because that provision is self-effectuating or because it does not contain explicit authorization to issue regulations, the EPA disagrees. The agency has long held and continues to maintain that 608(c), though self-effectuating, provides authority to issue implementing regulations that interpret, explain, and enforce the venting prohibition and the *de minimis* exemption in section 608(c) and that include the venting prohibition in the overall context of the regulatory scheme. (*See, e.g.,* 69 FR 11947). Thus, while section 608(c) does not include a requirement to issue regulations as section 608(a) does, the agency does not view the lack of a requirement as equivalent to a prohibition on issuing regulations under section 608(c). This is not a situation where Congress was silent as to whether the statutory provision applies to substitutes. Rather, Congress specifically included substitutes in the venting prohibition. It also provided the agency additional discretion to exempt substitutes from the venting prohibition when it determined that the venting, release, or disposal of the substitute did not pose a threat to the environment. The EPA construes the inclusion of substitutes in section 608(c)(2) in these ways to indicate that Congress contemplated that regulation of substitutes would occur. Furthermore, while the EPA is not relying on CAA section 301(a) for primary or substantive authority in this action, the agency believes that the text of CAA section 301(a), which provides that the EPA may ''prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions'' under the Act, supplements its authority under section 608(c) to issue regulations that interpret, explain, or enforce the venting prohibition and the *de minimis* exemption. In addition, as some commenters point out, the legislative history indicates that in establishing the venting prohibition, Congress expected the EPA to promulgate regulatory ''provisions to foster implementation of this prohibition, including guidance on what constitutes 'de minimis' and 'good faith'.'' *Report of the Committee on Environment and Public Works United States Senate, Report Accompanying S. 1630 (S. Rept. 101–228)* (December 20, 1989) at 396 (*reprinted in* 5 A Legislative History of the Clean Air Act Amendments of 1990, at 8736 (1993)).

Furthermore, as explained in Section II of this document, the agency continues to view section 608 as ambiguous in important respects. In section 608(c) Congress provided an exemption to the venting prohibition for certain *de minimis* releases, but it did not define what releases would be considered ''*de minimis*'' nor which activities would be considered ''good faith attempts to recapture and recycle or safely dispose'' of such substances. Where Congress has not directly spoken to an issue or has left ambiguity in the statute, that silence or ambiguity creates an assumption that ''Congress implicitly delegated to the agency the power to make policy choices that represent a reasonable accommodation of conflicting policies that are committed to the agency's care by the statute.'' *National Ass'n of Mfrs.* v. *United States DOI,* 134 F.3d 1095, 1106 (D.C. Cir. 1998). As the U.S. Supreme Court has explained, the ''power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.'' *Chevron,* 467 U.S. at 843–44. Accordingly, Congress's silence with regard to carrying out the venting prohibition and the exception for certain releases leaves a gap for the Agency to fill.

Consistent with this view, the EPA's regulations at § 82.154 have included the venting prohibition since they were originally promulgated in 1993. (58 FR 28714). Even before the 2016 Rule, the subpart F regulations provided that ''[n]o person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances'' and then provided for exceptions from this prohibition for specified substitutes in specified end-uses. (§ 82.154 (2014)). These exceptions implemented the discretion Congress left the EPA under 608(c)(2) to exempt certain releases from the venting prohibition, if the Administrator has determined that ''venting, releasing, or disposing of such substance does not pose a threat to the environment.'' CAA section 608(c)(2). Similarly, the regulations at § 82.154 in place before the 2016 Rule included provisions clarifying that ''[ODS] releases shall be considered de minimis only if they occur when'' certain regulatory requirements are observed. (§ 82.154(a)(2) (2014)). However, those regulations did not provide the same clarity regarding releases of non-exempt substitute refrigerants or what practices would be considered to fall within the ambit of ''good faith attempts to recycle or recover'' non-exempt substitute refrigerants. (§ 82.154(a)(2)). The EPA has long interpreted section 608(c)(2) to incorporate and extend both the venting prohibition and the *de minimis* exemption in section 608(c)(1) to substitute refrigerants, but Congress did not specify what practices or actions should be taken to qualify for this exemption in either provision. Thus, it is reasonable to interpret these provisions as indicating that Congress contemplated that the EPA would have authority to resolve this ambiguity by issuing regulations to implement section 608(c). For these reasons, and as explained in prior sections of this document, the EPA continues to believe that section 608(c) is reasonably interpreted to provide it some authority to issue regulations applicable to substitute refrigerants and thus disagrees with these comments.

B. Comments on Whether ''Topping Off'' a Leaking Appliance Constitutes a Knowing Release Subject to the Venting Prohibition

The EPA received multiple comments stating that the operation of an appliance, and the ''topping off'' with additional refrigerant, is not knowing venting prohibited under section 608(c). They state that venting must occur during the service, maintenance, repair, or disposal of an appliance to be prohibited. Other comments disagree with the EPA's proposed decision to return to its pre-2016 interpretation of ''topping off.'' A couple of commenters state that the fact that refrigerant must be added demonstrates that there is a leak, which would continue if not repaired, and that a technician that repeatedly tops off refrigerant from leaking equipment knows the refrigerant is being released. These commenters object to the proposal to return to the prior interpretation of ''topping off'' because under that interpretation, no matter how significant the quantity of lost refrigerant from a leaking appliance, it would not violate the venting prohibition unless there was a practical

a rule on halon management under the authority of section 608(a)(2) (63 FR 11084, March 5, 1998). In that action, EPA noted that section 608(a)(2) 'directs EPA to establish standards and requirements regarding the use and disposal of class I and II substances other than refrigerants.' 63 FR 11085. Similarly, EPA considered whether to establish a requirement to use gas impermeable tarps to reduce emissions of methyl bromide under section 608(a)(2), ultimately determining not to do so for technological and economic reasons. 63 FR 6008 (February 5, 1998).'' (82 FR 82290).

certainty refrigerant was being released during the servicing event. These commenters thought such a result conflicted with section 608's purpose of reducing emissions of ODS and their substitutes. These commenters also generally found the EPA's 2016 change in its historical interpretation to be reasonable and supported retaining that interpretation. Other commenters look to the word ''maintenance'' in section 608 as providing authority for the leak repair provisions. One commenter states that ''maintenance'' includes normal operation, noting the definition of maintenance includes ''keep[ing] in an existing state'' or ''preserv[ing]'' the machinery.[18] Another comment states that because proper maintenance includes fixing leaks, failure to adequately repair leaks violates the venting prohibition.

The EPA disagrees with commenters that state that the ''topping off'' of a leaking appliance is necessarily prohibited under section 608(c). The addition of refrigerant to an appliance during service, maintenance, or repair is typically distinct and separate in time from the release of that refrigerant into the environment from a leak during the normal operation of the appliance. As discussed elsewhere in this document, while there may be a release of refrigerant from a leaking appliance, all appliances leak and such leaks typically occur during normal operations. While there may be cases where there would be an ongoing release of refrigerant such that the refrigerant added to the system is contemporaneously released and the technician knows about such a release during the servicing event (*e.g.,* when refrigerant is added to equipment that is audibly or visibly leaking during the servicing event), the EPA does not have any information to suggest that this is the norm. Accordingly, the EPA does not have any information to suggest that these situations are common enough to sustain an extension of the leak repair requirements to equipment using solely substitute refrigerants under the text of section 608(c).

The EPA also disagrees with the commenters suggesting that inclusion of the term ''maintaining'' in section 608(c) provides the agency authority to apply the leak repair provisions to appliances containing only substitute refrigerants. Contrary to the position that the EPA took in the 2016 Rule (81 FR 82291), the EPA concludes in this action that the term ''maintaining'' in section 608(c) is not meant to encompass the normal operation of an appliance. Rather, as discussed in Section II above, the EPA believes it is reasonable to interpret this term in light of the other terms in section 608(c) (servicing, repairing, or disposing), all of which refer to activities that are distinct from the normal, day-to-day operation of the equipment. The EPA also disagrees with the commenters suggesting that failure to repair leaks is a failure to maintain equipment that necessarily results in releases that violate the venting prohibition. The text of section 608(c)(1) prohibits knowing releases of ODS by ''any person, in the course of maintaining, servicing, repairing, or disposing'' of appliances, and section 608(c)(2) extends that prohibition to knowing releases of substitute refrigerants ''by any person maintaining, servicing, repairing, or disposing of'' an appliance. Thus, section 608(c) requires an actor (*e.g.,* a technician) to conduct one of a particular set of actions on an object (an appliance) in order for the venting prohibition to apply. The four terms ''maintaining, servicing, repairing, or disposing'' included in section 608(c) are all forms of transitive verbs that express an action by an actor (''any person'') on an object (an appliance containing or using refrigerant). Interpreting the term ''maintaining'' as encompassing the lack of maintenance or failure to repair leaks unreasonably transforms the prohibition against knowing releases during certain defined activities into a requirement to undertake those activities. In the EPA's view, it is not reasonable to interpret the term ''maintaining'' to encompass normal, day-to-day operations of an appliance or to encompass failure to maintain an appliance. Rather, the EPA concludes that the term ''maintaining'' as used in section 608(c) should be interpreted to refer to work done on an appliance in furtherance of its continued functioning or to preserve its existing state of repair. (*See, e.g., The American Heritage College Dictionary,* 4th ed. (Houghton Mifflin, 2002), at 834 (listing definitions of ''maintain'' which include ''to keep in an existing state; preserve or retain'' and to ''keep in a condition of good repair or efficiency''); *Merriam Webster's Collegiate Dictionary,* 11th ed. (Merriam Webster Inc., 2003), at 749 (definitions of ''maintain'' include ''to keep in an existing state (as of repair, efficiency, or validity): preserve from failure or decline <~machinery>'')).

The EPA disagrees with the comments that its historic interpretation, to which it returns today, is inconsistent with the purpose of section 608(c). As explained in Section II above, a general analysis of whether a provision leads to reductions in ODS emissions would typically be undertaken under section 608(a). In contrast to section 608(a), which requires regulations to reduce emissions of ODS to the lowest achievable level, the agency interprets section 608(c) as focusing on limiting particular types of emissions of ODS and substitute refrigerants—those from knowing releases, venting, and disposal that occur in the course of maintaining, servicing, repairing, or disposing of appliances. The agency views its return to its historic interpretation in this action as consistent with the purposes of section 608(c) because it better focuses the regulations on knowing releases that occur during the activities listed in 608(c). In this interpretation it is not the quantity of refrigerant released, but rather the circumstances of the release that determine whether the venting prohibition applies. The EPA concludes that its legal authority under section 608(c)(2) does not extend to emissions of substitute refrigerants that do not occur during one of those four activities. Thus, the agency agrees with the comments stating that the release must occur during the service, maintenance, repair, or disposal of an appliance to be prohibited under the venting prohibition.

A couple of commenters request that the EPA clarify how rescinding the 2016 Rule's interpretation—that ''topping off'' a leaking appliance could in some circumstances constitute a knowing release and violate the venting prohibition—affects appliances containing ODS refrigerant. Noting that the proposed rule states that the Agency was not modifying any ODS provisions, the commenters state that the EPA should rescind this interpretation as it applies to ODS appliances as well. The EPA responds that the agency is rescinding this interpretation for all appliances, regardless of the type of refrigerant used. The original interpretation that topping off an appliance was not a knowing release was in the context of appliances containing ODS refrigerant. (58 FR 28672). Thus, reverting back to that original interpretation means it applies to appliances using ODS refrigerant, as well as to those using non-ODS refrigerants. We further note that this return to the original interpretation does not change the required leak repair practices in § 82.157 for ODS equipment, as those requirements reduce the emissions of ODS and maximize the recapture and recycling of ODS as provided in section 608(a). In

[18] Maintain, MERRIAM–WEBSTER ONLINE DICTIONARY, *https://www.merriam-webster.com/dictionary/maintain* (last visited Nov. 15, 2018).

addition, the agency is not changing the requirement under § 82.154(a)(2)(i) that ODS releases only qualify for the *de minimis* exemption if certain regulatory practices, including those in § 82.157, have been observed.

C. Comments on Whether Section 608(a) Provides Any Statutory Authority To Regulate Substitute Refrigerants

The EPA requested comment on whether, as a matter of statutory interpretation, the agency can rely on section 608(a) for the issuance of any of the subpart F requirements (leak repair or otherwise) for substitute refrigerants, including those provisions for which there is demonstrably a connection between the regulatory requirement and the purposes of section 608(a) to reduce use and emission of class I and II substances to the lowest achievable level and maximize the recapture and recycling of such substances. As the EPA discussed in the proposal, Congress specifically required the EPA in section 608(a) to issue regulations for class I and class II substances that would meet certain statutory purposes set forth in that section. But Congress did not list substitutes for coverage by those requirements. In contrast, section 608(c) does expressly apply to substitute refrigerants. This difference between section 608(a) and 608(c) could be interpreted as a manifestation of Congressional intent to distinguish between the categories of substances covered in these respective provisions and to only convey authority to address substitute refrigerants under 608(c), not 608(a), which is an issue on which the EPA solicited comment.

Three commenters state that 608(a) is not ambiguous with respect to the extent to which Congress authorized the EPA to issue refrigerant management regulations for substitutes. The commenters state that Congress did not provide any explicit grant of authority in section 608(a) for the EPA to establish a regulatory program for substitutes. The fact that Congress so clearly provided such authority for ODS demonstrates that no such authority exists for substitutes. One of those commenters concludes that the EPA lacks the discretion it claims to regulate non-exempt substitutes in any manner.

Other commenters state that the scope of 608(a) is ambiguous and that to the extent that the EPA determines that the statutory language is ambiguous, then the EPA is free to make a policy decision to resolve the ambiguity. These commenters state that there are many policy rationales that support regulating non-ODS substitutes to an equal extent as the regulation of ODS, including cost savings to owners and operators by encouraging proper leak management, reducing harm to the atmosphere, and reduced public safety hazards.

The EPA responds that, as discussed in Section II.B. above, while section 608(a)(3) states that regulations under 608(a) shall include requirements that serve particular objectives and discretionary language about what requirements those regulations *may* include, it does not contain any more specific mandates about *how* the required objectives should be achieved. Thus, the EPA agrees with the comments that section 608(a) is ambiguous with respect to the EPA's authority to regulate substitute refrigerants to achieve those purposes. Given this ambiguity, the EPA interprets section 608(a) to provide authority to issue regulations that reduce the use and emission of ODS to the lowest achievable level or that maximize the recapture and recycling of such substances, even if the regulations do not directly regulate ODS. Thus, as in the 2016 Rule, to the extent that the extension of certain subpart F requirements to non-exempt substitutes is necessary to achieve the purposes set forth in section 608(a)(3) (*i.e.,* reducing the use and emission of ODS to the lowest achievable level or maximizing the recapture and recycling of such substances), the EPA concludes that the extension is within the ambit of its authority under section 608(a). However, the EPA disagrees with the comments suggesting that 608(a) is so ambiguous as to allow the agency to employ various policy rationales such as cost savings to the owners and operators, encouraging proper leak management, reducing harm to the atmosphere, and reducing public safety hazards when considering whether the extension of the subpart F requirements to substitute refrigerants is supported by 608(a). The EPA interprets section 608(a) to authorize the extension of those requirements only if they meet the explicit purpose(s) of that section, including reducing the use and emission of ODS to the lowest achievable level and/or maximizing the recapture and recycling of such substances. For the reasons discussed in Section II of this document, the EPA concludes that section 608(a) does not support the 2016 extension of the leak repair requirements in § 82.157 to non-exempt substitute refrigerants but does support the extension of the non-leak repair requirements to such refrigerants.

Some commenters state that 608(a) does not provide authority to require repairing leaks of non-ODS substitutes because repairing an appliance containing a substitute will not reduce the use or emission of ODS nor maximize the recapture and recycling of ODS.

The EPA responds that, as described in greater detail in Section II above, the agency interprets CAA section 608(a) to support the 2016 Rule's extension of the existing subpart F requirements to appliances using only non-exempt substitute refrigerants only if that extension is necessary to serve the purposes of 608(a). The EPA agrees with these commenters that applying the leak repair provisions to appliances containing only substitute refrigerants is not necessary to reduce ODS emissions or to promote the recapture and recycling of ODS. This is especially true since the EPA is retaining the non-leak repair provisions in subpart F for non-exempt substitutes.

Three commenters state that the text of 608(a) demonstrates that Congress intended the section to provide an incentive to transition to non-ODS substitutes. These commenters state that rescinding the leak repair provisions for non-exempt substitutes will restore that incentive, which will minimize use and emission of ODS. Likewise, one commenter states that applying the refrigerant management requirements to substitutes will disincentivize the development of new substitutes.

While the EPA is rescinding the leak repair provisions for non-exempt substitutes based on its determination that the extension of these provisions to such substitutes exceeded its statutory authority because it was based on an unreasonable interpretation of that authority, the EPA disagrees that section 608 drives the development of or transition to substitutes. Section 608 is one of several complementary measures in Title VI of the CAA that support the phaseout of class I and class II ODS. For example, in section 610 Congress banned certain products containing ODS and granted the EPA authority under to ban others. In section 611, Congress required the EPA to promulgate labeling requirements for certain products containing or manufactured with ODS. These aspects of Title VI more directly establish incentives and support the transition to ODS alternatives than the provisions in section 608, which establish a national recycling and emission reduction program. Further, the production and import of class I ODS has been phased out and the production and import of class II ODS is well underway. Allowances for production and import of the most common HCFC refrigerant, HCFC–22, are set to decline to zero in 2020 (§§ 82.16, 82.15(e)). In addition,

use restrictions issued pursuant to section 605(a) prohibit use of newly produced HCFC–22 in equipment manufactured on or after January 1, 2010 (§ 82.15(g)(2)). The section 605(a) use restrictions further prohibit use of newly produced HCFC–123 in equipment manufactured on or after January 1, 2020 (§ 82.15(g)(4)). While used HCFCs are not subject to these restrictions, the HCFC production and import phaseout and the restrictions on use of newly produced HCFCs provide clear market signals regarding future availability of HCFC refrigerants.

Thus, the provisions of Title VI, taken together, provide a variety of incentives for the transition from ODS to substitutes. In section 608(c)(2), however, Congress indicated a concern about the potential environmental impacts of substitute refrigerants by extending the venting prohibition to substitute refrigerants, unless the EPA determines that for particular substances such releases do not pose a threat to the environment.

To the extent that the extension of subpart F regulatory requirements to non-exempt substitute refrigerants is supported by section 608(c), that extension provides clarity and certainty to owners, operators, and people servicing, maintaining, repairing, or disposing of air conditioning and refrigeration equipment of how they can avoid violating the venting prohibition. Such clarity and certainty with regards to the venting prohibition are consistent with the EPA's overall efforts under Title VI to facilitate a smooth transition from ODS to substitute refrigerants. Thus, while facilitating a smooth transition to substitutes is not a basis for this action, the EPA disagrees with the comments suggesting that applying subpart F provisions to non-exempt substitute refrigerants reduces incentives for the development of or transition to substitutes.

The EPA solicited comment regarding scenarios where failure to apply consistent standards for the non-leak repair provisions in Subpart F could lead to emissions of ODS. These scenarios include contamination caused by the improper handling of non-exempt substitute refrigerant, equipment failure due to mixed or contaminated refrigerant, venting of contaminated refrigerant due to cost of handling and reclaiming refrigerant in appliances, and venting due to an individual misidentifying an ODS refrigerant as a substitute refrigerant when performing maintenance on an appliance. (83 FR 49340).

One commenter states that the EPA provided no technical basis to warrant the extension of the non-leak repair subpart F requirements to substitutes. Specifically, the commenter states that the agency did not provide any data concerning frequency of refrigerant contamination, equipment failures due to contamination, and misidentification. The commenter states that its members, including one that has 75 separate facilities, could not identify any examples of substitute contamination or mismanagement. Multiple other commenters state that a single, uniform, and consistent management system for ODS and substitute refrigerants makes refrigerant management easier for technicians maintaining, servicing, or disposing of refrigeration equipment, and increases the chances that technicians will not release class I or class II refrigerant. Some of these comments were limited to the non-leak repair provisions of Subpart F and some were inclusive of the leak repair provisions. Several refrigerant technicians and reclaimers in their comments relay instances where a layperson has mixed refrigerant or attempted an improper retrofit or other maintenance and caused the release of refrigerant. Other commenters state that refrigerant mixing would increase if the sales restriction for non-exempt substitutes were rescinded.

The EPA's understanding of the industry indicates that technician errors can result in refrigerant mixing, and catastrophic equipment failure as a result. The agency's understanding is consistent with and supported by information that stakeholders have provided to the agency, including information submitted during the development of this rulemaking and included in the record for this rule. Moreover, the EPA has supporting evidence from enforcement actions pertaining to R–22a and reported reclamation data that mixing does occur. Many entities including refrigerant reclaimers, equipment manufacturers, technicians, and equipment owners have notified the agency that mixed refrigerant is becoming increasingly prevalent as the number of substitutes for ODS in use increases. The EPA finds credible the information provided by commenters who identified examples of refrigerant releases related to mixing of refrigerants or attempted improper retrofit or other maintenance.

Evidence of refrigerant mixing comes from data reported to the EPA by reclaimers. The amount of mixed refrigerant being received by reclaimers has been increasing since 2012 by total volume or since 2013 as a percentage of the amount of refrigerant sent for reclamation. These data support the anecdotal statements and comments made by individual reclaimers and technicians that they are encountering more mixed refrigerant. The data are available on the EPA's website and some of the comments and statements are in the docket to this rule.[19] The EPA also expects that the reported data are an underestimate of the total amount of mixed refrigerant since mixed refrigerant is often vented or not sent to reclaimers, and thus those amounts are unavailable to be reported.

In addition, as discussed in the 2016 Rule, the use of R–22a (a non-exempt substitute refrigerant) as a replacement for R–22 (an ODS refrigerant) indicates to the EPA that people are purchasing their own refrigerant and adding it to systems with ODS refrigerant. R–22a, which is propane, in some cases mixed with isobutane and an odorant, has been marketed as a ''drop-in'' (or more appropriately termed a ''retrofit'') replacement for existing equipment, typically residential split air-conditioning systems, which are designed for use with HCFCs or HFCs. The EPA has listed propane and R–22a as well as all ASHRAE Flammability Class 3 Refrigerants as unacceptable for retrofit in residential and light commercial unitary split AC and heat pumps under the Significant New Alternatives Policy program. The Agency learned through its enforcement actions against Enviro-Safe and Northcutt, two distributors of R–22a, and through other investigations, that R–22a has been sold to both consumers and certified technicians. Often the buyers are not aware there is a difference between R–22 and R–22a, or even that R–22a is flammable. As a result, appliances have exploded, resulting in the release of refrigerant that consists in part of ODS, and people have been injured. Together, this data from reclaimers and information on R–22a support the view that applying the sales restriction and technician certification requirements to non-exempt substitute refrigerants serves the purposes of section 608(a) because it prevents the mixing and subsequent release of ODS refrigerants, including in mixtures with substitute refrigerants.

Two commenters state that cross-contamination of ODS and non-exempt substitute refrigerant does not occur because they operate at different pressures so there are no concerns that ODS will be emitted if there are no

[19] Mixed Refrigerant Received Totals by Year (Pounds), *available at https://www.epa.gov/section608/summary-refrigerant-reclamation-trends.*

controls on substitute refrigerants. In contrast, another commenter states that many class II (and in some cases, class I) substances can be used interchangeably with HFCs and other substitute refrigerants, though sometimes requiring equipment modification. Other commenters state that ODS and ODS substitutes can be used interchangeably in many applications, and service technicians are likely to encounter both types of refrigerants. In California, approximately 17% of reporting facilities have both ODS and HFC systems.

The EPA disagrees with the comment saying that cross-contamination of ODS and non-exempt substitute refrigerant cannot occur because they operate at different pressures. R–22 has been the dominant ODS refrigerant and is being replaced with several non-exempt substitute refrigerants that operate at similar pressures (*e.g.,* R–404A, R–407A, and R–407C). In those situations, cross-contamination of ODS and substitute refrigerant, refrigerant mixing, and related releases of ODS can occur. The EPA agrees with the comments that ODS and substitute refrigerants have inappropriately been used interchangeably. The EPA frequently hears from industry stakeholders, similar to comments received on the proposal, that technicians are ''topping off'' R–22 systems with non-exempt substitute refrigerant, particularly during the final stages of the R–22 phaseout which has seen price spikes. Improper retrofits or refrigerant mixing can occur even when the operating pressure is different, especially when appliances are serviced by untrained personnel. This mixing of refrigerant with different operating pressure makes catastrophic equipment failure and release of the refrigerant charge even more likely.

A few commenters state that eliminating the reclamation requirement for non-exempt substitute refrigerants would set in motion market forces that would ultimately result in an increase in ODS emissions. Specifically, the commenter states that technicians would resell recovered substitute refrigerants to other customers rather than sending them for reclamation. This would reduce the profitability and ability of reclaimers to reclaim the ODS refrigerants that they do receive. The comment explains that reclaimers might stop accepting ODS refrigerants and technicians would then either resell contaminated refrigerant, vent the ODS refrigerants to the atmosphere, or pay for proper disposal, likely in that order.

The EPA agrees with the comments that rescinding the reclamation requirements for non-exempt substitute refrigerants would likely result in an increase in ODS emissions. As discussed further in Section II.D. of this document, the reclamation requirements for non-exempt substitute refrigerant prohibit the resale of mixed used refrigerant and support a market-based process from the technician or recovery company to the refrigerant distributor and ultimately the reclaimer to return used ODS and non-exempt substitute refrigerant to the same purity level as newly produced refrigerant. The requirement that recovered ODS and non-exempt substitute refrigerant be reclaimed to meet industry purity standards before being resold, with limited exceptions, implements the direction in section 608(a)(3) to reduce the use and emission of ODS to the lowest achievable level, and to maximize the recapture and recycling of such substances, as explained further in Section II.D. of this document. The EPA concludes that section 608 provides the EPA authority for the 2016 Rule's extension of the reclamation requirements to substitute refrigerants and is therefore not finalizing a rescission of the reclamation standards.

D. Comments Regarding How Holistic Interpretations of Section 608 and Other Sections of Title VI May Relate to EPA's Authority To Regulate Substitute Refrigerants

One commenter states that the EPA must read section 608 as a whole, consistent with giving meaning to the full statutory provision. This commenter further asserts that doing so shows that Congress intended to only stagger requirements for ODS and non-exempt substitutes, with ODS requirements applying starting in 1992 and those for substitutes starting in 1995, not to create a more limited regulatory program for substitutes. A few commenters state that section 608(a) is broader than 608(c) in that it provides the EPA the authority to regulate ''use'' of an ODS while 608(c) is limited to service, maintenance, repair, or disposal of an appliance. These commenters state that this difference in wording indicates that Congress intended for different requirements to apply to ODS and substitutes. Another commenter states that because section 608(c)(2) extends to the ''knowing release'' or the disposal of substitutes, it provides broader legal authority than exists within the Administrator's authority to establish standards regarding the ''use and disposal of class I substances'' under CAA section 608(a), offering the example that CAA section 608(c) authority extends to any ''release'' whether by means other than use or disposal.

The EPA responds that the agency has appropriately considered the authority granted to the agency under section 608, considering that section as a whole, in reaching the interpretations supporting this action. Based on that consideration, the EPA disagrees that reading 608(a) and (c) together indicates that Congress intended simply to stagger similar requirements for ODS and substitutes. Were this the case, Congress could have inserted requirements to regulate substitutes in 608(a) that were effective in 1995, in a similar manner to the way it made the venting prohibition effective for substitutes effective November 15, 1995 in 608(c)(2). But it did not. While Congress chose to stagger the requirements in 608(a) for class I and class II ODS, with section 608(a)(1) requiring the EPA to issue certain regulations for class I substances by January 1, 1992, and 608(a)(2) requiring other regulations for class I and class II substances by November 15, 1994, it did not include such a staggered date for substitutes. Nor did it even mention substitutes in these provisions. Similarly, while Congress staggered the application of the venting prohibition in section 608(c) to ODS and substitutes, that only indicates that Congress intended for the venting prohibition to apply equally to both substitutes and ODS after November 15, 1995. As explained in greater detail in Section II of this document, the EPA concludes that, reading section 608 as a whole, its authority to address substitutes under section 608 is more limited than its authority to address ODS.

The EPA agrees with the comment that that the verbs used in section 608(a) suggest a broader scope of authority than those in 608(c). As noted in Section II above, sections 608(a)(1) and (2) broadly authorize regulations for the ''use and disposal'' of ODS, and section 608(a)(2) clarifies that this ''includ[es] use and disposal during service, repair, or disposal'' of appliances. The term ''includ[es]'' in 608(a)(2) indicates that ''use and disposal'' can occur during activities other than ''service, repair, or disposal.'' These are three of the four activities mentioned in section 608(c), which prohibits knowing releases ''in the course of maintaining, servicing, repairing, or disposing'' of appliances. As explained elsewhere in this document, the EPA interprets the fourth term, ''maintaining,'' as similar in scope to ''servicing, repairing, or disposing'' and to refer to work done on an appliance in furtherance of its

continued functioning or to preserve its existing state of repair. Thus, the EPA concludes that Congress envisioned that the regulations under section 608(a) would affect a broader range of activities than those under section 608(c). In addition, as described in greater detail in Section II above, the EPA now reads sections 608(a) and (c) together to determine that its authority is more limited for substitute refrigerants than for ODS. However, the EPA does not believe that this means none of the same provisions can be applied to ODS and substitute refrigerants. Rather, the EPA believes the same provision can apply to both ODS and substitute refrigerants where the agency can reasonably conclude that extending a requirement that previously only applied to ODS refrigerants to substitute refrigerants is an appropriate application of its authority under either section 608(a) or (c), under the interpretive framework set forth in Section II above. The EPA disagrees with the comment that 608(c)(2) is broader than 608(a) because it extends to ''any release.'' As discussed in Section II, the releases prohibited under section 608(c)(2) are limited to those that occur ''in the course of maintaining, servicing, repairing, or disposing'' of appliances, a narrower range of activities than the broad range of ''use and disposal'' activities featured in section 608(a). Two commenters state that reading sections 608 and 612 together indicates that Congress sought to avoid solving one problem (ozone depletion) only to create another, in this case GHG emissions. They argue that given the policy choices that are embodied in section 612—to replace ODS with substitutes that lower the overall risks to human health and the environment—and the fact that HFCs have not been exempted from the venting prohibition, the EPA should take an expansive read of the Agency's authority to regulate substitutes.

The EPA responds that CAA sections 612 and 608 are distinct provisions, and the EPA does not believe it is reasonable to interpret the policy objectives of section 612 as expanding the agency's ability to regulate substitutes under section 608 beyond the authority conveyed in the text of 608 itself. As explained in Section II above, because the agency has determined that the 2016 Rule's extension of the leak repair requirements to appliances using only non-exempt substitute refrigerant exceeds its statutory authority, it is rescinding that extension.

Another commenter states that reading 608 and 609 together indicates that Congress was capable of clearly indicating when it intended for ODS and substitutes to be treated the same, and that it chose not to do so in 608. In support of this argument, the commenter points out that the definition of refrigerant in section 609 includes class I and class II substances, as well as any substitute substance beginning November 15, 1995. The EPA responds that as described in greater detail in Section II above, it interprets its authority to address substitutes under section 608 as more limited than its authority to address ODS, based in part on the inclusion of the term ''substitute'' in section 608(c)(2) but not sections 608(a)(1) and (2). Section 609 is a distinct provision from section 608 and is highly specialized, being focused on motor vehicle air conditioners, which were one of the first uses to transition to substitutes. The EPA believes this comment provides additional support for the agency's conclusion that its authority to regulate substitutes under section 608 is not as extensive as its authority to regulate ODS. However, the EPA does not believe that section 609 should be read to suggest that the agency has *no* authority to regulate substitute refrigerants under section 608, as section 608(c), like section 609, does mention both ODS and substitute refrigerants and applies the venting prohibition to both beginning November 15, 1995. Nor does anything in section 609 indicate whether certain refrigerant management requirements for substitutes might be necessary to achieve the purposes of section 608(a), which covers a broad range of uses, with widely varying timelines for the transition from ODS. For the reasons described further in Section II, the agency continues to reasonably interpret both section 608(a) and (c) to provide some authority to regulate substitute refrigerants, to the extent consistent with the text of those provisions, and this action appropriately aligns its regulation of substitute refrigerants with its statutory authority under 608.

One commenter states that the name of Title VI (Stratospheric Ozone Protection) indicates that Congress intended to only address stratospheric ozone depletion, not GHG emissions. The EPA responds that this action addresses non-exempt substitutes without distinction as to whether they are GHGs and indeed without distinction as to any other attribute. Further, the text of 608(c) demonstrates that Congress was addressing both class I and class II refrigerants and substitute refrigerants. Congress specifically applied the venting prohibition to substitutes, and, as indicated by the provision that allows the EPA to exempt substitute refrigerants from the venting prohibition if it determines that venting, release, or disposal of such substitute does not pose a threat to the environment, specifically contemplated that threats to the environment other than stratospheric ozone depletion would be considered in implementing the venting prohibition under section 608(c)(2). In addition, the Supreme Court has recognized the ''wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text''; while they may provide a ''short-hand reference to the general subject matter involved,'' they are not ''necessarily designed to be a reference guide or a synopsis.'' *Bhd. of R.R. Trainmen* v. *Balt. & O.R. Co.,* 331 U.S. 519, 528–29 (1947) (internal citations omitted). Thus, the EPA does not interpret the title of Title VI as precluding it from regulating substitute refrigerants, where such regulation is otherwise authorized under the Act. Moreover, as described in Section II above, in re-assessing the scope of its authority for the 2016 Rule's extension of subpart F provisions to substitute refrigerants, the EPA has considered whether the extension of those provisions serve the purposes of section 608(a) by maximizing recyling or recovery of ODS and/or reducing emissions of ODS to the lowest achievable level and has determined that the extension of those provisions with the exception of the leak repair requirements met such purposes.

Three commenters cite section 602(e) for the proposition that Congress did not intend to address GHGs in any of Title VI. That section requires the EPA to publish the global warming potential (GWP) of class I and class II substances but states that such required publication ''shall not be construed to be the basis of any additional regulation under this chapter.'' The EPA responds, as above, that this action addresses non-exempt substitutes without distinction as to whether they are GHGs and indeed without distinction as to any other attribute. Regardless, section 602(e) does not mention substitutes. Section 602(e) relates to the GWPs of ODS, and neither directs the publication of GWPs of substitutes nor makes any statement regarding regulation of such substances. In any event, the EPA is not regulating either ODS or substitutes on the basis of their GWP in this action. Furthermore, the EPA did not rely on section 602 as authority for the extension of subpart F to non-exempt substitutes in 2016, nor is it relying on section 602 for the action

being taken in this rulemaking. In the 2016 Rule, the EPA extended the subpart F regulations to all substitute refrigerants that are not exempt from the venting prohibition irrespective of their GWPs. In this action, the agency's decision to rescind the 2016 Rule's extension of the leak repair requirements to equipment containing only non-exempt substitute refrigerants is based on the conclusion that the extension exceeded the agency's authority under section 608 because it was based on an unreasonable interpretation of that authority.

E. Comments Regarding Whether the Agency Has Provided a Reasoned Basis for This Action

One commenter states that the EPA's reinterpretation of its legal authority fits squarely within the authority that supports an agency's ability to change its policy (citing *Chevron, U.S.A., Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984)). Some commenters state that the EPA has not offered an adequate rationale for this action and fault the agency for not providing substantial evidence for changing its previous findings. These commenters state that when changing policy, ''a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy'' (citing *FCC* v. *Fox Television Stations,* 556 U.S. 502, 516 (2009)). Another commenter states that the EPA failed to provide the requisite ''good reasons'' for its change (citing *id.* at 515). Some of these commenters state that ''an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance'' (citing *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto Ins. Co.,* 463 U.S. 29, 42 (1983)) and argue that the EPA has failed to provide a sufficient justification for the change. Other commenters state that the EPA ignores the fact that harmful emissions would increase under today's action, arguing that this shows that the EPA has failed to ''examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made'' (citing *State Farm,* 463 U.S. at 43)).

The EPA disagrees that the agency has failed to provide an adequate rationale for this regulatory change. To begin, we note that the agency ''obviously ha[s] broad discretion to reconsider a regulation at any time,'' *Clean Air Council,* 862 F.3d at 8–9, as long as it provides a reasoned explanation for its action. *See, e.g., Encino Motorcars,* 136 S.Ct. at 2125. As discussed elsewhere in this preamble, including in detail in Section II above, the reason for today's action is not a change in policy, but rather a determination that the agency exceeded the scope of its legal authority under the CAA in the 2016 Rule by extending the leak repair provisions to equipment containing only non-exempt substitute refrigerants based on an unreasonable interpretation of its authority. The EPA has provided a reasoned explanation of its current interpretation of its legal authority in Section II of this document and explained why that interpretation requires the rescission of the 2016 extension of the leak repair requirements to substitute refrigerants. Even if the facts and circumstances that underlay that extension, or were engendered by it, could be cited to provide a policy basis for applying the leak repair requirements to non-exempt substitute refrigerants, the EPA cannot do that because doing so exceeds its legal authority. An agency may ''justify its policy choice by explaining why that policy 'is more consistent with statutory language' than alternative policies,'' *Encino Motorcars,* 136 S.Ct. at 2127 (quoting *Long Island Care at Home Ltd.* v. *Coke,* 551 U.S. 158, 175 (2007)), as the agency has done here. In addition, the agency does not agree with the commenters' claim that it needs to provide more rationale for this change than if it were acting in the first instance. *See Encino Motorcars,* 136 S.Ct. at 2126 (''When an agency changes its existing position, it 'need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.' '') (quoting *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)). However, even if it did, the EPA believes that the detailed description in Section II of this document would satisfy that standard, especially considering that it is undertaking this action to rescind a regulatory provision that exceeds its statutory authority. Accordingly, the EPA agrees with the comments that stated this action is well within the agency's authority to change existing regulatory requirements.

Two commenters state that rescinding the leak repair provision for non-exempt substitutes is arbitrary and capricious because it would result in more of the pollution the CAA seeks to limit and then goes on to discuss the forgone annual GHG emissions reductions. They also state that the EPA has not explained how the new interpretation ''is rationally related to the goals of the statute.''

The EPA does not agree that this action will result in increased emissions of the pollution that section 608 seeks to limit, nor that this action is not rationally related to the goals of the statute. With respect to section 608(a), that section focuses on reducing emissions of ODS. The EPA has been implementing regulations under section 608(a) of the CAA for decades and has been appropriately reducing the use and emission of ODS refrigerants through those regulations. As discussed in Section II above, the EPA has determined that leak repair provisions as applied to appliances containing only substitute refrigerants are not needed to reduce the use and emissions of ODS refrigerants or to maximize the recapture and recycling of ODS refrigerants, especially if the other subpart F provisions are in place for non-exempt substitutes. As explained in Section II of this document, the EPA concludes that this action is necessary because the 2016 Rule exceeded its statutory authority. With respect to section 608(c), the agency interprets section 608(c) to apply only to knowing releases that occur in the course of maintaining, servicing, repairing, or disposing of appliances. Because operational leaks of substitute refrigerants that would typically trigger the leak repair provisions do not occur during one of those four activities, the EPA does not agree that this action will result in increased emissions of the pollution that section 608(c) seeks to limit.

IV. Extension of the January 1, 2019 Compliance Date for the Appliance Maintenance and Leak Repair Provisions for Non-Exempt Substitute Refrigerants

The 2016 Rule established a January 1, 2019 compliance date for the leak repair provisions. In establishing that compliance date, the agency had found that two years was sufficient time for owners and operators of appliances with 50 or more pounds of refrigerant to learn about the updated requirements and prepare for compliance. (81 FR 82343). The 2018 proposal for this action explained that the EPA was evaluating whether that compliance date remained viable or whether it should be extended. The EPA proposed to take final action to extend the compliance date in § 82.157(a) for appliances containing only non-exempt substitute refrigerants if final action on the substantive portions of the proposed rule would not occur within a reasonable time before the existing compliance date. At that

time, however, the EPA lacked specific information relating to the continued viability of the compliance date. The EPA requested comment on whether facilities would encounter practical difficulties in meeting the compliance date and stated that it intended to consider such information in deciding whether a compliance date extension was needed. The EPA further requested comment on any hardship that owners or operators of appliances would face if the compliance date was not extended and on any forgone benefits from such an extension. Finally, the EPA requested comment on its ability to finalize a compliance date extension.

Multiple commenters state that the EPA has the authority and should finalize an extension of the compliance date for the leak repair provisions as they apply to non-exempt substitutes. Several commenters state that the EPA should take a separate action to extend the compliance deadline. They argue that the extension would help eliminate the burden of implementing compliance plans that are expected to no longer be needed when the rule is finalized, and that the separate rule should be issued as far ahead of December 31, 2018 as is possible to minimize any burdens. Commenters state that a 6- to 12-month delay in compliance would provide certainty to the industry. Some suggest that the extension should be a full twelve months, which would move the compliance date to January 1, 2020. However, several other commenters do not support an extension of the compliance date. They state that the 2016 Rule has been in effect since January 1, 2017, and that responsible regulated entities have planned for, invested in, and implemented changes necessary to comply with the applicable compliance deadlines, including January 1, 2019. Commenters state that the EPA has failed to provide any lawful basis for its proposal to delay the compliance date for the 2016 Rule.

The EPA considered the comments received and is not finalizing, in this rulemaking or separately, an extension to the January 1, 2019 compliance date for the application of the updated leak repair provisions to non-exempt substitute refrigerants. Even though some commenters thought an extension would reduce compliance costs, commenters also said that they were taking steps to comply and did not suggest that they would be unable to do so by January 1, 2019. With no information in the record to contradict the EPA's earlier findings that two years provided sufficient time to prepare for the January 1, 2019 compliance date, this final rule rescinds the leak repair requirements for appliances that contain non-exempt substitute refrigerants without any extension of that compliance date.

V. Economic Analysis

The EPA does not interpret section 608 to require it to consider costs and benefits or select the option with the best cost-benefit outcome. Section 608 does not explicitly address whether costs or benefits should be considered in developing regulations under that section. Because the statutory language does not dictate a particular means of taking economic factors into account, if at all, the EPA has discretion to adopt a reasonable method for doing so. In this rule, the EPA has focused on the proper scope of the agency's authority to regulate.

The EPA is removing the requirement to comply with the leak repair provisions for appliances containing only non-exempt substitute refrigerants as the EPA has determined that the 2016 Rule's extension of those provisions to non-exempt substitute refrigerants exceeded the agency's statutory authority because it relied on an unreasonable interpretation of that authority. These provisions include requirements to repair equipment that is leaking above the regulatory threshold, along with the associated verification tests, leak inspections, and recordkeeping.

Details of the methods used to estimate the costs and benefits of this rule are discussed in the *Analysis of the Economic Impact of the Proposed 2018 Revisions to the National Recycling and Emission Reduction Program* in the docket. For a complete description of the methodology used in the EPA's analysis, see Section VI of the 2016 Rule (81 FR 82344) and the technical support document for the 2016 Rule which is also available in the docket for this action. While the EPA is providing this information to help the public understand the implications of this action compared to those considered in the economic analysis provided for the 2016 Rule, this action is not based on consideration of this information. Rather, this action is based on changes in the agency's legal interpretation of the scope of its statutory authority, as described in earlier sections of this document.

The EPA received several comments on the economic analysis included in the proposal. One commenter states that the EPA has the authority to take costs into consideration in finalizing the proposed rule even where the statute is silent, as confirmed by recent Supreme Court decisions. That commenter, and numerous other commenters, state that failure to consider a relevant factor such as cost could make the agency action unlawful. The EPA agrees as a general matter that the agency has the authority to consider costs and benefits in regulations promulgated under section 608. (*See, e.g.,* 81 FR 82287). However, the consideration of costs and benefits described in the technical support documents in the docket are provided for purposes of transparency and to inform the public about the implications of this action relative to those described in the economic analysis provided for the 2016 Rule following agency guidance on assessing economic costs and benefits. This action rescinds the extension of requirements that exceeded the agency's statutory authority. The agency cannot impose obligations that exceed its statutory authority, irrespective of the costs and benefits associated with those requirements.

The EPA received numerous comments on the agency's analysis of the costs and benefits of the proposed rule. Several commenters state that it is arbitrary to not monetize the climate damages caused by the forgone emission reductions resulting from rescinding the extension of the leak repair provisions to non-exempt substitutes. Commenters also argue that: Use of the Interagency Working Group's social cost of GHGs metric would have found that the climate damages of the proposed rule's forgone emissions reductions outweigh the estimated cost savings; it is arbitrary for the agency to not use any monetary value for fluorinated gases; and the EPA has previously found that HFCs endanger public health and welfare, so the agency cannot ignore GHG emissions which may result. Commenters also state that the EPA did not consider the effect that the proposed rule would have on operating costs of leaking systems, the shortened lifespans and increased equipment failures of systems allowed to operate with leaks, costs to companies that have created innovative products to facilitate compliance, and decreased yields of products generated through IPR processes. Some commenters also state that rescinding the leak detection and repair program would result in higher costs for consumers as well as lost jobs in the air conditioning and refrigeration industry. Others state that compliance costs will increase as companies will need to ensure compliance with two different regulatory frameworks.

The EPA disagrees with the comments suggesting that it has ignored the increased GHG emissions, as it has quantified the expected increase in those emissions and reflected them in

its analysis. Today's action is not based on a cost-benefit analysis of retaining or rescinding various provisions or on any other consideration of the costs and benefits of various policy options, but rather is focused solely on whether the agency had the statutory authority to extend elements of the refrigerant management program to non-exempt substitute refrigerants in the 2016 Rule. If the agency does not have legal authority to impose a requirement, it cannot do so, even if that action would be environmentally or economically beneficial. As noted above, the technical support documents in the docket are provided to inform the public about the implications of this action relative to those described in the economic analysis provided for the 2016 Rule. The EPA did not monetize the GHG effects in the economic analysis for the 2016 Rule, nor did it quantify the other types of indirect costs raised in the comments. The EPA observes that the 2016 Technical Support Document for the 2016 Rule notes that the final rule, ''may result in other economic health and environmental benefits that are not quantified or monetized in this conservative analysis.'' [20] EPA is rescinding the 2016 Rule's extension of the leak repair requirements to equipment containing only non-exempt substitute refrigerants, therefore the unquantified benefits related to the extension of such requirements will no longer be attributable to the EPA's refrigerant management program. Consistent with the agency's overall approach taken in the 2016 Rule, the EPA is not monetizing the GHG effects of this action. Similarly, the EPA is not quantifying other indirect costs or distributional effects raised by commenters. While such analyses are not relevant to the basis for this action, for informational purposes we observe that estimating distribution effects such as job loss is very difficult to quantitatively assess: Regulatory employment impacts can vary across occupations, regions, and industries; by labor demand and supply elasticities; and in response to other labor market conditions. Isolating such impacts is a challenge, as they are difficult to disentangle from employment impacts caused by a wide variety of ongoing, concurrent economic changes.[21]

One commenter states that the agency failed to quantify the extra ODS emissions that would result from unraveling the uniform regulatory framework for substitute refrigerants. Another commenter notes that the EPA's estimated forgone GHG emissions reductions do not consider appliances' end-of-life emissions. The EPA responds that, aside from the leak repair provisions, the EPA is retaining the extension of all the subpart F requirements to non-exempt substitute refrigerants, including the service practices, which require specific evacuation levels before disposing of an appliance or opening it for service, use of certified recovery equipment, and the technician certification requirement. In addition, the venting prohibition continues to apply to any knowing release, venting, or disposal of ODS or non-exempt substitute refrigerant by any person maintaining, servicing, repairing, or disposing of an appliance. As such, the EPA believes that end-of-life emissions of both ODS and non-exempt substitute refrigerant will not be affected by this final rule and were properly not included in the agency's analysis. Similarly, the EPA properly did not include any ODS emissions that would result from rescinding the non-leak repair subpart F provisions in its analysis for the final rule, as it is not rescinding the extension of those provisions.

Several commenters state that the compliance costs of the 2016 Rule were too great and presented an unnecessary burden. One commenter states that the $24 million in annual savings likely underestimates the costs of the 2016 Rule. One commenter states that the EPA has not fully considered the impacts of the 2016 Rule on companies, institutions like hospitals and schools, and homeowners. With the transition to HFCs and HFOs, these entities have made costly investments in systems, but found higher repair costs. Likewise, this commenter states that the EPA did not consider the costs to install new IPR using non-ODS refrigerants.

The EPA responds that the costs of the 2016 Rule are outside the scope of this action, which is only to rescind the 2016 Rule's extension of requirements to non-exempt substitute refrigerants that exceeded the agency's statutory authority.

The EPA received many comments from the refrigeration and air conditioning industry that they have spent time and money to comply with the various provisions of the 2016 Rule. This includes costs associated with training staff, updating reporting and recordkeeping software, revising and republishing testing materials, and identifying affected appliances and individuals responsible to ensure compliance.

The EPA responds that the consideration of costs, including reliance interests, is not relevant to this action because the rescission here is based on the agency's lack of legal authority for the 2016 Rule's extension of the leak repair provisions, not on a cost/benefit analysis or policy considerations. As noted above, if the agency does not have legal authority to impose a requirement, it cannot do so, even if retaining that requirement would be economically beneficial to some entities. However, the EPA notes that this action does not rescind the extension of most of the provisions that the commenters mention as a concern, including the leak repair provisions for appliances containing ODS, and therefore those investments will not be stranded as a result of this action. The EPA is rescinding the 2016 Rule's extension of the leak repair provisions as they apply to equipment containing only non-exempt substitute refrigerants, but it is retaining the extension of the other subpart F requirements, such as those pertaining to reclamation. This rule does not impose any new reporting or recordkeeping obligations.

One commenter states that the EPA failed to distinguish between private and social benefits, and that some costs of this action should not be counted if the regulated entity had the same or similar options available to identify and repair refrigerant leaks prior to the rulemaking. This comment referred specifically to the estimated $15 million in refrigerant purchases that will be made as a result of this action by owners and operators of equipment with non-exempt substitutes.

As explained above, consideration of the costs and benefits of this action is not part of the rationale for this action and does not inform the EPA's decision on this rule. Rather, this action is based on the agency's determination that the 2016 Rule's extension of the leak repair provisions to non-exempt substitute refrigerants exceeded the agency's statutory authority. The EPA additionally notes that while it is true that the costs of purchasing additional refrigerant will fall on private entities, it is those same private entities that will secure a reduction in burden from the rescission of the leak repair requirements of the 2016 Rule as they apply to equipment containing only

[20] Technical Support Document, Analysis of the Economic Impacts and Benefits of the Final Revisions to the National Recycling and Emission Reduction Program, September 2, 2016, pgs. 60–63.

[21] For a more detailed discussion, *see, e.g.,* Economic Analysis for Proposed Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA section 6(h), June 2019; Regulatory Impact Analysis for the Proposed Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review; EPA–452/R–19–001, August 2019.

non-exempt substitute refrigerants. To present one of these effects without the other would fail to recognize the fact that the two effects are inextricably related. Further, it is standard practice for the EPA, consistent with the agency's *Guidelines for Preparing Economic Analyses*,[22] to consider increased direct outlays of money by regulated entities due to an action relative to a baseline without that action as costs of the action. Any entity that did not repair a leaking appliance that they would have been required to repair before today's action would need to allocate some part of its resources to buying replacement refrigerant that otherwise could have been used for capital investment, increasing production, or profit. Under the agency's Guidelines, it is appropriate to consider the replacement refrigerant costs as opportunity costs when preparing an economic analysis.

The agency agrees that the nature of private costs in this case merits a separate accounting in a discussion of the total benefits and costs of a rule. We have enumerated the costs of purchasing additional refrigerant separate from the deregulatory benefits.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the costs and benefits associated with this action which is available in Docket Number EPA–HQ–OAR–2017–0629.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1626.17; Office of Management and Budget (OMB) Control Number: 2060–0256. You can find a copy of the ICR and supporting statement in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Through this rule, EPA is revising the leak repair provisions in § 82.157 so they apply only to equipment using ODS refrigerants or a blend containing ODS refrigerant.

Respondents/affected entities: This rule removes reporting and recordkeeping requirements for owners and operators of appliances containing 50 or more pounds of a non-exempt substitute refrigerant and technicians servicing such appliances. Entities required to comply with reporting and recordkeeping requirements include technicians; technician certification programs; refrigerant wholesalers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners and/or operators; and other establishments that perform refrigerant removal, service, or disposal.

Respondent's obligation to respond: Mandatory (40 CFR part 82, subpart F).

Estimated number of respondents: This rule reduces the estimated number of respondents from 861,374 under the 2016 Rule to 573,731.

Frequency of response: The frequency of responses vary from once a year to daily. Public reporting burden for this collection of information is estimated to vary from one minute to 9.4 hours per response, including time for reviewing instructions and gathering, maintaining, and submitting information.

Total estimated burden: This rule reduces the estimated annual recordkeeping and reporting burden from 580,473 hours under the 2016 Rule to 434,359 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: This rule reduces the estimated annual recordkeeping and reporting cost from $34,627,298 under the 2016 Rule to $24,625,892. There are no estimated annualized capital or operation and maintenance costs associated with the reporting or recordkeeping requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any new regulatory requirements. It is deregulatory in that it removes required leak repair and maintenance practices and associated recordkeeping for appliances that do not contain any ODS refrigerant. We have therefore concluded that this action will relieve regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The EPA has not conducted a separate analysis of

[22] The Guidelines can be found at *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses.* See Chapter 8 titled ''Analyzing Costs.''

risks to infants and children associated with this rule.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that it is not feasible to quantify any disproportionately high and adverse effects from this action on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: February 26, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Amend § 82.154 by revising paragraph (a)(2)(i) to read as follows:

§ 82.154 Prohibitions.

(a) * * *

(2) * * *

(i) The applicable practices in §§ 82.155 and 82.156 are observed, the applicable practices in § 82.157 are observed for appliances that contain any class I or class II refrigerant or blend containing a class I or class II refrigerant, recovery and/or recycling machines that meet the requirements in § 82.158 are used whenever refrigerant is removed from an appliance, the technician certification provisions in § 82.161 are observed, and the reclamation requirements in § 82.164 are observed; or

* * * * *

■ 3. Amend § 82.157 by revising paragraph (a) to read as follows:

§ 82.157 Appliance maintenance and leak repair.

(a) *Applicability.* This section applies as of January 1, 2019. As of April 10, 2020, this section applies only to appliances with a full charge of 50 or more pounds of any class I or class II refrigerant or blend containing a class I or class II refrigerant. Notwithstanding the use of the term refrigerant in this section, the requirements of this section do not apply to appliances containing solely substitute refrigerants. Unless otherwise specified, the requirements of this section apply to the owner or operator of the appliance.

* * * * *

[FR Doc. 2020–04773 Filed 3–10–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02]

RTID 0648–XS026

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2020 Red Snapper Recreational For-Hire Fishing Season in the Gulf of Mexico

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the 2020 recreational fishing season for the Federal charter vessel/headboat (for-hire) component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational for-hire component in the Gulf EEZ opens on June 1, 2020, and will close at 12:01 a.m., local time, on August 2, 2020. This closure is necessary to prevent the Federal for-hire component from exceeding its quota and to prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective at 12:01 a.m., local time, on August 2, 2020, until 12:01 a.m., local time, on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: The private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, Amendments 50 A–F to the FMP were implemented, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal water of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling quota to each state, and each state is required to constrain landings to its allocation. Therefore, NMFS will no longer announce a season for the private angling component of the recreational sector. Additionally, on February 20, 2020, NMFS published a final rule implementing a framework action that changed the Federal for-hire component's red snapper annual catch target (ACT) for 2020 and beyond, from 20 percent below the for-hire component quota to 9 percent below the for-hire component quota (85 FR 9684). This rule will be effective on March 23, 2020.

The red snapper for-hire component seasonal closure is projected from the component ACT. Projecting the for-hire component's seasonal closure using the ACT reduces the likelihood of the harvest exceeding the component quota and the total recreational quota.

All weights described in this temporary rule are in round weight.

The Federal for-hire component quota for red snapper in the Gulf EEZ is 3.130 million lb (1.420 million kg), and the 2020 ACT will be 2.848 million lb (1.292 million kg) (50 CFR 622.41(q)(2)(iii)(B)).

The 2020 Federal Gulf red snapper for-hire fishing season has been determined to be 62 days based on NMFS' projection of the date landings are expected to reach the component ACT. For details about the calculation of the projection for 2020, see *https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/gulf-mexico-recreational-red-snapper-management.* Therefore, the 2020 recreational season for the Federal for-hire component will begin at 12:01 a.m., local time, on June 1, 2020, and close at 12:01 a.m., local time, on August 2, 2020.

On and after the effective date of the Federal for-hire component closure, the bag and possession limits for red snapper for Federal for-hire vessels are zero. When the Federal for-hire component is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal for-hire permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. In addition, a person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.41(q)(2)(i) and (ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to close the Federal for-hire component of the red snapper recreational sector constitute good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the recreational red snapper quotas and ACTs, and the rule implementing the requirement to close the for-hire component when its ACT is projected to be reached have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because many for-hire operations book trips for clients in advance and require as much notice as NMFS is able to provide to adjust their business plans to account for the fishing season.

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

Dated: March 6, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–05003 Filed 3–6–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RTID 0648–XY085

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA will be reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 7, 2020, through 1200 hours, A.l.t., April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA is 135 metric tons as established by the final 2020 and 2021 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019), for the period 1200 hours, A.l.t., January 20, 2020, through 1200 hours, A.l.t., April 1, 2020.

In accordance with § 679.21(d)(6)(i), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA will be reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 5, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: March 6, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–04971 Filed 3–6–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 48
Wednesday, March 11, 2020

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2019–0062]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–045 Statistical Immigration Data Production and Reporting System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/ALL–045 Statistical Immigration Data Production and Reporting System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS 2019–0062, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number DHS–2019–0062. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''Department of Homeland Security/ALL–045 Statistical Immigration Data Production and Reporting System of Records.'' Federal statutes, including the Immigration and Nationality Act of 1965, as amended, and the Homeland Security Act of 2002, as amended, as well as Executive Orders and congressional mandates, require DHS's Office of Immigration Statistics (OIS) to regularly prepare an extensive series of analytical and statistical reports on border security, immigration enforcement activities, refugee and asylum claims, and other immigration events. For instance, in December 2015, Congress's explanatory statement accompanying DHS's 2016 appropriations legislation specifically directed the DHS Office of Strategy, Policy, and Plans (which includes OIS), to report on the ''enforcement lifecycle,'' defined as ''the full scope of immigration enforcement activities, from encounter to final disposition, including the use of prosecutorial discretion.'' Further, Congress directed that ''[a]ll data necessary to support a better picture of this lifecycle and the Department's effectiveness in enforcing immigration laws shall be considered and prioritized, including appropriate data collected by the [Executive Office for Immigration Review (EOIR)] at the Department of Justice [DOJ].''

Fulfilling these mandates requires OIS to collect data related to the granting of immigration benefits, such as nonimmigrant admissions, grants of lawful permanent residence, changes in legal status, naturalizations, and information related to the enforcement of immigration law, from across DHS and other federal immigration agencies. These data contain both personally identifiable information (PII) and sensitive PII (SPII). OIS is establishing this system of records notice (SORN) to inform the public of its collection and use of PII to create its statistical products.

DHS's immigration Components and other federal immigration agencies initially collect this data for operational purposes in accordance to their own mission and authorities. While the data that is first collected for operational purposes are covered by their respective SORNs, OIS is developing its own SORN to cover the records it creates and has aggregated as they enter OIS's analytical environment. Once in this environment, OIS processes the records in preparation for use in statistical analysis. Analyses may include merging of records from these distinct data systems to create new records.

Data within this system of records are intended only for analytical and statistical purposes, and are not intended for operational uses. This is reflected in the routine uses, which allow for the use of and sharing of data in this system of records solely for these purposes.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions, except for data that the DHS Information Sharing and Safeguarding Governance Board (ISSGB) has granted a waiver from this requirement on behalf of the Secretary of Homeland Security. In addition, DHS/OIS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

DHS is issuing this Notice of Proposed Rulemaking to exempt this system of records from certain requirements of the Privacy Act.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and

disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records. Some information in DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of the source systems and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

* * * * *

■ 2. Add, at the end of Appendix C to Part 5, paragraph <''83''> to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

83. The DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records consists of electronic and paper records and will be used by DHS and its Components. The DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its Components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

For records created and aggregated by DHS OIS, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(4), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). In addition to the reasons stated below, the reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures for records derived from DHS operational systems could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records that are derived from records from DHS operational systems could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity, including statistics records covered by this system that derived from records originating from DHS operational systems.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine

investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04986 Filed 3–10–20; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. USCBP–2019–0044]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection-002 Trusted and Registered Traveler Programs (TRTP) System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a modified and reissued system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/U.S. Customs and Border Protection-002 Trusted and Registered Traveler Programs,'' previously titled ''Global Enrollment System (GES) System of Records,'' and this proposed rulemaking. In this proposed rulemaking, the Department and the U.S. Customs and Border Protection (CBP) proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number USCBP–2019–0044, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra Danisek, (202) 344–1610, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Ave NW, Washington, DC 20229. For privacy issues, please contact: Jonathan R. Cantor, *Privacy@hq.dhs.gov,* (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/CBP proposes to update, rename, and reissue a current DHS system of records newly titled, ''DHS/CBP–002 Trusted and Registered Traveler Programs (TRTP).'' Formerly titled the ''Global Enrollment System,'' this system of records allows CBP to collect and maintain records on individuals who voluntarily provide personally identifiable information to CBP in return for enrollment in a program that will make them eligible for dedicated CBP processing at designated U.S. border ports of entry. This system of records includes information on individuals who participate in trusted traveler and registered traveler programs. This system of records notice (SORN) is being re-published under the new name, with a more comprehensive description of these programs, and the removal of references to the CBP Trusted Worker Programs, which are covered under the DHS/CBP–010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities System of Records Notice (December 19, 2008, 73 FR 77753). A fuller description of this revised SORN can be found herein the **Federal Register**.

Trusted traveler programs facilitate processing for pre-approved members, permitting more efficient inspections, and helping move participants through the lines at the port of entry or other designated locations more expeditiously. CBP's trusted traveler programs include:

- Global Entry,[1] which enables CBP to provide U.S. citizens, lawful permanent residents (LPRs), and citizens of certain foreign countries dedicated processing when arriving at airports with designated Global Entry kiosks.
- NEXUS, which allows pre-screened travelers dedicated processing when entering the United States and Canada. Program members use specific processing lanes at designated U.S.-Canada border ports of entry, NEXUS kiosks when entering Canada by air, and Global Entry kiosks when entering the United States via Canadian Preclearance airports. NEXUS members also receive dedicated processing at marine reporting locations.
- Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which provides dedicated processing clearance for pre-approved travelers using designated primary lanes entering the United States at land border ports of entry along the U.S.-Mexico border.
- The Free and Secure Trade (FAST) program, which provides dedicated processing for pre-approved commercial truck drivers from the United States, Canada, and Mexico. Members may use dedicated FAST lanes at both northern and southern border ports.
- The U.S.-Asia Economic Cooperation (APEC) Business Travel Card (ABTC) Program, which allows for U.S. business travelers or government officials engaged in business in the APEC region dedicated screening at participating airports.

Individuals who apply for enrollment in a trusted traveler program must provide biographic and certain biometric information to CBP, as described in the system of records notice. CBP screens this information against databases to verify eligibility for trusted traveler program participation. Once an applicant is approved and enrolls in the trusted traveler program, his or her information is vetted by CBP on a recurrent basis to ensure continued eligibility.

CBP also sponsors registered traveler programs that, like trusted traveler programs, allow individuals to provide their information to CBP voluntarily prior to travel in order to qualify for dedicated processing. Unlike trusted travelers, registered travelers are not subject to vetting, but rather maintain information on file with CBP to better facilitate their arrival at ports of entry.

Registered traveler programs include:

- Decal and Transponder Online Procurement System (DTOPS), which allows individuals registered to eligible commercial vehicles to pay their annual user fees in advance online and cross the border using decals or transponders that facilitate CBP inspection.
- Pleasure boat reporting options, which allow operators of small vessels arriving in the United States from a foreign location to report their arrival to CBP remotely instead of in person as

[1] Final Rule, Establishment of Global Entry Program (77 FR 5681, Feb. 6, 2012).

required under 19 U.S.C. 1433. Travelers who are members of another CBP trusted traveler program, who hold an I–68 Canadian Border boat landing permit, or who participate in the Local Border Option (LBO) may be eligible for remote arrival reporting.

CBP has signed a number of joint statements with foreign partners to permit citizens of certain foreign countries to apply for Global Entry. Some of these joint statements also permit Global Entry members to apply for trusted traveler programs operated by foreign partners. CBP continues to work with government border authorities in various countries to create this growing international network. As part of the procedure for implementing a joint statement, and adding foreign partners to Global Entry, CBP and each foreign partner execute parallel procedures that incorporate privacy protections. A more in-depth discussion of the arrangements by country is made available in DHS/CBP/PIA–002(b) GES Privacy Impact Assessment and Appendix A ''CBP Global Entry Expansion: Joint Statements.''

The authority for TRTP derives from CBP's mandate to secure the borders of the United States, and to facilitate legitimate trade and travel. The statutes that permit and define these programs include:

- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, 8 U.S.C. 1365b(k);
- Section 215 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1185;
- Section 402 of the Homeland Security Act of 2002, as amended, 6 U.S.C. 202;
- Section 404 of the Enhanced Border Security and Visa Reform Act of 2002, 8 U.S.C. 1753; and
- Section 433 of the Tariff Act of 1930, as amended, 19 U.S.C. 1433.

The Regulations that permit and define TRTP include Parts 103 and 235 of Title 8 of the Code of Federal Regulations. See, especially, 8 CFR 103.2, 103.7, 103.16, 235.1, 235.2, 235.7, and 235.12. Pursuant to the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, individuals seeking to enroll in trusted traveler or registered traveler programs must pay a fee when they apply or renew their membership. See 8 CFR 103.7(b)(1)(ii)(M).

Participation in these programs is entirely voluntary. Joint Statements with foreign partners establish that each country's use of GES information for vetting will be consistent with applicable domestic laws and policies. Participants should be aware that when they submit their information to a foreign country or agree to share their information with a foreign partner, the foreign country uses, maintains, retains, or disseminates their information in accordance with that foreign country's laws and privacy protections.

Consistent with DHS's information sharing mission, GES information may be shared with other DHS components whose personnel have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act. The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed and provide an opportunity for public comment.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/CBP–002 TRTP System of Records. Some information in DHS/CBP–002 TRTP System of Records relates to official DHS national security, law enforcement, and immigration activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes or to avoid disclosure of activity techniques. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/DHS/CBP–002 TRTP System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

* * * * *

■ 2. Add, at the end of Appendix C to Part 5, paragraph ''82'' to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

82. The DHS/U.S. Customs and Border Protection (CBP)–002 Trusted and Registered Traveler Program (TRTP) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–002 TRTP System of Records collects and maintains records on individuals who voluntarily provide personally identifiable information to U.S. Customs and Border Protection in return for enrollment in a program that will make them eligible for dedicated CBP processing at designated U.S. border ports of entry and foreign preclearance facilities. The DHS/CBP–002 TRTP system of records contains personally identifiable information in biographic application data, biometric information, conveyance information, pointer information to other law enforcement databases that support the DHS/CBP membership decision, Law Enforcement risk assessment worksheets, payment tracking numbers, and U.S. or foreign trusted traveler membership decisions in the form of a ''pass/fail.''

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4);

(d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted records created during the background check and vetting process from the following provisions of the Privacy Act 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Also, the Privacy Act requires DHS maintain an accounting of such disclosures made pursuant to all routine uses. However, disclosing the fact that CBP has disclosed records to an external law enforcement and/or intelligence agency may affect ongoing law enforcement, intelligence, or national security activity. As such, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) has exempted these records from (c)(3), (e)(8), and (g)(1) of the Privacy Act, as is necessary and appropriate to protect this information.

In addition, when a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Finally, in its discretion, CBP may not assert any exemptions with regard to accessing or amending an individual's application data in a trusted or registered traveler program or accessing their final membership determination in the trusted or registered traveler programs.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Jonathan R. Cantor

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04984 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0239; Product Identifier 2018–SW–073–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model EC120B helicopters. This proposed AD was prompted by a report that a changed manufacturing process for the tail rotor blades (TRB) was implemented, affecting the structural characteristics of the blades and generating a new part number for these blades. This proposed AD would require re-identifying each affected TRB having a certain part number and serial number and establishing a life limit for the new part numbers. This AD also prohibits installation of any affected TRB identified with the old part number on any helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 27, 2020.

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

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

For service information identified in this NPRM, contact Airbus Helicopters,

2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

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–2020–0239; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the Mandatory Continuing Airworthiness Information (MCAI), 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: Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *Kristin.Bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0239; Product Identifier 2018–SW–073–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0183, dated August 28, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for all Airbus EC120 B helicopters. EASA advises that a changed manufacturing process for TRBs was implemented, affecting the structural characteristic of the TRBs and generating a new part number for these blades. Because this is a newly established part number, no service life limit currently exists for this part. This EASA AD identifies a service life limit for the new TRB part numbers, which, if not required, might result in TRBs exceeding their service life limit. This condition, if not corrected, could lead to loss of the TRB and subsequent loss of control of the helicopter. The EASA AD also prohibits installation of any affected TRB identified with the old part number on any helicopter and prohibits rework, repair, or modification of any affected part.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0239.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin EC120–04A008, dated July 18, 2018 (''ASB EC120–04A008''). This service information describes procedures for re-identifying a TRB with P/N C642A0300103 for certain serial numbers as specified in ASB EC120–04A008.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require re-identifying each affected TRB with a new part number, establishing a life limit for the new TRB part number, and prohibiting installation of any affected TRB having the old part number.

Costs of Compliance

The FAA estimates that this proposed AD affects 94 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	** $0	$85	* $7,990

* The FAA has received no definitive data that would enable providing cost estimates for the additional applicable maintenance instructions specified in this proposed AD.

** The FAA has received no definitive data on the parts cost.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0239; Product Identifier 2018–SW–073–AD.

(a) Comments Due Date

The FAA must receive comments by April 27, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC120B helicopters, certificated in any category.

(d) Subject

The Joint Aircraft System/Component (JASC) Code 6410, Tail rotor blades.

(e) Reason

This AD was prompted by a report that a new manufacturing process for the tail rotor blades (TRBs) has been implemented, affecting the structural characteristics of the TRB and generating a new part number (P/N) for these blades. It was determined that a new life limit is needed for the new P/N TRBs. The FAA is issuing this AD to ensure the new P/N TRBs do not exceed their life limit, which could lead to loss of the TRB and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Definition of an Affected Part for Re-identification and Validation of Rework/Repair/Modification

An ''affected part'' is a TRB having P/N C642A0300103 and a serial number specified in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin EC120–04A008, dated July 18, 2018 (''ASB EC120–04A008'').

(h) Part Replacement (Life Limit Implementation)

Before exceeding 8,500 hours time-in-service (TIS) since first installation on a helicopter: Remove from service each TRB having P/N C642A0300104 or P/N C642A0300105.

(i) Part Re-Identification and Validation of Rework/Repair/Modification

(1) Within 1,000 hours TIS after the effective date of this AD: Re-identify each affected part in accordance with 3.B. of the Accomplishment Instructions of ASB EC120–04A008.

(2) Within 6 months after the effective date of this AD, for each affected part which has been subject to rework, repair, or modification before the re-identification as required by paragraph (i)(1) of this AD, contact the Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, for additional applicable maintenance instructions and, within the compliance time identified in those instructions, accomplish those instructions accordingly.

(j) Parts Installation Prohibition and Rework/Repair/Modification Limitation

(1) As of the effective date of this AD, no person may install a TRB having P/N C642A0300103 and a serial number specified in Appendix 4.A. of ASB EC120–04A008 on any helicopter.

(2) As of the effective date of this AD, no person may accomplish any rework, repair, or modification of an affected part, unless it has been determined that the rework, repair, or modification is FAA-approved for P/N C642A0300105.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(l) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD 2018–0183, dated August 28, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0239.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued on March 4, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–04972 Filed 3–10–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0238; Product Identifier 2018–SW–072–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model EC130B4 and EC130T2 helicopters. This proposed AD was prompted by a report that a changed manufacturing process for the tail rotor blades (TRB) was implemented, affecting the structural characteristics of the blades and generating a new part number for these blades. This proposed AD would require re-identifying each affected TRB having a certain part number and serial number and establishing a life limit for the new part numbers. This AD also prohibits installation of any affected TRB identified with the old part number on

any helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 27, 2020.

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

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

For service information identified in this NPRM, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222 5110.

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–2020–0238; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the Mandatory Continuing Airworthiness Information (MCAI), 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: Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *Kristin.Bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0238; Product Identifier 2018–SW–072–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0182, dated August 28, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for all Airbus Helicopters EC130B4 and EC130T2 helicopters. EASA advises that a changed manufacturing process for TRBs was implemented, affecting the structural characteristic of the TRBs and generating a new part number for these blades. Because this is a newly established part number, no service life limit currently exists for this part. This EASA AD identifies a service life limit for the newly established TRB part numbers, which, if not required, might result in TRBs exceeding their life limit. This condition, if not corrected, could lead to loss of the TRB and subsequent loss of control of the helicopter. The EASA AD also prohibits installation of any affected TRB identified with the old part number on any helicopter, and prohibits rework, repair, or modification of any affected part.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0238.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin EC130–04A007, dated July 18, 2018 (''ASB EC130–04A007''). This service information describes procedures for re-identifying a TRB with P/N 350A333002.02 for certain serial numbers, as specified in ASB EC130–04A007.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require re-identifying each affected TRB with a new part number, establishing a life limit for the new TRB part number, and would prohibit installation of any affected TRB identified with the old part number on any helicopter.

Difference Between This Proposed AD and the MCAI or Service Information

EASA AD 2018–0182 specifies to replace TRBs having P/N 350A333002.05. However, this part number is not installed on in-service helicopters and is not addressed in Airbus Helicopters ASB EC130–04A007. Therefore, this AD does not require replacing TRBs having P/N 350A333002.05.

Costs of Compliance

The FAA estimates that this proposed AD affects 253 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	** $0	$85	* $21,505

* The FAA has received no definitive data that would enable us to provide cost estimates for the additional applicable maintenance instructions specified in this proposed AD.
** The FAA has received no definitive data on the parts costs for required actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0238; Product Identifier 2018–SW–072–AD.

(a) Comments Due Date

The FAA must receive comments by April 27, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC130B4 and EC130T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6410, Tail rotor blade.

(e) Reason

This AD was prompted by a report that a new manufacturing process for the tail rotor blades (TRBs) has been implemented, affecting the structural characteristics of the TRB and generating a new part number (P/N) for these blades. It was determined that a new life limit is needed for the new P/N TRBs. The FAA is issuing this AD to ensure the new P/N TRBs do not exceed their life limit, which could lead to loss of the TRB and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Definition of an Affected Part for the Re-Identification and Validation of Rework/Repair/Modification

An ''affected part'' is a TRB having P/N 350A333002.02 and a serial number specified in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin EC130–04A007, dated July 18, 2018 (''ASB EC130–04A007'').

(h) Part Replacement (Life Limit Implementation)

Before exceeding 10,000 hours time-in-service (TIS) since first installation on a helicopter: Remove from service each TRB having P/N 350A333002.04.

(i) Part Re-Identification and Validation of Rework/Repair/Modification

(1) Within 1,200 hours TIS after the effective date of this AD: Re-identify each affected part, in accordance with 3.B. of the Accomplishment Instructions of Airbus Helicopters ASB EC130–04A007.

(2) For each affected part which has been subject to rework, repair, or modification before the re-identification, as required by paragraph (i)(1) of this AD, within 6 months after the effective date of this AD, contact the Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, for additional applicable maintenance instructions and, within the compliance time identified in those instructions, accomplish those instructions accordingly.

(j) Parts Installation Prohibition and Rework/Repair/Modification Limitation

(1) As of the effective date of this AD, no person may install a TRB having P/N 350A333002.02 and a serial number specified in Appendix 4.A. of ASB EC130–04A007 on any helicopter.

(2) As of the effective date of this AD, no person may accomplish any rework, repair, or modification of an affected part, unless it has been determined that the rework, repair, or modification is FAA-approved for P/N 350A333002.04.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(l) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD 2018–0182, dated August 28, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0238.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued on March 4, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–04973 Filed 3–10–20; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 85, No. 48
Wednesday, March 11, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Maryland Advisory Committee to the Commission will be convene at Ascend One Government Building, BelAir Room, 8930 Stanford Blvd., Columbia, MD 21045, at 12:00 p.m. EDT on Tuesday, April 7, 2020. The purpose of the meeting is for the Advisory Committee to have an orientation and begin planning its first civil rights project for its new appointment term.

DATES: Tuesday, April 7, 2020, at 12:00 p.m. EDT.

ADDRESSES: Ascend One Government Building, BelAir Room, 8930 Stanford Blvd., Columbia, MD 21045

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for project planning. The public is invited to the meeting and encouraged to address the committee following the meeting.

If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Thursday, May 7, 2020. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ebohor@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzloAAA,* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda Tuesday, April 7, 2020 at 12:00 p.m. EDT

- Welcome and Introductions
- Orientation for New Committee
- Project Planning for its First Civil Rights Project
- Open Comment
- Adjournment

Dated: March 5, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–04923 Filed 3–10–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Renewal of Information Collection for Self-Certification to the EU–U.S. and Swiss-U.S. Privacy Shield Frameworks.

OMB Control Number: 0625–0276.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 5,100.

Average Hours per Response: 40 minutes.

Burden Hours: 3,412.

Needs and Uses: The United States, the European Union (EU), and Switzerland share the goal of enhancing privacy protection for their citizens but take different approaches to doing so. Given those differences, the Department of Commerce (DOC) developed the EU–U.S. and Swiss-U.S. Privacy Shield Frameworks (Privacy Shield) in consultation with the European Commission, the Swiss Administration, industry, and other stakeholders. Privacy Shield provides U.S. organizations a reliable mechanism for personal data transfers to the United States from the EU and Switzerland, while ensuring data protection that is consistent with EU and Swiss law.

The European Commission and Swiss Administration deemed the EU–U.S. Privacy Shield Framework and Swiss-U.S. Privacy Shield Framework adequate to enable data transfers under EU and Swiss law, respectively, on July 12, 2016 and on January 12, 2017. The DOC began accepting self-certification submissions for the EU–U.S. Privacy Shield on August 1, 2016, and for the Swiss-U.S. Privacy Shield on April 12, 2017. More information on the Privacy Shield is available at: *https://www.privacyshield.gov/welcome.*

The DOC issued the Privacy Shield Principles under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512). The International Trade Administration (ITA) administers and supervises the Privacy Shield, including maintaining and making publicly available an authoritative list of U.S. organizations that have self-certified to the DOC. U.S. organizations submit information to ITA to self-certify their compliance with Privacy Shield.

U.S. organizations considering self-certifying to the Privacy Shield should review the Privacy Shield Framework. In summary, to participate, an organization must (a) be subject to the investigatory and enforcement powers of the Federal Trade Commission, the Department of Transportation, or another statutory body that will effectively ensure compliance with the

Principles; (b) publicly declare its commitment to comply with the Principles; (c) publicly disclose its privacy policies in line with the Principles; and (d) fully implement them.

Self-certification is voluntary; however, an organization's failure to comply with the Principles after its self-certification is enforceable under Section 5 of the Federal Trade Commission Act prohibiting unfair and deceptive acts in or affecting commerce (15 U.S.C. 45(a)) or other laws or regulations prohibiting such acts.

To rely on the Privacy Shield for transfers of personal data from the EU and/or Switzerland, an organization must self-certify its adherence to the Principles to the DOC, be placed on the Privacy Shield List, and remain on the Privacy Shield List. To self-certify for the Privacy Shield, an organization must provide to the DOC the information specified in the Privacy Shield Principles via the self-certification form.

ITA has committed to follow up with organizations that have been removed from the Privacy Shield List. ITA sends questionnaires to organizations that fail to complete the annual certification or that have withdrawn from the Privacy Shield to verify whether they will return, delete, or continue to apply the Principles to the personal information that they received while they participated in the Privacy Shield. If personal information will be retained, ITA asks organizations to verify who within the organization will serve as an ongoing point of contact for Privacy Shield-related questions.

In addition, ITA has committed to conduct compliance reviews on an ongoing basis, including through sending detailed questionnaires to participating organizations. Such compliance reviews take place when: (a) The DOC receives specific non-frivolous complaints about an organization's compliance with the Principles, (b) an organization does not respond satisfactorily to DOC inquiries for information relating to the Privacy Shield, or (c) there is credible evidence that an organization does not comply with its commitments under the Privacy Shield.

Affected Public: Primarily businesses or other for-profit organizations.

Frequency: Annual and periodic.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 975–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–04935 Filed 3–10–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Shanghai Wells Hanger Co., Ltd., and Hong Kong Wells Ltd. (collectively, Shanghai Wells) failed to demonstrate eligibility for separate rate status during the period of review (POR), and these companies, therefore, are a part of the China-wide entity. The POR is October 1, 2017 through September 30, 2018.

DATES: Applicable March 11, 2020.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2019, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty (AD) order on steel wire garment hangers from the People's Republic of China (China).[1] We invited interested parties to comment on these *Preliminary Results.* We received no comments from interested parties. As such, these final results are unchanged from the *Preliminary Results.*

Scope of the Order

The merchandise subject to the order is steel wire garment hangers.[2] The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7326.20.0020, 7323.99.9060, and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description of the scope of the order remains dispositive. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.[3]

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). As noted in the *Preliminary Results,* Shanghai Wells did not permit Commerce to verify its questionnaire responses.[4] Therefore, Commerce preliminarily determined that Shanghai Wells is not eligible for a separate rate and is therefore part of the China-wide entity. We received no comments on the *Preliminary Results,* and, thus, we have no basis for reconsidering this determination. Because there are no changes for these final results from the *Preliminary Results,* there is no accompanying Issues and Decision Memorandum.

Final Results of the Review

We continue to find that Shanghai Wells is not eligible for a separate rate, and therefore it is part of the China-wide entity. The rate previously established for the China-wide entity is 187.25 percent[5] and is not subject to change as a result of this review because no party requested a review of the China-wide entity.[6]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and

[1] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 68117 (December 13, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008).

[3] *See* PDM at section III.

[4] *See Preliminary Results,* 84 FR at 68118.

[5] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 41480 (July 15, 2015), and accompanying Preliminary Decision Memorandum, unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013–2014,* 80 FR 69942 (November 12, 2015).

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.

We will instruct CBP to assess antidumping duties at a rate of 187.25 percent for all entries of subject merchandise during the POR which was exported by Shanghai Wells.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, including Shanghai Wells, the cash deposit rate will be the existing cash deposit rate for the China-wide entity, *i.e.,* 187.25 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: March 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–04956 Filed 3–10–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Fisheries Greater Atlantic Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This action proposes to extend the information collection for the Greater Atlantic Gear Identification.

DATES: Written comments must be submitted on or before May 11, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laura Hansen, Fishery Management Specialist, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930; 978–281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for renewal of a current information collection.

This notice is for the extension of Paperwork Reduction Act requirements regarding Greater Atlantic Region fishing gear marking requirements. Regulations at 50 CFR 648.84(a),(b), and (d), 648.123(b)(3), 648.144(b)(1), 648.264(a)(5), and 697.21(a) and (b) require that Federal permit holders using certain types of fishing gear mark the gear with specified information for the purposes of vessel and gear identification (*e.g.,* hull identification number, Federal fishing permit number, etc.). The regulations also specify how the gear is to be marked for the purposes of visibility (*e.g.,* buoys, radar reflectors, etc.).

The success of fisheries management programs depends on regulatory compliance. The ability to link fishing gear to the vessel owner or operator is crucial to the enforcement of regulations under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The ability to identify gear allows state and federal enforcement personnel to identify permit holders that are using unapproved gear configuration, using the gear during a time restriction, or using gear in a restricted area. In the Greater Atlantic Region, gear marking is required of permit holders in the Northeast multispecies longline and gillnet fisheries, American lobster trap fishery, scup trap/pot fishery, the deep-sea red crab fishery, the tilefish longline fishery, and the black sea bass trap/pot fishery.

The marking of gear is also a valuable tool in ascertaining ownership of lost or damaged gear, as well as gear involved in civil proceedings. Gear can be lost or damaged as the result of interactions

between mobile and fixed gears. Gear identification is an important tool in identifying the parties involved in these conflicts. Proper marking also makes gear more visible to other vessels in the water to aid in navigation and increase safety at sea.

The quantity of gear in this collection is distinguished by the number of attached end lines associated with each string of hooks, pots, or traps. As such, a single Federal permit holder may be responsible for marking several strings of a given gear type, or may use multiple different gear types that require marking.

II. Method of Collection

No information is submitted to NMFS as a result of this collection. The vessel's hull identification number or other means of identification specified in the regulations must be affixed to the buoy or other part of the gear as specified in the regulations.

III. Data

OMB Control Number: 0648–0351.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals and households; business or other for-profit organizations.

Estimated Number of Respondents: 4,789.

Estimated Time per Response: 1 minute per string of gear.

Estimated Total Annual Burden Hours: 16,886.

Estimated Total Annual Cost to Public: $47,890.

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. 2020–04931 Filed 3–10–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Nomination Process for National Marine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This proposed information collection is for national marine sanctuary nominations received pursuant to NOAA regulations that provide that the public may nominate special places of the marine environment through the sanctuary nomination process.

DATES: Written comments must be submitted on or before May 11, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jessica Kondel, (240) 533–0647, or *Jessica.Kondel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for extension, without change, of a currently approved collection. The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or esthetic qualities as national marine sanctuaries. Day-to-day management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries, which serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters. The network includes a system of 14 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats.

National marine sanctuary regulations provide that the public may nominate special places of the marine environment to become a national marine sanctuary through the sanctuary nomination process (15 CFR part 922). Through this nomination process, NOAA is seeking to give communities an opportunity to identify special marine and Great Lakes areas they believe would benefit from designation as a national marine sanctuary. There is no requirement for who may nominate an area for consideration; however, nominations should demonstrate broad support from a variety of stakeholders and interested parties. Persons wanting to submit nominations for consideration should submit information on the qualifying criteria and management considerations for the site to be nominated. The Office of National Marine Sanctuaries reviews the submissions, which could result in the nomination being added to an inventory of areas that NOAA may consider for sanctuary designation at some point in the future. Sanctuary designation is a separate public process that would be conducted pursuant to the requirements of the National Marine Sanctuaries Act, and all other applicable laws.

II. Method of Collection

Electronic applications submitted via email and paper nominations submitted via regular mail.

III. Data

OMB Control Number: 0648–0682.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Estimated Number of Respondents: 5.

Estimated Time per Response: 84 hours.

Estimated Total Annual Burden Hours: 591.

Estimated Total Annual Cost to Public: $120.

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. 2020–04932 Filed 3–10–20; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Management and Oversight of the National Estuarine Research Reserve System

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before May 11, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth Mountz, NOAA's Office for Coastal Management, N/OCM6, Silver Spring, MD 20910, 240–533–0819, *Elizabeth.Mountz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. The National Estuarine Research Reserve System (NERRS) is a partnership between the National Oceanic and Atmospheric Administration (NOAA) and 22 states and Puerto Rico that protects more than 1.3 million coastal and estuarine acres in 28 Reserves for long-term research, monitoring, education, and stewardship, established under Section 315 of the Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1451), 16 U.S.C. 1461. The NERRS consists of carefully selected estuarine areas of the United States that are designated, preserved, and managed for research and educational purposes. The Reserves are chosen to reflect regional differences and to include a variety of ecosystem types according to the classification scheme of the national program as presented in 15 CFR part 921. As part of a national system, the Reserves collectively provide a unique opportunity to address research questions and estuarine management issues of national significance. The Reserves also serve to enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation. Regulations provide guidance for delineating Reserve boundaries and additional guidance for arriving at the most effective and least costly approach to establishing adequate state control of key land and water areas. Any qualified public or private persons, organizations or institutions may compete for research funding to work in research Reserves. In fact, applicants are almost always states.

Subsection 3l5(e)(1)(B) of the CZMA authorizes the National Ocean Service (NOS) to make grants to, or cooperative agreements with, any coastal state or public or private institution or person for purposes of supporting research within the NERRS. This program is listed in the Catalog of Federal Domestic Assistance under ''Coastal Zone Management Estuarine Research Reserve, Number 11.420''. Applications for such grants follow the provisions of 2 CFR 200. During the site selection and designation process, information is collected from states in order to prepare a management plan and environmental impact statement. Designated Reserves apply annually for operations funds by submitting a work plan; subsequently, progress reports are required every six months for the duration of the award. Each Reserve compiles an ecological characterization or site profile to describe the biological and physical environment of the Reserve, research to date and research gaps. Reserves revise their management plans every five years. A competitive fellowship program supports opportunities for graduate students to conduct research at each Reserve. This information is required to ensure that Reserves are adhering to regulations and that the Reserves are in keeping with the purpose for which they were designated.

II. Method of Collection

Respondents have a choice of either electronic or paper submissions. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0121.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Non-profit institutions; state, local, or tribal government.

Estimated Number of Respondents: 75.

Estimated Time per Response: Management plan, 1800 hours; site profile, 1800 hours; site nomination documents, 2500 hours; award application, 8 hours; award reports, 5 hours; NEPA documentation, 40 hours.

Estimated Total Annual Burden Hours: 8,216.

Estimated Total Annual Cost to Public: $0.

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. 2020–04933 Filed 3–10–20; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (''the Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The charter and contact information for the Committee's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation*.

Pursuant to section 546(c)(1) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (''FY 2015 NDAA''), the Committee will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

Members of the Committee who are not full-time or permanent part-time Federal officers, employees, or members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Committee members who are full-time or permanent part-time Federal officers, employees, or members of the Armed Forces will be appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the Committee are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee. All written statements shall be submitted to the DFO for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: March 5, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–04897 Filed 3–10–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Key Challenges in Reconstituting Uranium Mining and Conversion Capabilities in the United States

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Extension of comment period.

SUMMARY: On February 24, 2020, the U.S. Department of Energy (DOE) published a Request for Information (RFI) seeking comment on key challenges in reconstituting uranium mining and conversion capabilities in the United States. The RFI established a March 16, 2020 deadline for the submission of written comments. DOE is extending the comment period to March 30, 2020.

DATES: The comment period for the RFI published on February 24, 2020 (85 FR 10424) is extended. DOE will accept comments, data, and information responding to this RFI submitted on or before March 30, 2020.

ADDRESSES: Interested persons may submit comments by any of the following methods.

1. *Email: RFI-Uranium@hq.doe.gov.* Submit electronic comments in Microsoft Word or PDF and avoid the use of special characters or any form of encryption. Please include ''Response to RFI'' in the subject line.

2. *Postal Mail:* Response to Mining and Conversion RFI, c/o Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–42, 19901 Germantown Rd., Germantown, MD 20874–1290.

3. *Hand Delivery/Courier:* Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–42, B–409, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–1788.

4. *Online:* Responses will be accepted online at *https://www.regulations.gov.*

Instructions: All submissions received must include the agency name for this request for information. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *rfi-uranium@hq.doe.gov* or Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–42, B–409, 19901

Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–1788. Please include ''Question on the RFI'' in the subject line.

SUPPLEMENTARY INFORMATION: On February 24, 2020, the U.S. Department of Energy (DOE) published a request for information (RFI) in the **Federal Register** (85 FR 10424). DOE issued this RFI to invite public input on key challenges in reconstituting uranium mining and conversion capabilities in the United States. This invitation is in recognition of the importance of nuclear fuel supply chain capabilities in the United States. The Joint Explanatory Statement of the Energy and Water Development Committees on H.R. 1865, the Fiscal Year 2020 Energy and Water Appropriations Act, requests the Department to contract not later than 60 days after enactment of the Act with a Federally-Funded Research and Development Center (FFRDC) or other independent organization to work with industry to identify key challenges in reconstituting mining and conversion capabilities in the United States. The responses received from this RFI will be provided to the FFRDC or the independent organization. The RFI established a March 16, 2020, deadline for the submission of written comments. DOE has received requests from the public for extension of the public comment period. In response to those requests, DOE is extending the comment period to March 30, 2020 to provide the public additional time for comment.

Signed in Washington, DC, on March 5, 2020.

Andrew Griffith,

Deputy Assistant Secretary for Nuclear Fuel Cycle and Supply Chain, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2020–04964 Filed 3–10–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD20–1–000]

Commission Information Collection Activities (FERC–725G); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–725G (Mandatory Reliability Standards for the Bulk-Power System: PRC Standards: Regional Reliability Standard PRC–006–NPCC–2 Automatic Underfrequency Load-Shedding (UFLS)) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due May 11, 2020.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0252, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. RD20–1–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725G (Mandatory Reliability Standards for the Bulk-Power System: Regional Reliability Standard PRC–006–NPCC–2, Automatic Underfrequency Load-Shedding (UFLS).

OMB Control No.: 1902–0252.

Type of Request: Revisions to the information collection, as discussed in Docket No. RD20–1–000.

Abstract: The proposed regional Reliability Standard applies to generator owners, planning coordinators, distribution providers, and transmission owners in the Northeast Power Coordinating Council Region and is designed to ensure the development of an effective automatic underfrequency load shedding (UFLS) program to preserve the security and integrity of the Bulk-Power System during declining system frequency events in coordination with the NERC continent-wide UFLS Reliability Standard PRC–006–1. The Commission also proposes to approve the related violation risk factors, violation severity levels, implementation plan, and effective date proposed by NERC.

On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005).[1] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO.[4] The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On December 23, 2019, the North American Electric Reliability Corporation (NERC) and Northeast Power Coordinating Council, Inc. (NPCC) filed a joint petition seeking approval of proposed regional Reliability Standard PRC–006–NPCC–2 (NPCC Automatic Underfrequency Load Shedding). NERC and NPCC state that regional Reliability Standard PRC–006–NPCC–2 establishes consistent and coordinated requirements for the design,

[1] Energy Policy Act of 2005, Public Law No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824*o*).

[2] 16 U.S.C. 824*o*(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

implementation, and analysis of automatic underfrequency load shedding (UFLS) programs among all NPCC applicable entities. These requirements are more stringent and specific than the NERC continent-wide UFLS Reliability Standard, PRC–006–3, and were established such that the declining frequency is arrested and recovered in accordance with NPCC performance requirements. NPCC revised currently effective Regional Reliability Standard PRC–006–NPCC–1 to remove redundancies with the Reliability Standard PRC–006–3, clarify obligations for registered entities, improve communication of island boundaries to affected registered entities, and provide entities with the flexibility to calculate net load shed for UFLS in certain situations.

On February 19, 2020, the Commission issued a Delegated Letter Order, Docket No. RD20–1–000, approving proposed Reliability Standard PRC–006–NPCC–2, the associated VRFs and VSLs, the Effective Date, and the retirement of the currently effective Regional Reliability Standard PRC–006–NPCC–1. The effective date for Reliability Standard PRC–006–NPCC–2 is as of the date of this order, January 18, 2020.

Type of Respondents: Generator owners, planning coordinators, distribution providers, and transmission owners in the Northeast Power Coordinating Council (NPCC) Region.

Estimate of Annual Burden:[5] Our estimates are based on the NERC Compliance Registry Summary of Entities as of January 31, 2019. According to the NERC compliance registry, and Functions as of, which indicates there are registered as GO, PC, DP and TO entities.

The individual burden estimates are based on the time needed to gather data, run studies, and analyze study results to design or update the underfrequency load shedding programs. Additionally, documentation and the review of underfrequency load shedding program results by supervisors and management is included in the administrative estimations. These are consistent with estimates for similar tasks in other Commission approved standards.

Estimates for the additional burden and cost imposed by the order in Docket No. RD20–1–000 follow:

Commission estimates the annual burden and cost[6] as follows. Burden and cost for the information collection as follows:

RD20–1–000—MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: REGIONAL RELIABILITY STANDARD PRC–006–NPCC–2 AUTOMATIC UNDERFREQUENCY LOAD SHEDDING

[UFLS]

Reliability standard & requirement	Average annual number[1] of respondents (1)	Average annual number of responses per respondent (2)	Average annual total number of responses (1) * (2) = (3)	Average burden hrs. & cost ($) per response (4)	Total annual burden hours & cost ($) (rounded) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
GO	125	1	125	24 hrs.; $80	3,000 hrs.; $10,000	$80
PC	2	1	2	24 hrs.; $80	48 hrs.; $160	$80
DP	51	1	51	24 hrs.; $80	1,224 hrs.; $4,080	$80
TO	39	1	39	24 hrs.; $80	936 hrs.; $3,120	
Total					5,208 hrs.; $17,360	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 5, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04953 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[6] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2019 average cost (for wages plus benefits), $80.00/hour is used.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1113–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3616 Iron Star Wind Project/ITC E&P Ag Cancel-Amended Filing to be effective 2/8/2020.

Filed Date: 3/5/20.

Accession Number: 20200305–5060.

Comments Due: 5 p.m. ET 3/26/20.

Docket Numbers: ER20–1164–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–03–04_SA 3438 Entergy Arkansas-Long Lake Solar GIA (J834) to be effective 2/21/2020.

Filed Date: 3/4/20.

Accession Number: 20200304–5295.

Comments Due: 5 p.m. ET 3/25/20.

Docket Numbers: ER20–1167–000.

Applicants: Midcontinent Independent System Operator, Inc., Republic Transmission, LLC.

Description: § 205(d) Rate Filing: 2020–03–04_Republic Transmission Integration Filing to be effective 12/31/9998.

Filed Date: 3/4/20.

Accession Number: 20200304–5247.

Comments Due: 5 p.m. ET 3/25/20.

Docket Numbers: ER20–1168–000.

Applicants: DTE Big Turtle Wind Farm I, LLC.

Description: § 205(d) Rate Filing: DTE Big Turtle Wind Farm I, LLC Notice of Succession to be effective 1/15/2020.

Filed Date: 3/5/20.
Accession Number: 20200305–5056.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1169–000.
Applicants: The Dayton Power and Light Company, East Kentucky Power Cooperative, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: The Dayton Power and Light Company submits IA SA No. 3137 to be effective 5/5/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5070.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1170–000.
Applicants: Electric Energy, Inc.
Description: Tariff Cancellation: Cancellation Open Access Transmission Tariff to be effective 3/5/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5072.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1171–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, SA No. 5231; Queue No. AC1–048/AC2–053/AE1–006 to be effective 2/4/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5078.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1172–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired TSA—ReEnergy Ashland, LLC to be effective 2/28/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5079.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1173–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Interconnect Agreement—ReEnergy Ashland, LP to be effective 2/28/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5081.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1174–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2020–03–05_SA 3440 OTP-Dakota Range III FSA (J488) BSP Switch Replacement to be effective 3/6/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5083.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1175–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2020–03–05_SA 3441 OTP-Tatanka Ridge Wind FSA (J493) BSP Switch Replacement to be effective 3/6/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5089.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1176–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2020–03–05_SA 3342 OTP-Deuel Harvest Wind FSA (J526) BSP Switch Replacement to be effective 3/6/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5091.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1177–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended GIA and DSA San Gorgonio Westwinds II, San Jacinto Power SA No. 863–864 to be effective 5/5/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5112.
Comments Due: 5 p.m. ET 3/26/20.
Docket Numbers: ER20–1178–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5596; Queue No. AD1–020 to be effective 2/4/2020.
Filed Date: 3/5/20.
Accession Number: 20200305–5117.
Comments Due: 5 p.m. ET 3/26/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04961 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7580–003]

South Sutter Water District; Notice of Application for Surrender of Conduit Exemption, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for surrender of conduit exemption from licensing.

b. *Project No.:* 7580–003.

c. *Date Filed:* December 31, 2019.

d. *Exemptee:* South Sutter Water District (SSWD).

e. *Name of Project:* Vanjop No. 1 Hydroelectric Project.

f. *Location:* The project is located on SSWD's Conveyance Canal which is part of SSWD's water delivery system near Sheridan in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Brad Arnold, General Manager, South Suter Water District, 2464 Pacific Avenue, Trowbridge, CA 95659, (530) 656–2242 *sswd@hughes.net.*

i. *FERC Contact:* Kim Nguyen, (202) 502–6105, *Kim.Nguyen@ferc.gov.*

j. Deadline for filing comments, interventions, and protests is April 3, 2020. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–7580–003.

k. *Description of Project Facilities:* The project consists of a radial gate, a bypass gate, an intake structure, a catch basin, a discharge structure, three turbine-generator units with total generating capacity of 415 kilowatts, and a short transmission line.

l. *Description of Request:* The licensee is proposing to surrender its exemption. The project operated until 2018 when significant repairs necessitated an extended outage until now. SSWD evaluated repair along with future operations and maintenance costs for the project, and concluded that the project is no longer economical, especially since the power purchase contract with Pacific Gas and Electric expired on October 14, 2019. The facilities would remain in place, except for the turbine-generator units which would be removed.

m. This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: March 4, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04899 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–27–000]

Liberty Power Holdings LLC v. Eversource Energy Service Company and ISO New England, Inc.; Notice of Complaint

Take notice that on February 28, 2020, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Liberty Power Holdings LLC (Liberty or Complainant) filed a formal complaint against Eversource Energy Service Company (Eversource) and ISO New England, Inc. (ISO–NE or collectively Respondents), seeking compensation for improperly calculated and billed charges relating to load that was not the responsibility of Liberty during November of 2018 in violation of the FPA and the ISO–NE Tariff, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 19, 2020.

Dated: March 4, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04900 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–29–000]

LS Power Grid California, LLC; Notice of Petition for Declaratory Order

Take notice that on March 4, 2020, pursuant to Rule 207 of the Federal

Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), LS Power Grid California, LLC (Petitioner), filed a petition for a declaratory order requesting that the Commission authorize specific rate incentives and treatments described for the Gates 500 kV Dynamic Reactive Support Project and Round Mountain 500 kV Area Dynamic Reactive Support Project, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on April 3, 2020.

Dated: March 5, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04954 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–11162–136]

Wisconsin Power and Light Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–11162–136.

c. *Date Filed:* February 14, 2020.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name of Project:* Prairie du Sac Hydroelectric Project.

f. *Location:* The project is located on the Wisconsin River in Sauk and Columbia counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Amanda Blank, Wisconsin Power and Light Company, S9270A Dam Rd Prairie du Sac, WI 53558, (608) 458–6316, *amandablank@alliantenergy.com.*

i. *FERC Contact:* Aneela Mousam, (202) 502–8357, *aneela.mousam@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 6, 2020.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–11162–136.

k. *Description of Request:* Wisconsin Power and Light Company requests Commission approval for an amendment to the license for the Prairie du Sac Hydroelectric Project. The project is currently undergoing maintenance activities, which are increasing the efficiency of the facility. During a recent internal compliance review, in preparation for maintenance activities, the licensee identified a discrepancy between the actual operating head and nameplate operating head due to drop in the tailwater elevation over the last 100 years. Therefore, the current authorized installed capacity of 27.3 MW needs to be amended to 31.4 MW, based on the actual operating head of 37.4 feet and calculated proposed capacity following turbine refurbishment. The turbines are being refurbished with in kind materials and will not change project operations.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–11162) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the

application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 5, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04955 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness Of Exempt Wholesale Generator Status

Jumbo Hill Wind Project, LLC	[EG20–58–000]
East Fork Wind Project, LLC ..	[EG20–59–000]
Wilton Wind Energy I, LLC	[EG20–60–000]

Take notice that during the month of February 2020, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: March 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–04962 Filed 3–10–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10006–45–Region 3]

Clean Water Act: Virginia—Sarah Creek and Perrin River Vessel Sewage No-Discharge Zone—Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative affirmative determination.

SUMMARY: Notice is hereby given that an application for a no-discharge zone has been received from the Secretary of Natural Resources on behalf of the Commonwealth of Virginia requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency (EPA) Mid-Atlantic Region, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Sarah Creek and Perrin River, Gloucester County, Virginia. The EPA is requesting comments on this application and whether the EPA should finalize its tentative affirmative determination or make a negative determination on the proposed designation for Sarah Creek and Perrin River as provided in the Clean Water Act. The application is available upon request from the EPA (at the email address below) or at *https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/NoDischargeZoneDesignations.aspx.*

DATES: Comments must be received in writing to the EPA on or before April 10, 2020.

ADDRESSES: Comments should be sent to Matthew A. Konfirst, U.S. Environmental Protection Agency—Mid-Atlantic Region, 1650 Arch Street, Mail Code 3WD31, Philadelphia, PA 19103–2029, or emailed to *konfirst.matthew@epa.gov.* Only written comments will be considered.

FOR FURTHER INFORMATION CONTACT: Matthew A. Konfirst, U.S. Environmental Protection Agency—Mid-Atlantic Region. Telephone: (215) 814–5801, Fax number: (215) 814–5007; email address: *konfirst.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: The delineation of the proposed no-discharge zone of Sarah Creek from York River will begin at 37°14′58.34″ N, 76°29′39.17″ W and extend to 37°15′00.81″ N, 76°28′37.84″ W. From there it will continue north throughout any navigable waters including all tributaries and bays. The delineation of the proposed no-discharge zone of Perrin River from York River will begin at 37°15′47.18″ N, 76°25′20.73″ W and extend to 37°15′50.63″ N, 76°25′11.84″ W. From there it will continue north throughout any navigable waters including all tributaries and bays.

Based on the boater population in Sarah Creek and Perrin River, EPA guidance recommends one pumpout facility for each waterbody. The Commonwealth of Virginia has certified that there are three stationary and one mobile pumpout facilities at two locations on Sarah Creek and one stationary pumpout facility on Perrin River. Two of the three locations also have a method to empty portable toilets. Furthermore, the Hampton Roads Sanitation District (HRSD) provides free portable pumpout service in Gloucester County on Fridays, Saturdays and Sundays during summer months and on Saturdays the rest of the year. HRSD prefers to service marinas but will provide the portable pumpout at a private residence when requested. The Virginia Department of Health (VDH) ensures that proper sanitary facilities are present at marinas, and marina facilities are inspected annually by VDH for compliance with regulations. A list of the facilities, phone numbers, locations and hours of operation follows.

LIST OF FACILITIES WITH PUMPOUTS IN THE PROPOSED NO-DISCHARGE ZONE

Pumpout facility	Operating hours	Mean low water depth (ft)	Phone No.	Address
York River Yacht Haven (Sarah Creek).	24/7	8	804–642–2156	8109 Yacht Haven Road, Gloucester Point, VA 23062.
Dockside Condominiums (Sarah Creek).	24/7—April 1–November 15	6	757–876–1568	Sunset Drive, Gloucester Point, VA 23062.
Crown Pointe Marina (Perrin River).	The pump-out is available 24/7 from March 1–November 30 (so it is available even if the other marina services are closed). Dec 1–Feb 28 pump-out is winterized	5	804–642–6177	9737 Cooks Landing Road, Hayes, VA 23072.

The Commonwealth of Virginia has provided documentation indicating that the maximum total vessel population is estimated to be 3,563 vessels (2,115 in Sarah Creek and 1,448 in Perrin River), the majority of which are recreational. The most conservative vessel population estimates provided by the Commonwealth of Virginia suggest that there are 535 vessels less than 16 feet in length, 1,531 vessels between 16 feet and 25 feet in length, 1,263 vessels between 25 feet and 40 feet in length, and 234 vessels greater than 40 feet in length. Commercial traffic on these waterways is limited to 24–30 dead rise workboats, two large fiberglass fishing boats, three charter fishing boats, and a few small tugs that work at the oil refinery on the other side of the York River. Based on the number and size of vessels and EPA guidance for state and local officials, the estimated number of vessels requiring pumpout facilities in Sarah Creek and Perrin River during peak occupancy is 221.

In the application, Virginia has certified that Sarah Creek and Perrin River require greater environmental protection than provided by currently applicable Federal regulations. Sarah Creek and Perrin River are tributaries to the York River, which drains into the Chesapeake Bay. All or portions of the proposed waters have been listed on current or previous Clean Water Act 303(d) lists of impaired waters by the state as impaired for shellfish harvesting due to fecal coliform. As such, many shellfish beds are restricted or closed. Both are also impaired for dissolved oxygen and aquatic plants (macrophytes). Establishing a no-discharge zone would contribute to: (1) Protecting tidal ecosystem services provided by these waterbodies, (2) restoring the restricted and closed shellfish beds in these areas, and (3) preventing further water quality degradation and loss of beneficial uses in these tributaries as well as in the York River.

Sarah Creek and Perrin River are used for a variety of activities, including boating, fishing, shellfish harvesting, oyster gardening, crabbing, water skiing, swimming and more. There are marinas, private piers, numerous vessel anchorages, public and private boat launch facilities, commercial seafood docks and a waterside restaurant. Local watermen are interwoven with the unique identity of the Chesapeake Bay, influencing its history, culture and economy. Furthermore, these waterbodies provide food, spawning grounds and/or habitat to approximately 33 threatened, endangered and rare species of plants and animals, including the Atlantic sturgeon, loggerhead sea turtle and the northern diamond-backed terrapin.

The criteria for the EPA to make its decision are based on Section 312 of the Clean Water Act, 33 U.S.C. 1322, and EPA's implementing regulations found at 40 CFR 140.4. A detailed EPA guidance document entitled ''Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume 1. Establishing No-Discharge Areas under § 312 of the Clean Water Act (EPA 842–B–94–004, August 1994)'' provides additional detail and informs EPA's analysis. The two primary criteria upon which an affirmative decision is based are: (1) A certifying statement of need that the waters described in the application require greater environmental protection; and (2) demonstrating that there is a sufficient number of accessible boat sewage pumpout and dump station facilities available to the boating public, in lieu of direct discharge of treated sewage into the waters described in the application.

The EPA has made a tentative determination that sufficient pumpout stations exist in both Sarah Creek and Perrin River to service the vessel population and that the use of these facilities imposes minimal costs. In Sarah Creek, there is no charge to use the available pumpout facilities, while in Perrin River there is a $5.00 fee per pumpout for non-slip holders, though the fee is waived with a small purchase at the marina store. The commercial vessels operating in Sarah Creek and Perrin River include 24–30 dead rise boats, two large fiberglass fishing boats, three charter fishing boats and a few small tugs. Depth at low tide at the pumpout facilities is between five and eight feet, which is comparable to the depths at the entrances to Sarah Creek and Perrin River. Vessels requiring greater depths than provided at the pumpout station would have difficulty entering the creek. Most commercial boats, such as local watermen's boats, generally do not have Marine Sanitation Devices (MSDs) installed and do not require a pumpout. As described in the state's application, two large fiberglass fishing boats in the Perrin River have MSDs. Additionally, a few small tug boats use the Perrin River as a staging area. These vessels likely have MSDs onboard, but also use porta-johns located on the barges. Of three charter fishing boats that are kept in Sarah Creek and operate primarily on the York River and Chesapeake Bay, two have porta-potties, while the third has an existing holding tank.

Based on the information above, the EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Sarah Creek and Perrin River and its tributaries such that the Commonwealth of Virginia may establish a vessel sewage no-discharge zone.

Dated: February 13, 2020.

Cosmo Servidio,

Regional Administrator, Mid-Atlantic Region.

[FR Doc. 2020–05008 Filed 3–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10006–44–Region 1]

Notice of Availability of Draft NPDES Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening comment period.

SUMMARY: EPA issued a Notice of Availability of the draft National Pollutant Discharge Elimination System (NPDES) Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire, published in the **Federal Register** on January 7, 2020. This notice reopens the comment period through April 8, 2020. Comments submitted anytime between January 7, 2020 and April 8, 2020 will be accepted and considered.

DATES: The comment period for the draft general permit published January 7, 2020 (FR Doc. 2019–28510) (FRL–10003–91–Region 1) is reopened through April 8, 2020. All comments must be received on or before April 8, 2020.

ADDRESSES: Submit comments by one of the following methods:

- *Email: Cobb.Michael@epa.gov*
- *Mail:* Michael Cobb, U.S. EPA—Region 1, 5 Post Office Square—Suite 100 (06–1), Boston, MA 02109–3912.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained, by appointment, between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding legal holidays from: Michael Cobb, Water Division, U.S. EPA, 5 Post Office Square—Suite 100, Boston, MA 02109–3912; telephone: 617–918–1369; email: *Cobb.Michael@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice reopens the public comment period established in the **Federal Register** issue of January 7, 2020 (FR Doc. 2019–28510) (FRL–10003–91–Region 1). In that notice, EPA announced the availability for public comment of its draft NPDES Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire. All draft permit documents can be found at *https://www.epa.gov/npdes-permits/draft-great-bay-total-nitrogen-general-permit.* This reopening of the comment period is in response to requests received from several interested parties to extend the comment period.

Dated: February 27, 2020.

Dennis Deziel,

Regional Administrator, Region 1.

[FR Doc. 2020–05010 Filed 3–10–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0850; OMB 3060–0896; FRS 16546]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 11, 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 to *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.: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services, FCC Form 605.

Form No.: FCC Form 605.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents/Responses: 130,000 respondents; 130,000 responses.

Estimated Time per Response: 0.17 hours–0.44 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement, recordkeeping and other (5 and 10 years).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 CFR 1.913(a)(4).

Total Annual Burden: 57,218 hours.

Total Respondent Cost: $2,676,700.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. The Commission is required to withhold from disclosure certain information about the individual such as date of birth or telephone number.

Needs and Uses: FCC Form 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and is used to collect licensing data for the Universal Licensing System. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements). The Commission is making minor clarifications to the instructions on the main form and schedule B as well as a clarification to Item 3 on the main form.

The data collected on this form includes the Date of Birth for Commercial Operator licensees however this information will be redacted from public view.

The FCC uses the information in FCC Form 605 to determine whether the applicant is legally, technically, and financially qualified to obtain a license. Without such information, the Commission cannot determine whether to issue the licenses to the applicants that provide telecommunication services to the public, and therefore, to fulfill its statutory responsibilities in accordance with the C communications Act of 1934, as amended. Information provided on this form will also be used to update the database and to provide for proper use of the frequency spectrum as well as enforcement purposes.

OMB Approval Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other-for profit entities, not-for-profit institutions, State, local or tribal government.

Number of Respondents and Responses: 2,000 respondents and 5,350 responses.

Estimated Hours per Response: 0.5 hours-2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 309 of the Communications Act of 1934, as amended.

Annual Hour Burden: 6,663 hours.

Annual Cost Burden: $12,332,500.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Commission's rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, bidding credit eligibility and engineering data. These data are used by Commission staff to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant

bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–04969 Filed 3–10–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0787, FRS 16545]

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 April 10, 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: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, CG Docket 17–169.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 4,160 respondents; 20,920 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 10 hours.

Frequency of Response: Recordkeeping requirement; Biennial, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104–104, 110 Stat. 56.

Total Annual Burden: 87,173 hours.

Total Annual Cost: 26,300,00.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'', in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: Section 258 of the Telecommunications Act of 1996 (1996 Act) directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, CC Docket No. 94–129, FCC 03–42 (Third Order on Reconsideration), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission released an Order (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the Third Order on Reconsideration. On January 9, 2008, the Commission released the

Fourth Report and Order, CC Docket No. 94–129, FCC 07–223, revising its requirements concerning verification of a consumer's intent to switch carriers.

The Fourth Report and Order modified the information collection requirements contained in § 64.1120(c)(3)(iii) of the Commission's rules to provide for verifications to elicit ''confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized.''

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–04968 Filed 3–10–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16541]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 11, 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, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 Fixed Support.

Form Number: FCC Form 5634.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 20 unique respondents; 30 responses.

Estimated Time per Response: 2–80 hours.

Frequency of Response: One-time and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, and 254.

Total Annual Burden: 1,620 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Although some information collected in FCC Form 5634 will be made available for routine public inspection, the Commission will withhold certain information collected in FCC Form 5634 from routine public inspection. Specifically, the Commission will treat certain financial and technical information submitted in FCC Form 5634 as confidential. However, if a request for public inspection for this technical or financial information is made under 47 CFR 0.461, and the applicant has any objections to disclosure, the applicant will be notified and will be required to justify continued confidential treatment. To the extent that an applicant seeks to have other information collected in FCC Form 5634 or during the post-selection review process withheld from public inspection, the applicant may request confidential treatment pursuant to 47 CFR 0.459.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this new information collection. In the *Uniendo a Puerto Rico Fund and Connect USVI Fund Order,* the Commission comprehensively reformed the high-cost program within the universal service fund to focus support on networks capable of providing advanced, hardened voice and broadband services in Puerto Rico and the U.S. Virgin Islands (collectively, the Territories). *Uniendo a Puerto Rico Fund and the Connect USVI Fund,* WC Dockets Nos. 18–143 et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109 (*PR–USVI Order*). As part of the *PR–USVI Order,* the Commission adopted a single-round competitive proposal process to award Stage 2 support for fixed telecommunications networks in the Territories (Stage 2 Competition).

For the Stage 2 Competition, service providers will compete to receive high-cost support of up to $504.7 million in Puerto Rico and $186.5 million in the U.S. Virgin Islands over 10 years to offer fixed voice and broadband services to all locations in the Territories in accordance with the framework adopted in the *PR–USVI Order.* The information collection requirements reported under this new collection are the result of the competitive proposal process adopted by the *PR–USVI Order* to award support to winning applicants. The Commission adopted various rules regarding the eligibility of service providers and the term of support. In addition, the Commission adopted rules to govern the competitive proposal process, which includes information to be submitted by parties as part of their competitive proposals and information that must be submitted by winning bidders seeking to become authorized to receive Stage 2 fixed support. The Commission concluded, based on its experience with awarding high-cost support and consistent with the record, that this single-stage competitive proposal process balances the need to collect information essential to awarding support and authorizing Stage 2 fixed support with administrative efficiency.

The Commission estimates that approximately 20 parties will apply and approximately 10 will be selected as winning applicants. The Commission is therefore seeking approval from the OMB for the collection on FCC Form 5634 of the information, disclosures, and certifications adopted by the Commission. This information

collection addresses the burdens associated with these requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–04966 Filed 3–10–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0055; OMB 3060–0310; OMB 3060–0607; OMB 3060–0938; FRS 16547]

Information Collections 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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 11, 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 to *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: 3060–0055.

Title: Application for Cable Television Relay Service Station License, FCC Form 327.

Form Number: FCC Form 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Time per Response: 3.166 hours.

Frequency of Response: On occasion reporting requirement; Every 5 years reporting requirement.

Total Annual Burden: 1,266 hours.

Total Annual Costs: $98,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: This filing is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (*e.g.,* on one side of a river or mountain) to another point (*e.g.,* the other side of the river or mountain) or many points (''multipoint'') via microwave. The filing is done for an initial license, for modification of an existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with Sections 78.11 to 78.40 of the Commission's Rules. The form consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete, and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

OMB Control Number: 3060–0310.

Title: Section 76.1801, Registration Statement; Community Cable Registration, FCC Form 322.

Form Number: FCC Form 322.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 601 respondents and 601 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One time and on occasion reporting requirements.

Total Annual Burden: 301 hours.

Total Annual Costs: $36,060.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impacts.

Needs and Uses: Cable operators are required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 identifies biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form replaces the requirement that cable operators send a letter containing the same information.

OMB Control Number: 3060–0607.

Title: Section 76.922, Rates for Basic Service Tiers and Cable Programming Services Tiers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, Local or Tribal Government.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Number of Respondents and Responses: 1 respondent; 1 response.

Estimated Time per Response: 12 hours.

Total Annual Burden: 12 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need to confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 76.922(b)(5) provides that an eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to local subscribers, the local franchising authority (''LFA''), and the Commission.

OMB Control Number: 3060–0938.

Title: Application for a Low Power FM Broadcast Station License, FCC Form 319.

Form Number: FCC Form 319.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, State, local or Tribal Government.

Number of Respondents and Responses: 200 respondents and 200 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $27,500.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Privacy Impact Assessment(s): No impacts.

Needs and Uses: On January 20, 2000, the Commission adopted a Report and Order (R&O) in MM Docket No. 99–25, In the Matter of Creation of Low Power Radio Service. With the adoption of this R&O, the Commission authorized the licensing of two new classes of FM radio stations, generally referred to as low power FM stations (LPFM): A LP100 class for stations operating at 50–100 watts effective radiated power (ERP) at an antenna height above average terrain (HAAT) of 30 meters; and a LP10 class for stations operating at 1–10 watts ERP and an antenna height of 30 meters HAAT. These stations will be operated on a noncommercial educational basis by entities that do not hold attributable interests in any other broadcast station or other media subject to the Commission's ownership rules. The LPFM service authorized in this Report and Order provides significant opportunities for new radio services. The LPFM service creates a class of radio stations designed to serve very localized communities or underrepresented groups within communities.

In connection with this new service, the Commission developed a new FCC Form 319, Application for a Low Power FM Broadcast Station License. FCC Form 319 is required to apply for a license for a new or modified Low Power FM (LPFM) station.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–04970 Filed 3–10–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0997; FRS 16544]

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 May 11, 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 No.: 3060–0997.

Title: Section 52.15(k), Numbering Utilization and Compliance Audit.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time Per Response: 33 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Section 251.

Total Annual Burden: 330 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Commission employees and the independent auditor are prohibited by 47 U.S.C. 220(f) from divulging any fact or information that may come to their knowledge in the course of performing the audit, except as directed by the Commission or a court.

Needs and Uses: The audit program, consisting of audit procedures and guidelines, is developed to conduct

random audits. The random audits are conducted on the carriers that use numbering resources in order to verify the accuracy of numbering data reported on FCC Form 502, and to monitor compliance with FCC rules, orders and applicable industry guidelines. Failure of the audited carriers to respond to the audits can result in penalties. Based on the final audit report, evidence of potential violations may result in enforcement action.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–04967 Filed 3–10–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201334.

Agreement Name: COSCO/ONE/OOCL/YM EMED–USEC Vessel Sharing Agreement.

Parties: COSCO SHIPPING Lines Co., Ltd.; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; and Yang Ming Marine Transport Corp., Yang Ming (UK) Ltd., and Yang Ming (Singapore) Pte. Ltd. (acting as a single party).

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to cooperate on the provision of a service operating between the U.S. East Coast and ports in the Mediterranean.

Proposed Effective Date: 3/4/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27479.

Agreement No.: 012056–002.

Agreement Name: WWOcean/EUKOR Joint Operating Agreement.

Parties: Wallenius Wilhelmsen Ocean AS and EUKOR Car Carriers, Inc.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: This amendment revises Article 5.6(c) of the Agreement to exclude tug services from the services for which the parties are authorized to negotiate jointly.

Proposed Effective Date: 3/5/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/2021.

Dated: March 6, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–05002 Filed 3–10–20; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–0420]

Providing Regulatory Submissions in Alternate Electronic Format; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Alternate Electronic Format.'' Under the Federal Food, Drug, and Cosmetic Act (FD&C Act), Congress granted FDA the authority to implement the statutory electronic submission requirements in guidance. In response, FDA implemented binding guidance requiring that new drug applications (NDAs), abbreviated new drug applications (ANDAs), certain drug master files (DMFs), certain biologics license applications (BLAs), and certain investigational new drug applications (INDs) be submitted to the Agency in electronic common technical document (eCTD) format. Recognizing that some submissions are exempt from this requirement and that waivers of the requirement may be granted on a case-by-case basis, the Agency is issuing this draft guidance to describe the alternate electronic format sponsors or applicants should use for submissions covered under such exemptions and waivers.

DATES: Submit either electronic or written comments on the draft guidance by May 11, 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–2020–D–0420 for ''Providing Regulatory Submissions in Alternate Electronic Format.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926; or 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.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Alternate Electronic Format.'' This draft guidance provides recommendations on an alternate electronic format for submissions that are covered under an exemption from or granted a waiver of the requirements of section 745A(a) of the FD&C Act (21 U.S.C. 379k–1). These recommendations pertain to the electronic format of content in NDAs, ANDAs, DMFs, certain BLAs, and certain INDs submitted to the Center for Drug Evaluation and Research or to the Center for Biologics Evaluation and Research.

This draft guidance includes information on: (1) How to submit in alternate electronic format (without xml backbone), (2) submission of FDA forms, (3) pre-submission considerations, (4) submission structure, (5) file formats and versions, (6) datasets and study information, (7) transmitting electronic submissions, and (8) receipt dates.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Providing Regulatory Submissions in Alternate Electronic Format.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to 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 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, or *https://www.regulations.gov.*

Dated: March 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04994 Filed 3–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1156]

Q3D(R1) Elemental Impurities; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised final guidance for industry entitled ''Q3D(R1) Elemental Impurities.'' The guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. This guidance finalizes the draft guidance ''Q3D(R1) Elemental Impurities'' published on July 13, 2018. This guidance revises the existing guidance for industry ''Q3D Elemental Impurities'' and provides an updated permitted daily exposure (PDE) for the cadmium inhalation route of exposure. The updated PDE of 3 micrograms (μg)/day is based on a modifying factor approach like that used for calculating the PDEs for the cadmium oral and parenteral routes of exposure. This revised guidance is intended to correct a calculation error in the PDE for cadmium by the inhalation route of exposure.

DATES: The announcement of the guidance is published in the **Federal Register** on March 11, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–1156 for ''Q3D(R1) Elemental Impurities.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Tim McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6426, Silver Spring, MD 20993–0002, 240–402–0477.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization, and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In the **Federal Register** of July 13, 2018 (83 FR 32669), FDA published a notice announcing the availability of a draft guidance entitled ''Q3D Elemental

Impurities.'' The notice gave interested persons an opportunity to submit comments by August 13, 2018.

After consideration of the comments received, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in March 2019.

The guidance revises the existing guidance for industry ''Q3D Elemental Impurities'' and provides an updated permitted daily exposure (PDE) for the cadmium inhalation route of exposure. The revision was initiated following identification of a calculation error in the original text. The updated PDE of 3 µg/day is based on a modifying factor approach that is consistent with the method used for calculating the PDEs for the oral and parenteral routes of exposure.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Q3D(R1) Elemental Impurities.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.regulations.gov, https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: March 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04995 Filed 3–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0315]

Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.8 With Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) Center for Drug Evaluation and Research (CDER) is announcing that FDA will begin supporting the Clinical Data Interchange Standards Consortium (CDISC) for Study Data Tabulation Model version 1.8 (SDTM v1.8), and CDISC Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule version 1.0 (SENDIG–AR v1.0) on March 15, 2020, and that these new standards will be required in submissions to FDA effective March 15, 2022. An update will be made to the FDA Data Standards Catalog (Catalog) to reflect these changes.

DATES: Submit either electronic or written comments at any time.

ADDRESSES: You may submit comments 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–2020–N–0315 for ''Support and Requirement Begin for Study Data Tabulation Model Version 1.8 with Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0.'' 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.

FOR FURTHER INFORMATION CONTACT: Chenoa Conley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 301–796–0035, email: *cderdatastandards@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2014, FDA published final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' (eStudy Data guidance), posted on FDA's Study Data Standards Resources web page at *https://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.* The eStudy Data guidance implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k–1(a)) for study data contained in new drug applications, abbreviated new drug applications, biologics license applications, and investigational new drug applications submitted to CDER or the Center for Biologics Evaluation and Research by specifying the format for electronic submissions. The eStudy Data guidance states that a **Federal Register** notice will specify any new standard version updates that will be added to the Catalog and will specify when support for the new standard begins or ends, and when the requirement to submit data using the new standard begins or ends. FDA will begin supporting SDTM v1.8 and SENDIG–AR v1.0 on March 15, 2020, and such Animal Rule [1] submissions will be required to use the new standard effective March 15, 2022.

Dated: March 5, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04898 Filed 3–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1482]

Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is reopening the comment period for the notice that appeared in the **Federal Register** of April 3, 2019, and extending it indefinitely. The notice announced a public hearing to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds. In addition, it notified the public that FDA was establishing a docket for public comment on this hearing and that the docket would close on July 2, 2019. On June 20, 2019, a notice that appeared in the **Federal Register** extended the comment period to July 16, 2019. To provide a public and transparent way for stakeholders to provide new and emerging information to us in real time as it becomes available, we are reopening the comment period and extending it indefinitely to allow interested parties to continue to comment. We are particularly interested in data that may help to address uncertainties and data gaps related to the safety of cannabidiol (CBD).

DATES: FDA is reopening the comment period and extending it indefinitely on the notice published in the **Federal Register** of April 3, 2019 (84 FR 12969).

ADDRESSES: You may submit either electronic or written comments as follows.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1482 for ''Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds.'' 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.'' We will review this copy, including the claimed confidential information, in our 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.*

[1] The Animal Rule refers to FDA's regulations for the approval of new drugs and biological products when human efficacy studies are not ethical or feasible (see 21 CFR 314.600–650 for drugs and 21 CFR 601.90–95 for biologics).

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: April Alexandrow, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3147, Silver Spring, MD 20993, 301–796–5363.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 2019, FDA published a notice announcing a public hearing to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds. In addition, we notified the public that FDA was establishing a docket for public comment on this hearing. The information from the hearing and comments provided to the docket were solicited to help inform our regulatory oversight of these products and as an important step in our continued evaluation of cannabis and cannabis-derived compounds in FDA-regulated products. We asked that comments be submitted by July 2, 2019.

In response to requests for an extension of the comment period to provide additional time to develop meaningful and thoughtful responses to questions, on June 20, 2019, we published a notice that appeared in the **Federal Register** that extended the comment period for 14 days, until July 16, 2019.

In light of the continued interest and increased research activity in this space, as well as the need for additional scientific data on this topic, we have decided to reopen the comment period and extend it indefinitely to allow interested parties to continue to comment and to provide relevant data to the Agency on this subject. If, in the future, we decide to close the comment period, we will publish a **Federal Register** notice to that effect. This extension will allow stakeholders to continue to provide new and emerging information, in as close to real time as possible, as research in this area evolves.

We are particularly interested in data that may help to address uncertainties and data gaps related to the CBD. Studies that may help to address such uncertainties and data gaps may include, but are not limited to:

- The risk of liver injury from CBD, *e.g.,* clinical studies to evaluate potential liver injury following long-term exposure of CBD in healthy populations and in people who may be more susceptible to CBD-induced liver injury (*e.g.,* due to preexisting liver disease), long-term (chronic), repeated dose studies in an appropriate animal model to determine the most sensitive liver toxicity endpoint, and to establish a no observed effect level (NOAEL), as well as studies to investigate the mechanism of liver injury;
- Toxicities of some of the active metabolites of CBD, *e.g.,* animal toxicology studies of the major human metabolites such as 7–COOH–CBD, as well as pharmacology studies to fully characterize the binding profile and activity of major metabolites of CBD (*e.g.,* 7–OH–CBD, 7–COOH–CBD);
- Impact of CBD on the male reproductive system, *e.g.,* long-term (chronic), repeated dose studies in an appropriate animal model to determine the most sensitive male reproductive toxicity endpoint and to establish a NOAEL, and studies to characterize the mechanism mediating CBD effects on the male reproductive system for the purpose of assessing human relevance;
- Effect of CBD co-administration with other medicines, alcohol, dietary supplements, tobacco products, and herbal products;
- Impact on neurological development, *e.g.,* neurodevelopmental toxicology studies of CBD and 7–COOH–CBD to characterize the long-term functional impact of these compounds on the developing brain; addition of long-term neurodevelopment adverse outcomes in ongoing or future clinical trials of CBD to assess learning, cognition, and behavior;
- Sedative effects of CBD, *e.g.,* studies to characterize the effect on driving performance and ability to operate heavy machinery due to CBD's sedative effects;
- Transdermal penetration and pharmacokinetics of CBD, *e.g.,* methods development for the evaluation and assessment of dermal penetration of CBD;
- Clinical studies (including real world data/evidence) to address safety questions related to long-term sustained or cumulative exposure to CBD, including in vulnerable populations such as children, the elderly, and women who are pregnant or breastfeeding;
- Long-term (chronic) repeated dose toxicity studies in appropriate animal models, evaluating the most relevant toxicological end points (*e.g.,* male reproductive toxicity and liver toxicity), to better characterize the potential long-term effects of CBD, with systematic reporting of relevant parameters including, but not limited to, histopathology, hematology and clinical chemistry analyses, testosterone and other hormone levels, and urinalysis;
- Clinical studies on the effect of different routes of CBD administration (*e.g.,* oral, topical, inhaled) on its safety profile;
- Effect of CBD on pets and food-producing animals, *e.g.,* animal studies that demonstrate the effect of CBD exposure in different target animal species, breeds, or classes, including information on the formation of residues in edible tissues of food-producing animals and safety of chronic exposure;
- Studies to characterize the potential for bioaccumulation of CBD over long-term exposure, *e.g.,* appropriately designed absorption, distribution, metabolism, and elimination studies in appropriate animal models; and
- Effect of CBD on the eye, *e.g.,* studies to determine if CBD is distributed into the eye following various routes of exposure, studies to characterize CBD's potential effect on intraocular pressure, and assessment of potential impacts in potentially sensitive populations such as patients with glaucoma.

Dated: March 5, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04919 Filed 3–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0001]

Scientific and Ethical Considerations for the Inclusion of Pregnant Women in Clinical Trials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Scientific and Ethical Considerations for the Inclusion of Pregnant Women in Clinical Trials.'' The meeting will be convened by Duke University's Robert J. Margolis, Center for Health Policy (Duke-Margolis) and supported by a cooperative agreement with FDA. The meeting is intended to gather industry, patient, clinician,

researcher, institutional review board, ethicist, professional society and other stakeholder input on the scientific and ethical issues that surround the inclusion of pregnant women in clinical trials for drug development.

DATES: The public meeting will be held on April 16, 2020, from 9 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration information.

ADDRESSES: The public meeting will be held at the National Press Club Main Ballroom, 529 14th St. NW, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Jasmine Smith, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, at *ONDPublicMTGSupport@fda.hhs.gov* or 301–796–0621, or Catherine Sewell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5360, Silver Spring, MD 20993–0002, Fax: 301–796–9897.

SUPPLEMENTARY INFORMATION:

I. Background

FDA endorses an informed and balanced approach to gathering data informing the safe and effective use of drugs and biological products in pregnancy through judicious inclusion of pregnant women in clinical trials and careful attention to potential fetal risk. Input from this meeting will help provide such information on the development of therapies for pregnancy-specific conditions and for general medical conditions that occur in women of childbearing age and require treatment during pregnancy. This meeting supports the objectives of The Task Force on Research Specific to Pregnant Women and Lactating Women (''Task Force'' or ''PRGLAC'') which was established by section 2041 of the 21st Century Cures Act, Public Law 114–255, to provide advice and guidance on activities related to identifying and addressing gaps in knowledge and research on safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities.[1] Input from this meeting may also help further inform FDA's work toward the finalization of the Agency's draft guidance: Pregnant Women: Scientific and Ethical Considerations for Inclusion in Clinical Trials (83 FR 15161, April 6, 2018).

[1] *https://www.nichd.nih.gov/sites/default/files/2018-09/PRGLAC_Report.pdf.*

II. Topics for Discussion at the Public Meeting

The meeting will allow participants (including industry, clinicians, patients, researchers, institutional review boards, ethicists, professional societies and other stakeholders) to provide input on key topics, including:

- Key areas of unmet needs for therapeutic development or clinical data in obstetrics
- The regulatory, scientific, and ethical considerations and challenges in the enrollment of pregnant women in clinical research

For more information on the meeting topics and discussion questions, visit *https://healthpolicy.duke.edu/events/scientific-and-ethical-considerations-inclusion-pregnant-women-clinical-trials.* FDA will publish a discussion guide outlining background information on the topic areas to this website approximately 2 weeks before the meeting date. FDA will also post the agenda and other meeting materials to this website approximately 5 business days before the meeting.

The format of the public meeting will consist of a series of presentations, panel discussions, and open discussion.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://healthpolicy.duke.edu/events/scientific-and-ethical-considerations-inclusion-pregnant-women-clinical-trials.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation once they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact Jasmine Smith, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, at *ONDPublicMTGSupport@fda.hhs.gov* or 301–796–0621; or Catherine Sewell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5360, Silver Spring, MD 20993–0002, Fax: 301–796–9897.

Persons attending FDA's meetings are advised that FDA is not responsible for providing access to electrical outlets.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast and archived video footage will be available at the event website. If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. Persons interested in viewing the live webcast are encouraged to register in advance. You will be asked to indicate in your registration if you plan to attend in person or via the webcast. Please register for the webcast by visiting *https://healthpolicy.duke.edu/events/scientific-and-ethical-considerations-inclusion-pregnant-women-clinical-trials.*

Registered webcast participants will be sent technical system requirements in advance of the event. It is recommended that you review these technical system requirements prior to joining the streaming webcast of the public meeting.

FDA has verified the website addresses in this document as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that transcripts of the public meeting will not be available.

Dated: March 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04990 Filed 3–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Letters of Interest (LOI) for NCI-MATCH Laboratories

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) through its National Clinical Trials Network (NCTN) is developing a successor precision medicine trial to 'NCI-Molecular Analysis for Therapy Choice (NCI-MATCH)' entitled 'NCI-ComboMATCH'. The principal of this intiative is to overcome drug resistance to single-agent therapy by developing genomically-directed targeted agent combinations. All combinations must be

supported by robust, preclinical *in vivo* evidence.

NCI-ComboMATCH trial leadership invites applications for Clinical Laboratory Improvements Program (CLIA) certified/accredited laboratories that test tumor specimens from patients utilizing Next-Generation Sequencing (NGS) assays to participate in the NCI-ComboMATCH trial. In order to support this trial, the designated laboratories participating in NCI-ComboMATCH will identify patients for the specific variants needed for trial eligibility. Laboratories will be required to contact any of the NCTN sites that have activated NCI-ComboMATCH if a specimen sent from one of these sites has a variant(s) that would potentially make the patient eligible for one of the treatment arms.

DATES: Letters Of Interest (LOIs) should be submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH) on or before 5:00 p.m. EST on June 30, 2020.

ADDRESSES: Submit LOIs by email to *NCICOMBOMATCHLabApps@nih.gov*. 9609 Medical Center Drive, 3 West, Room 526, MSC 9728, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Questions about this request for LOIs should be directed to *NCICOMBOMATCHLabApps@nih.gov*. James V. Tricoli *tricolij@mail.nih.gov* can also provide further information.

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C. 285, of the Public Health Service Act, as amended. Similar to NCI-MATCH, NCI-ComboMATCH is conceived as a signal-seeking study. The NCI-ComboMATCH team will determine whether patients with tumor mutations, amplifications or translocations in the genetic pathway(s) of interest are likely to derive clinical benefit if treated with a combination of precision medicine agents targeting those specific pathway(s). This recruitment is for labs that can specifically screen 200 patients seen at NCTN sites per month.

Patients with histologically documented solid tumors and lymphomas whose disease has progressed following at least one line of standard systemic therapy or for whom no standard therapy exists are eligible if they meet the eligibility criteria for the trial.

The selected collaborating outside laboratories may only act (*i.e.,* refer patients) on any of the variant arms for which their assay reports actionable mutations of interest (aMOIs). The assay must also report all exclusionary variants for the arm unless these occur at a frequency of <1% in cancer patients.

Only CLIA accredited/certified laboratories located in the United States may be considered for addition to the laboratory network.

Letter of Interest (LOI) and Confidentiality Agreement

Candidate laboratories should submit a letter of interest to *NCICOMBOMATCHLabApps@nih.gov* stating:

- Statement of interest in the proposed activity
- Laboratory name
- Lead contact name, address, email address, and telephone number
- CLIA certification number
- Assay name
- Brief description of assay
  - Sensitivity and specificity for SNVs, indels, CNV, fusions
  - Method of analysis
  - Platform and variant calling
- Number of assays on patients per month
- Number assays on patients seen at NCTN study sites per month
- Provide a list of other CLIA approved/certified tests that have been validated in your laboratory
- Willingness to contact sites regarding results with a potentially eligible for NCI-ComboMATCH
- Willingness to sign a collaboration agreement with NCI (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) and to share data and publication rights

Following an acceptable eligibility review to the NCI-ComboMATCH screening committee, the laboratory would execute a confidentiality agreement with the NCI and will be provided with a detailed list of eligibility and exclusion variants for arms (approved at that time). The lab would then be required to submit an application within 6 weeks for review by the NCI-Combo MATCH review committee. Candidate laboratories will be required to meet the following general requirements:

- Testing must be performed in a CLIA-certified or -accredited laboratory located in the United States.
- Assays can be on tumor tissue (including lymphoma) or circulating tumor DNA (ctDNA).
- Laboratory NGS panels must be analytically and clinically validated on DNA from human tumor tissue, with performance characteristics as follows:
  - Specificity at least 99% for single nucleotide variants, indels
  - Sensitivity at least 95% for single nucleotide variants, indels
  - Sensitivity of 90% for copy number variants (state fold of copy number variants that can be detected with 90% sensitivity)
  - 99% reproducibility between sequencers (if more than one sequencer is used) and between operators
  - Lower limit of detection for SNV, indels, CNV must be stated.

Laboratories must supply the following information in their application:

- Lower limit of % tumor accepted, and whether (and which) enrichment procedures are employed
- Whether the lab archives images of slides from the tumor
- Whether the lab also runs germline as well as tumor with the assay (a simultaneous germline sequencing is not required by NCI-ComboMATCH)
- A detailed description of assay procedures, including starting material, extraction of nucleic acids, quality assurance, quality metrics, data analysis and filters must be supplied

- Laboratory NGS test panels must interrogate actionable mutations of interest (aMOIs) required for enrollment into the available variant arms.
- Academic laboratories must be located at a center that participates in NCI-Combo MATCH.
- The designated lab should be willing to provide residual nucleic acid from the sample they tested if the patient enrolls on NCI-ComboMATCH.
- Laboratories shall NOT advertise that they are screening laboratories for ComboMATCH eligibility without prior review by NCI and ECOG–ACRIN. Any press release or public disclosure requires clearance by NCI and the NCI-ComboMATCH team.
- Laboratories must agree to use the existing workflow established by the NCI NCI-ComboMATCH trial team to identify patients for the variant arms.
  - Laboratory results of NGS assays done for clinical care will be the subject of this initiative. There is no funding for ''screening'' a patient for NCI-ComboMATCH.
  - Laboratories must notify NCI-ComboMATCH sites that the laboratory results would potentially allow the patient to be eligible for NCI-ComboMATCH.
  - Laboratories must track how many assays per month detect variants that could make a patient eligible for NCI-ComboMATCH.
  - If the clinician presents the NCI-ComboMATCH study and the patient is eligible and desires to enter the study,

the laboratory must agree to enter the results into the informatics system that assigns treatment in NCI-ComboMATCH (MATCHbox).

○ Laboratories must have a way to answer questions from NCI-ComboMATCH sites about their assay and must have a contact person for optimal communication with the NCI-ComboMATCH team.

• Prior to participation, laboratories must enter into a collaboration agreement with NCI. A sample agreement is available upon request. As part of such a collaboration agreement, laboratories must agree to provide the licensing rights described in the CTEP IP Option to the Pharmaceutical Collaborators who provided agents for the NCI-ComboMATCH trial (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) as well as agree to the data sharing and publication rights consistent with those agreements.

• No reimbursement for these activities (testing or notification of sites of NCI-ComboMATCH eligibility) exists.

Qualified laboratories serving underserved populations are encouraged to participate. How to apply:

1. Submit letter of interest (LOI) as described above under ''Letter of Interest and Confidentiality Agreement'' to *NCICOMBOMATCHLabApps@nih.gov*.

2. LOIs will be accepted for 3 months from the date of this notice. LOIs will be reviewed immediately upon receipt.

3. Notification of acceptance, non-acceptance or questions from Steering Committee will be sent to the designated contact person as soon as the LOI has been reviewed. This notification will include further instructions if a full application is invited.

4. Applications that have not been submitted within 6 weeks of notification of acceptance of the LOI will be de-activated and not further considered.

5. DO NOT send a full application until you are invited to do so.

Review criteria for LOI:

Laboratory is a CLIA-certified laboratory within the United States.

Academic laboratories must have NCI-ComboMATCH open at their site.

Laboratory NGS assay has adequate sensitivity and specificity.

Laboratory tests tumor tissue for variants as described in NCI-ComboMATCH.

Laboratory agrees to provide needed information for evaluation of the analytical validity of the test.

Laboratory is likely to screen at least 200 patients at NCTN sites per month for NCI-ComboMATCH.

Laboratory agrees to contact sites regarding NCI-ComboMATCH eligibility.

Laboratory agrees to a collaboration with NCI as detailed above.

Review criteria for full application:

Laboratory supplies evidence that the assay meets analytical requirements as detailed above.

Laboratories are capable of contacting clinical sites, tracking activity, and screening at least 200 patients at NCTN sites per month to the study based on detection of potential variants.

Laboratories agree to execute a collaboration agreement with NCI, as well as to data sharing and sharing publication rights.

Laboratories agree to abide by the procedures in place for the NCI-ComboMATCH study and to collaborate fully with the NCI-ComboMATCH team.

For more information, contact *NCICOMBOMATCHLabApps@nih.gov.*

Dated: March 5, 2020.

James V. Tricoli,

Chief, Diagnostic Biomarkers and Technology Branch, Cancer Diagnosis Program, National Cancer Institute.

[FR Doc. 2020–04915 Filed 3–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Member Conflict: Stroke, Traumatic Brain Injury and Sport-Related Concussions, March 25, 2020, 10:00 a.m. to 3:00 p.m., at the National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on March 04, 2020, 85 FR 12799.

The meeting will be held on March 26, 2020. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 5, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04928 Filed 3–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, RFA–RM–19–008: NIH Director's Early Independence Award Review, March 18, 2020, 08:30 a.m. to March 19, 2020, 12:00 p.m. which was published in the **Federal Register** on February 20, 2020, 85 FR 9787.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, meeting start time is changing to 09:00 a.m. and meeting end time to 03:00 p.m. The meeting is closed to the public.

Dated: March 5, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04929 Filed 3–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Letters of Interest (LOI) for Pediatric Focused NCI–MATCH Laboratories

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) through its National Clinical Trials Network (NCTN) is developing a successor precision medicine trial to 'NCI-Molecular Analysis for Therapy Choice (NCI–MATCH)' entitled 'NCI-ComboMATCH'. The principal of this intiative is to overcome drug resistance to single-agent therapy by developing genomically-directed targeted agent combinations. All combinations must be supported by robust, preclinical *in vivo* evidence.

NCI-ComboMATCH trial leadership invites applications for Clinical Laboratory Improvements Program (CLIA) certified/accredited laboratories that test tumor specimens from pediatric patients utilizing Next-Generation Sequencing (NGS) assays to participate in the NCI-ComboMATCH trial. In order to support this trial, the designated laboratories participating in NCI-ComboMATCH will identify pediatric patients for the specific variants needed for trial eligibility. Laboratories will be

required to contact any of the NCTN sites that have activated NCI-ComboMATCH if a specimen sent from one of these sites has a variant(s) that would potentially make the patient eligible for one of the treatment arms.

DATES: Letters of Interest (LOIs) should be submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH) on or before 5:00 p.m. EST on June 30, 2020.

ADDRESSES: Submit LOIs by email to *NCICOMBOMATCHLabApps@nih.gov*. 9609 Medical Center Drive, 3 West, Room 526, MSC 9728, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Questions about this request for LOIs should be directed to *NCICOMBOMATCHLabApps@nih.gov*. James V. Tricoli *tricolij@mail.nih.gov* can also provide further information.

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C. 285, of the Public Health Service Act, as amended. Similar to NCI–MATCH, NCI-ComboMATCH is conceived as a signal-seeking study. The NCI-ComboMATCH team will determine whether pediatric patients with tumor mutations, amplifications or translocations in the genetic pathway(s) of interest are likely to derive clinical benefit if treated with a combination of precision medicine agents targeting those specific pathway(s). This recruitment is for pediatric focused labs that can specifically screen 250 pediatric patients seen at NCTN sites per month.

Patients with histologically documented solid tumors and lymphomas whose disease has progressed following at least one line of standard systemic therapy or for whom no standard therapy exists are eligible if they meet the eligibility criteria for the trial.

The selected collaborating outside laboratories may only act (*i.e.* refer patients) on any of the variant arms for which their assay reports actionable mutations of interest (aMOIs). The assay must also report all exclusionary variants for the arm unless these occur at a frequency of <1% in cancer patients.

Only CLIA accredited/certified laboratories located in the United States may be considered for addition to the laboratory network.

Letter of Interest (LOI) and Confidentiality Agreement

Candidate laboratories should submit a letter of interest to *NCICOMBOMATCHLabApps@nih.gov* stating:

- Statement of interest in the proposed activity
- Laboratory name
- Lead contact name, address, email address, and telephone number
- CLIA certification number
- Assay name
- Brief description of assay
  - Sensitivity and specificity for SNVs, indels, CNV, fusions
  - Method of analysis
  - Platform and variant calling
- Number of assays on pediatric patients per month
- Number assays on patients seen at NCTN study sites per month
- Provide a list of other CLIA approved/certified tests that have been validated in your laboratory
- Willingness to contact sites regarding results with a potentially eligible for NCI-ComboMATCH
- Willingness to sign a collaboration agreement with NCI (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) and to share data and publication rights

Following an acceptable eligibility review to the NCI-ComboMATCH screening committee, the laboratory would execute a confidentiality agreement with the NCI and will be provided with a detailed list of eligibility and exclusion variants for arms (approved at that time). The lab would then be required to submit an application within 6 weeks for review by the NCI-ComboMATCH review committee. Candidate laboratories will be required to meet the following general requirements:

- Testing must be performed in a CLIA-certified or -accredited laboratory located in the United States.
- Assays can be on tumor tissue (including lymphoma) or circulating tumor DNA (ctDNA).
- Laboratory NGS panels must be analytically and clinically validated on DNA from human tumor tissues, with performance characteristics as follows:
  - Specificity at least 99% for single nucleotide variants, indels
  - Sensitivity at least 95% for single nucleotide variants, indels
  - Sensitivity of 90% for copy number variants (state fold of copy number variants that can be detected with 90% sensitivity)
  - 99% reproducibility between sequencers (if more than one sequencer is used) and between operators
  - Lower limit of detection for SNV, indels, CNV must be stated.

Laboratories must supply the following information in their application:

  - Lower limit of % tumor accepted, and whether (and which) enrichment procedures are employed
  - Whether the lab archives images of slides from the tumor
  - Whether the lab also runs germline as well as tumor with the assay (a simultaneous germline sequencing is not required by NCI-ComboMATCH)
  - A detailed description of assay procedures, including starting material, extraction of nucleic acids, quality assurance, quality metrics, data analysis and filters must be supplied.
- Laboratory NGS test panels must interrogate actionable mutations of interest (aMOIs) required for enrollment into the available variant arms. Applicant laboratories must state which NCI-ComboMATCH arms they would like to participate in.
- Academic laboratories must be located at a center that participates in NCI-ComboMATCH.
- The designated lab should be willing to provide residual nucleic acid from the sample they tested if the patient enrolls on NCI-ComboMATCH.
- Laboratories shall NOT advertise that they are screening laboratories for ComboMATCH eligibility without prior review by NCI and ECOG–ACRIN. Any press release or public disclosure requires clearance by NCI and the NCI-ComboMATCH team.
- Laboratories must agree to use the existing workflow established by the NCI NCI-ComboMATCH trial team to identify patients for the variant arms.
  - Laboratory results of NGS assays done for clinical care will be the subject of this initiative. There is no funding for ''screening'' a patient for NCI-ComboMATCH.
  - Laboratories must notify NCI-ComboMATCH sites that the laboratory results would potentially allow the patient to be eligible for NCI Combo MATCH.
  - Laboratories must track how many assays per month detect variants that could make a pediatric patient eligible for NCI-ComboMATCH.
  - If the clinician presents the NCI-ComboMATCH study and the pediatric patient is eligible and desires to enter the study, the laboratory must agree to enter results into the informatics system that assigns treatment in Combo MATCH (MATCHbox).
  - Laboratories must have a way to answer questions from Combo MATCH sites about their assay and must have a contact person for optimal communication with the NCI-ComboMATCH team.

• Prior to participation, laboratories must enter into a collaboration agreement with NCI. A sample agreement is available upon request. As part of such a collaboration agreement, laboratories must agree to provide the licensing rights described in the CTEP IP Option to the Pharmaceutical Collaborators who provided agents for the NCI-ComboMATCH trial (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) as well as agree to the data sharing and publication rights consistent with those agreements.

• No reimbursement for these activities (testing or notification of sites of NCI-ComboMATCH eligibility) exists.

Qualified laboratories serving underserved populations are encouraged to participate.

How to apply:

1. Submit letter of interest (LOI) as described above under ''Letter of Interest and Confidentiality Agreement'' to *NCICOMBOMATCHLabApps@nih.gov*.

2. LOIs will be accepted for 3 months from the date of this notice. LOIs will be reviewed immediately upon receipt.

3. Notification of acceptance, non-acceptance or questions from Steering Committee will be sent to the designated contact person as soon as the LOI has been reviewed. This notification will include further instructions if a full application is invited.

4. Applications that have not been submitted within 6 weeks of notification of acceptance of the LOI will be de-activated and not further considered.

5. DO NOT send a full application until you are invited to do so.

Review criteria for LOI:

Laboratory is a CLIA certified laboratory within the United States.

Academic laboratories must have NCI-ComboMATCH open at their site.

Laboratory NGS assay has adequate sensitivity and specificity.

Laboratory tests tumor tissue for variants as described in NCI-ComboMATCH.

Laboratory agrees to provide needed information for evaluation of the analytical validity of the test.

Laboratory is likely to screen at least 250 pediatric patients at NCTN sites for NCI-ComboMATCH per month.

Laboratory agrees to contact sites regarding NCI-ComboMATCH eligibility.

Laboratory agrees to a collaboration with NCI as detailed above.

Review criteria for full application:

Laboratory supplies evidence that the assay meets analytical requirements as detailed above.

Laboratories are capable of contacting clinical sites, tracking activity, and of screening at least 250 pediatric patients at NCTN sites per month to the study based on detection of potential variants.

Laboratories agree to execute a collaboration agreement with NCI, as well as to data sharing and sharing publication rights.

Laboratories agree to abide by the procedures in place for the NCI-ComboMATCH study and to collaborate fully with the NCI-ComboMATCH team.

For more information, contact *NCICOMBOMATCHLabApps@nih.gov.*

Dated: March 5, 2020.

James V. Tricoli,

Chief, Diagnostic Biomarkers and Technology Branch, Cancer Diagnosis Program, National Cancer Institute.

[FR Doc. 2020–04916 Filed 3–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Office of the Director, National Institutes of Health, Board of Scientific Counselors, May 15, 2020, 10:00 a.m. to 2:00 p.m., National Institutes of Health, 1 Center Drive, Building 1, Room 151, Bethesda, MD 20892, which was published in the **Federal Register** on February 28, 2020, 85 FR 12797.

The meeting notice is amended to change the email of the Contact Person from *mmburney@od.nih.gov* to *mmcburney@od.nih.gov*. The meeting is partially Closed to the public.

Dated: March 6, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04930 Filed 3–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0013; OMB No. 1660–0061]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Assistance to Individuals and Households Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the need to collect information from individuals or households, and States, territories, and Tribal governments in order to provide and/or administer disaster assistance through the Individuals and Households Program.

DATES: Comments must be submitted on or before May 11, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0013. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE–1604, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Supervisory Program Specialist, FEMA Recovery Directorate, 540–686–3602. You may contact the

Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, as amended, is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a federally declared disaster. Regulations in 44 CFR, 206.110—Federal Assistance to Individuals and Households implements the policy and procedures set forth in Section 408 of the Stafford Act, 42 U.S.C. 5174, as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs, and are unable to meet such expenses or needs through other means.

This collection provides applicants the ability to request approval of late applications, request continued temporary housing assistance, appeal program decisions, request advance disaster assistance, request assistance checks not received be stopped and reissued, and to authorize the release of information third parties. This collection also allows for the establishment of an annual agreement between FEMA and States, territories, or Tribal governments regarding how the Other Needs provision of IHP will be administered: By FEMA, by the State, territory, or Tribal government, or jointly.

Collection of Information

Title: Federal Assistance to Individuals and Households Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0061.

FEMA Forms: FEMA Form 010–0–11, Individuals and Households Program (IHP)—Other Needs Assistance Administrative Option Selection; Development of State/Tribal Administrative Plan (SAP) for Other Needs Provision of IHP; FEMA Form 010–0–12 (English), Individuals and Households Program Application for Continued Temporary Housing Assistance; FEMA Form 010–0–12S (Spanish), Programa de Individuos y Familias Solicitud Para Continuar La Asistencia de Vivienda Temporera; Request for Approval of Late Registration; Appeal of Program Decision; FEMA Form 009–0–95 (English), Request for Advance Disaster Assistance; FEMA Form 009–0–95S (Spanish), Solicitud de Adelanto de la Asistencia por Desastre; FEMA Form 009–0–96 (English), Request to Stop Payment and Reissue Disaster Assistance Check; FEMA Form 009–0–96S (Spanish), Solicitud para Detener el Pago y Reemitir el Cheque de Asistencia por Desastre; FEMA Form 140–003d–1—(English), Authorization for the Release of Information Under the Privacy Act; FEMA Form 140–003d–1S—(Spanish), Autorización para la Divulgación de Información bajo el Acta de Privacidad.

Abstract: This collection provides applicants the ability to request approval of late applications, request continued temporary housing assistance, appeal program decisions, request advance disaster assistance, request assistance checks not received be stopped and reissued, and to authorize the release of information third parties. It also establishes an agreement between FEMA and States, territories, and Tribal governments regarding the administration of the Other Needs provision of IHP.

Affected Public: Individuals or Households; State, local, or Tribal Government.

Estimated Number of Respondents: 140,753.

Estimated Number of Responses: 185,057.

Estimated Total Annual Burden Hours: 150,828.

Estimated Total Annual Respondent Cost: $5,530,313.

Estimated Respondents' Operation and Maintenance Costs: NA.

Estimated Respondents' Capital and Start-Up Costs: NA.

Estimated Total Annual Cost to the Federal Government: $1,089,213.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Deputy Director of Information Management, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–04936 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2019–0036]

Privacy Act of 1974; System of Records

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

ACTION: Rescindment of a System of Records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security/U.S. Customs and Border Protection is giving notice that it proposes to rescind the following Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) Privacy Act system of records notice, ''Department of Homeland Security/U.S. Customs and Border Protection–017 Analytical Framework for Intelligence (AFI)'' System of Records and replace it with ''Department of Homeland Security(DHS)/U.S. Customs and Border Protection(CBP)–024 CBP Intelligence Records System (CIRS) System of Records.''

DATES: These changes will take effect upon publication.

ADDRESSES: You may submit comments, identified by docket number USCBP–2019–0036 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, (202) 344–1610, *Privacy.CBP@cbp.dhs.gov,* CBP Privacy Officer, U.S. Customs and Border Protection, Washington, DC 20004. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717,

Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is rescinding the following system of records notice (SORN), ''Department of Homeland Security(DHS)/U.S. Customs and Border Protection(CBP)–017 Analytical Framework for Intelligence (AFI)'' System of Records, and replace it, and rely upon for records collected and maintained to support CBP's law enforcement intelligence mission, with ''Department of Homeland Security(DHS)/U.S. Customs and Border Protection(CBP)–024 CBP Intelligence Records System (CIRS) System of Records'' (82 FR 44198, September 21, 2017). Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

SYSTEM NAME AND NUMBER:

Department of Homeland Security/U.S. Customs and Border Protection–017 Analytical Framework for Intelligence.

HISTORY:

Department of Homeland Security/U.S. Customs and Border Protection–017 Analytical Framework for Intelligence (AFI) (June 7, 2012, 77 FR 33753).

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04982 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2019–0043]

Privacy Act of 1974; System of Records

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

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue the current DHS system of records titled ''Department of Homeland Security/U.S. Customs and Border Protection-002 Global Enrollment System,'' and rename it as ''Department of Homeland Security/U.S. Customs and Border Protection-002 Trusted and Registered Traveler Programs.'' This system of records allows the Department of Homeland Security/U.S. Customs and Border Protection (CBP) to collect and maintain records on individuals who voluntarily provide personally identifiable information to CBP in return for enrollment in a program that will make them eligible for dedicated CBP processing at designated U.S. border ports of entry, including all trusted traveler and registered traveler programs.

DATES: Submit comments on or before April 10, 2020. This modified system will be effective April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number USCBP–2019–0043 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCBP–2019–0043. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, (202) 344–1610, *privacy.cbp@cbp.dhs.gov,* CBP Privacy Officer, U.S. Customs and Border Protection, Ronald Reagan Building, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy issues, please contact: Jonathan R. Cantor (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/CBP proposes to update, rename, and reissue a current DHS system of records newly titled, ''DHS/CBP–002 Trusted and Registered Traveler Programs (TRTP).'' Formerly titled the ''Global Enrollment System,'' this system of records allows CBP to collect and maintain records on individuals who voluntarily provide personally identifiable information to CBP in return for enrollment in a program that will make them eligible for dedicated CBP processing at designated U.S. border ports of entry. This system of records includes information on individuals who participate in trusted traveler and registered traveler programs. This system of records notice is being re-published under the new name, with a more comprehensive description of these programs, and the removal of references to the CBP Trusted Worker Programs, which are covered under the DHS/CBP–010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities System of Records Notice (December 19, 2008, 73 FR 77753).

Trusted traveler programs facilitate processing for pre-approved members, permitting more efficient inspections, and helping move participants through the lines at the port of entry or other designated locations more expeditiously. CBP's trusted traveler programs include:

- Global Entry,[1] which enables CBP to provide U.S. citizens, lawful permanent residents (LPRs), and citizens of certain foreign countries dedicated processing when arriving at airports with designated Global Entry kiosks.
- NEXUS, which allows pre-screened travelers dedicated processing when entering the United States and Canada. Program members use specific processing lanes at designated U.S.-Canada border ports of entry, NEXUS kiosks when entering Canada by air, and Global Entry kiosks when entering the United States via Canadian Preclearance airports. NEXUS members also receive dedicated processing at marine reporting locations.
- Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which provides dedicated processing clearance for pre-approved travelers using designated primary lanes entering the United States at land border ports of entry along the U.S.-Mexico border.
- The Free and Secure Trade (FAST) program, which provides dedicated processing for pre-approved commercial truck drivers from the United States, Canada, and Mexico. Members may use dedicated FAST lanes at both northern and southern border ports.
- The U.S.-Asia Economic Cooperation (APEC) Business Travel

[1] Final Rule, Establishment of Global Entry Program (77 FR 5681, Feb. 6, 2012).

Card (ABTC) Program, which allows for U.S. business travelers or government officials engaged in business in the APEC region dedicated screening at participating airports.

Individuals who apply for enrollment in a trusted traveler program must provide biographic and certain biometric information to CBP, as described below. CBP screens this information against databases to verify eligibility for trusted traveler program participation. Once an applicant is approved and enrolls in the trusted traveler program, his or her information is vetted by CBP on a recurrent basis to ensure continued eligibility.

CBP also sponsors registered traveler programs that, like trusted traveler programs, allow individuals to provide their information to CBP voluntarily prior to travel in order to qualify for dedicated processing. Unlike trusted travelers, registered travelers are not subject to vetting, but rather maintain information on file with CBP to better facilitate their arrival at ports of entry.

Registered traveler programs include:

- Decal and Transponder Online Procurement System (DTOPS), which allows individuals registered to eligible commercial vehicles to pay their annual user fees in advance online and cross the border using decals or transponders that facilitate CBP inspection.
- Pleasure boat reporting options, which allow operators of small vessels arriving in the United States from a foreign location to report their arrival to CBP remotely instead of in person as required under 19 U.S.C. 1433. Travelers who are members of another CBP trusted traveler program, who hold an I–68 Canadian Border boat landing permit, or who participate in the Local Border Option (LBO) may be eligible for remote arrival reporting.

CBP has signed a number of joint statements with foreign partners to permit citizens of certain foreign countries to apply for Global Entry. Some of these joint statements also permit Global Entry members to apply for trusted traveler programs operated by foreign partners. CBP continues to work with government border authorities in various countries to create this growing international network. As part of the procedure for implementing a joint statement, and adding foreign partners to Global Entry, CBP and each foreign partner execute parallel procedures that incorporate privacy protections. A more in-depth discussion of the arrangements by country is made available in DHS/CBP/PIA–002(b) GES Privacy Impact Assessment and Appendix A ''CBP Global Entry Expansion: Joint Statements.''

The authority for TRTP derives from CBP's mandate to secure the borders of the United States, and to facilitate legitimate trade and travel. The statutes that permit and define these programs include:

- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, 8 U.S.C. 1365b(k);
- Section 215 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1185;
- Section 402 of the Homeland Security Act of 2002, as amended, 6 U.S.C. 202;
- Section 404 of the Enhanced Border Security and Visa Reform Act of 2002, 8 U.S.C. 1753; and
- Section 433 of the Tariff Act of 1930, as amended, 19 U.S.C. 1433.

The Regulations that permit and define TRTP include Parts 103 and 235 of Title 8 of the Code of Federal Regulations. See, especially, 8 CFR 103.2, 103.7, 103.16, 235.1, 235.2, 235.7, and 235.12. Pursuant to the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, individuals seeking to enroll in trusted traveler or registered traveler programs must pay a fee when they apply or renew their membership. *See* 8 CFR 103.7(b)(1)(ii)(M).

Participation in these programs is entirely voluntary. Joint Statements with foreign partners establish that each country's use of GES information for vetting will be consistent with applicable domestic laws and policies. Participants should be aware that when they submit their information to a foreign country or agree to share their information with a foreign partner, the foreign country uses, maintains, retains, or disseminates their information in accordance with that foreign country's laws and privacy protections.

Consistent with DHS's information sharing mission, GES information may be shared with other DHS components whose personnel have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

DHS/CBP is simultaneously issuing a notice of proposed rulemaking to exempt portions of the DHS/CBP–002 TRTP SORN from the Privacy Act requirements. Pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act, law enforcement related records, including the information from other law enforcement databases that support the DHS/CBP membership decision, and the law enforcement risk assessment worksheet that have been created during the background check and vetting process, are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g)(1). Pursuant to 5 U.S.C. 552a(k)(2), records created during the background check and vetting process are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). In addition, when a record contains information from other exempt systems of records, DHS/CBP will claim the same exemptions for that record as are claimed for the original systems of records and will claim any additional exemptions that this notice delineates.

CBP will not assert any exemptions with regard to accessing or amending an individual's application data in a trusted or registered traveler program and/or final membership determination in the trusted traveler programs. However, this data may be shared with law enforcement and/or intelligence agencies pursuant to the routine uses identified in the TRTP SORN. The Privacy Act requires that DHS maintain an accounting of such disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement and/or intelligence agency has sought particular records may affect ongoing law enforcement activity. As such, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), DHS will claim an exemption from (c)(3), (e)(8), and (g)(1) of the Privacy Act, as is necessary and appropriate to protect this information. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make

requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP–002 TRTP System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-002 Trusted and Registered Traveler Programs (TRTP).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the CBP Headquarters in Washington, DC and field offices. CBP maintains records in the Trusted Traveler Programs (TTP) information technology system, as well as other applications that support trusted traveler and registered traveler application and program management. CBP may also maintain these records in various CBP law enforcement systems for participant screening.

SYSTEM MANAGER(S):

Trusted Traveler Program Manager, Office of Field Operations, and Executive Director, Passenger Systems Program Directorate, Office of Information and Technology, U.S. Customs and Border Protection, 1300 Pennsylvania Ave. NW, Washington, DC 20229.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, 8 U.S.C. 1365b(k); Section 215 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1185; Section 402 of the Homeland Security Act of 2002, as amended, 6 U.S.C. 202; Section 404 of the Enhanced Border Security and Visa Reform Act of 2002, 8 U.S.C. 1753; Section 433 of the Tariff Act of 1930, as amended, 19 U.S.C. 1433; 31 U.S.C. 9701; and Parts 103 and 235 of Title 8 of the Code of Federal Regulations (See, especially, 8 CFR 103.2, 103.7, 103.16, 235.1, 235.2, 235.7, and 235.12).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to assess on an ongoing basis applicants' eligibility for enrollment in trusted traveler and registered traveler programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: INDIVIDUALS WHO APPLY TO USE ANY FORM OF AUTOMATED OR OTHER EXPEDITED INSPECTION FOR VERIFYING ELIGIBILITY TO CROSS THE BORDER INTO THE UNITED STATES.

CATEGORIES OF RECORDS IN THE SYSTEM:

TRTP collects the following information on trusted travelers:

Biographic application data, including:

- Full name;
- Alias(es);
- Date of birth;
- Place of birth;
- Language preference;
- Gender;
- Current and former addresses;
- Telephone numbers;
- IP address;
- Country of citizenship;
- Alien registration number (if applicable);
- Employment history (if available);
- PASS ID or Trusted Traveler membership number;
- Countries visited in the last five years;
- Criminal history (provided by applicant);
- Parental or Legal Guardian permission (if 18 years or younger);
- Driver's license number;
- Issuing state or province of the applicant's Driver's License;
- Trusted Traveler Program System (TTP) user name and password (password is maintained in an encrypted format); and
- Answers to security questions to reset password.

Vehicle or Vessel information, as appropriate, including:

- Flag and home port (where the vessel is foreign flagged);
- Name, registration number, and registration issuing state or province of the applicant's vessel;
- Make and model, year, color, Vehicle Identification Number (VIN), and license plate number of the vehicle; and
- Owner name, gender, and date of birth.

Biometric data, including:

- Fingerprints (collected and stored through the DHS Automated Biometric Identification System (IDENT) for future identity verification);
- Fingerprint Identification Number (FIN);
- Height;
- Eye color; and
- Facial photographs.

Information added by DHS/CBP:

- Criminal history information, as well as responsive information from other law enforcement databases that support the DHS/CBP membership decision;
- Law enforcement risk assessment worksheet;
- Pay.gov tracking number;
- Program membership decision in the form of a ''pass/fail;'' and
- Foreign government membership decisions in the form of a ''pass/fail.''

The following information is collected on registered pleasure boat travelers:

- Full name;
- Gender;
- Date of birth;
- Place of birth;
- Country of citizenship;
- Address;
- Contact telephone number;
- Alternate telephone number;
- Contact email address;
- Password;
- Document type and number (*e.g.,* U.S. Passport, Permanent Resident Card, Birth Certificate), place of issue, and expiration date of document; and
- Vessel information including registration number, hull ID number, decal number, registered name, location where vessel is registered, and vessel description (*e.g.,* length, type, manufacturer, model, year, hull colors).

The following information is collected about Decal and Transponder Online Procurement System (DTOPS) registered travelers:

- Account name;
- Physical address;
- Shipping address;
- Pay.gov tracking number;
- Free and Secure Trade (FAST) ID, if the conveyance's owner is Customs Trade Partnership Against Terrorism (C–TPAT)/FAST approved;
- Conveyance model year;
- Conveyance manufacturer name;
- Conveyance identification numbers and information, which are specific to the type of conveyance (*e.g.,* local registration number, an aircraft's tail number, Coast Guard ID number, vessel name);
- Contact name;
- Contact telephone number; and
- Contact email address.

RECORD SOURCE CATEGORIES:

TRTP records are obtained from the individual and from external law enforcement systems. DHS/CBP may use a number of DHS/CBP databases during the vetting process before individuals will be enrolled and accepted in any trusted traveler program. These databases include the Automated Targeting System (ATS), which contains historical and enforcement data on travelers, and provides a gateway to other sources of data. These other external sources include the Terrorist Screening Database, FBI criminal history, and National Crime and

Information Center outstanding wants/warrants, vehicle and driver's license-related data contained in the International Justice and Public Safety Network's National Law Enforcement Telecommunications System (Nlets) system, and Department of State alien records, lookouts, and status indicators. Vetting results are also based on checks of the FBI's Integrated Automated Fingerprint Identification System for criminal history and IDENT for immigration related records. Trusted traveler applicants from partnering foreign countries will have membership determinations recorded in TRTP that are received by DHS/CBP from their home country's government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To foreign governments, at the request of the individual, for the purpose of applying to that country's trusted traveler program.

J. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency for the purpose of determining an individual's eligibility for membership in a trusted traveler or registered traveler program.

K. To federal and foreign government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security, or to assist in anti-terrorism efforts.

L. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

M. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, which relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by any of the personal identifiers listed in the categories of records above.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

CBP is proposing to NARA the following retention schedules: Trusted traveler data is retained for the duration of an individual's active membership plus three years after an individual's membership is no longer active, either as a result of expiration without renewal at the end of a five-year term, as a result of abandonment, or as a result of CBP termination. DTOPS master file data is retained for twelve years after the account, decal, transponder, or VIN is inactive or deactivated.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/CBP will consider individual requests to determine whether information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and CBP's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' 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 Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about the individual may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and individual's 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, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to CBP. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

Regardless of whether the Privacy Act or JRA applies, travelers who believe that records in this system maintain incorrect or inaccurate information may direct inquiries to the CBP Info Center, 1300 Pennsylvania Avenue NW, Washington, DC 20229. Travelers may also contact the DHS Traveler Redress Inquiry Program (DHS TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *www.dhs.gov/dhs-trip* if they have experienced a travel-related screening difficulty, including those they believe may be related to incorrect or inaccurate information retained in their record(s).

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2) seeks to exempt the law enforcement related records, including information from other law enforcement databases that support the DHS/CBP membership decision, and the law enforcement risk assessment worksheet that have been created during the background check and vetting process, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), seeks to exempt records created during the background check and vetting process from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H),(e)(4)(I); and (f).

Also, the Privacy Act requires DHS maintain an accounting of such disclosures made pursuant to all routine uses. However, disclosing the fact that CBP has disclosed records covered by this SORN to an external law enforcement and/or intelligence agency may negatively affect and interfere with ongoing law enforcement, intelligence, or national security activity. As such, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), DHS will claim an exemption from (c)(3), (e)(8), and (g)(1) of the Privacy Act, as is necessary and appropriate to protect this information.

In addition, when a record contains information from other exempt systems of records, DHS/CBP will claim the same exemptions for that record as are claimed for the original systems of records and will claim any additional exemptions that this notice delineates.

Finally, in its discretion, CBP may not assert any exemptions with regard to accessing or amending an individual's application data in a trusted or registered traveler program or accessing their final membership determination in the trusted traveler programs.

HISTORY:

DHS/CBP–002 Global Enrollment System, 78 FR 3441 (January 18, 2013); DHS/CBP–002 Global Enrollment System of Records, 71 FR 20708 (April 21, 2006).

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04980 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2019–0039]

Privacy Act of 1974; System of Records

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

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''Department of Homeland Security/U.S. Customs and Border Protection-026 Explorer Program System of Records.'' This system of records allows the DHS/U.S. Customs and Border Protection (CBP) to collect and maintain records on individuals who apply for, participate in, or sponsor a minor dependent for the CBP Law Enforcement Explorer Program, a work-based volunteer program for young adults interested in learning about law enforcement. The program gives individuals ages 14–18 the opportunity to learn about law enforcement careers and serves as a stepping-stone for a career in law enforcement. The Explorer Program is chartered by Learning for Life/Boy Scouts of America as an educational resource program and sponsored by CBP as a personnel recruitment program.

This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before April 10, 2020. This new system will be effective April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number USCBP–2019–0039 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCBP–2019–0039. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek (202) 344–1610, *privacy.cbp@cbp.dhs.gov,* CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.3D, Washington, DC 20229. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/CBP proposes to establish a new DHS system of records titled, ''DHS/CBP–026 Explorer Program System of Records.''

The CBP Explorer Program allows youth between the ages of 14 and 18 to learn about law enforcement careers and serves as a stepping-stone for a career in law enforcement. The Explorer Program is chartered by Learning for Life/Boy Scouts of America (LFL/BSA) as an educational resource program and sponsored by CBP as a personnel recruitment program. All members of the CBP Explorer Program are members of the LFL/BSA. In order to participate, applicants must submit information to CBP related to their eligibility for the program. A variety of forms are required as part of the application package, including general application forms, consent forms and waivers, medical releases, and background check authorizations. For applicants under the age of 18, a parent or legal guardian is required to provide information about him or herself as part of the application process. Parents and legal guardians are also subject to background checks during the application process to obtain and verify information provided by applicants. Candidates accepted to the program attend a 10-week training academy and are then posted with the Office of Field Operations at Ports of Entry and/or with U.S. Border Patrol at Border Patrol stations. Explorers participate in regular meetings, activities, and trainings at their post until they ''age out'' or resign from the Program.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–026 Explorer Program System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP–026 Explorer Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-026 Explorer Program System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

DHS/CBP maintains records at individual CBP Office of Field Operations Field Offices or Ports of Entry; U.S. Border Patrol Sectors or Stations; and CBP Headquarters at 1300 Pennsylvania Avenue NW, Washington, DC 20229.

SYSTEM MANAGER(S):

Director of Field Operations for each Office of Field Operations location, and Sector Chief for each U.S. Border Patrol Sector location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of authority; 5 U.S.C. 3111, Acceptance of volunteer service; 44 U.S.C. 3101, Records management by agency heads, general duties; Federal Information Security Act (Pub. L. 104–106, section 5113); E-Government Act (Pub. L. 104–347, section 203); Paperwork Reduction Act of 1995 (44 U.S.C. 3501); Government Paperwork Elimination Act (44 U.S.C. 3504); Homeland Security Presidential Directive-12, Policies for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Act of 1949, as amended (40 U.S.C. 521); the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, Section 3001 (50 U.S.C. 3341); Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons, as amended by Executive Order 13478; Homeland Security Act of 2002, Public Law 107–296, as amended (6 U.S.C. 341).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect information on applicants, participants, and parents/legal guardians sponsoring a dependent for participation in the CBP Explorer Program, and any references provided on the applications, to ensure that (1) applicants meet the required qualifications for program participation; that (2) applicants and their parents and legal guardians, if appropriate, do not have a criminal history that would preclude them from accessing CBP personnel and facilities; and (3) ensure the safety and welfare of program participants. CBP uses information from Explorer Program participants to administer the program and to monitor the participant's progress and achievements, and to ensure that CBP can attend to the participant's medical and other needs if they arise while the individual is participating in program trainings and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals within this system include (1) potential applicants to the Explorer Program who submit preliminary information to CBP; (2) applicants who have submitted partial or complete application materials; (3) current and former participants in the Explorer Program; (4) parents and legal guardians of Explorer applicants and participants, as well as others authorized by the parent or legal guardian to pick up or otherwise provide support to the participant; and (5) individuals serving as references or providing information to verify eligibility for Explorer program participation.

CATEGORIES OF RECORDS IN THE SYSTEM:

CBP maintains the following information related to the Explorer Program:

- Applicant first name, middle initial, and last name;
- Applicant age and date of birth;
- Applicant place of birth;
- Identification information (driver's license, birth certificate, or other identifying information);
- Social Security number (Applicant/Participant/Parents/Guardians);
- Photocopies of any relevant identity documents;
- Applicant Citizenship status;
- Applicant Ethnic background;
- Photos or videos provided during the Explorer's tenure in the Program;
- Emergency contact information;
- Applicant Gender;
- Applicant Phone numbers;
- Applicant Email addresses;
- Notary Information, if required for certain application forms;
- Applicant Mailing addresses, including ZIP code;
- Applicant/participant education information;
- Applicant/participant employment information;
- Applicant/participant annual health and medical information, including but not limited to: Medical history; current and prior medical conditions and diagnoses; symptoms reported and exhibited treatment and prescription information; special needs and accommodations; health insurance information; and other records related to the assessment and treatment of a health or medical issue;
- Parent/guardian general contact information;
- Parent/guardian employment information;
- Applicant/participant and parent/guardian general consent information;
- Background check results for applicants and parents/guardians (clear/no clear response only; no details or copies of the background check are maintained among these records); and
- General information related to the individuals' training and performance in the program.

RECORD SOURCE CATEGORIES:

DHS/CBP may obtain records about applicants, and parents/guardians directly from the individual, or through Learning for Life/Boy Scouts of America.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1)

responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To an organization or person in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular criminal or terrorist activity or conspiracy, or when the information is relevant to the protection of life, property, or other vital interests of a person.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

L. To any nonprofit organization or entity, such as ''Learning for Life'' or the ''Boy Scouts of America,'' to the extent necessary to administer the CBP Explorer Program and ensure the health, safety, and welfare of program participants.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/CBP retrieves records by an individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

CBP is in the process of drafting a proposed records retention schedule for the information maintained in the CBP Explorers SORN. CBP will delete records when superseded, obsolete, or when an individual submits a request to the agency to remove the records. In general, and unless it receives a request for removal, CBP will maintain these records for 2 years after the individuals leave the program, at which point the records will be considered obsolete and deleted and shredded.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and CBP's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' 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 Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act (FOIA).

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's 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, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have the information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due

to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04981 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCIS–2019–0019]

Privacy Act of 1974; System of Records

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Rescindment of a System of Records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) is giving notice that it is rescinding the following Privacy Act system of records notices, ''Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)–002 Background Check Service System of Records'' and ''DHS/USCIS–003 Biometric Storage System'' and has consolidated both system of record notices into ''DHS/USCIS–018 Immigration Biometric and Background Check Records System of Records,'' (July 31, 2018, 83 FR 36950).

DATES: These changes will take effect upon publication.

ADDRESSES: You may submit comments, identified by docket number USCIS–2019–0019 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCIS–2019–2019. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Donald K. Hawkins, *USCIS.PrivacyCompliance@uscis.dhs.gov,* (202) 272–8030, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW, Washington, DC 20529. For privacy questions, please contact: Jonathan R. Cantor, *Privacy@hq.dhs.gov,* (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is rescinding the system of records notices, ''DHS/U.S. Citizenship and Immigration Services (USCIS)–002 Background Check Service System of Records,'' (June 5, 2007, 72 FR 31082) and ''DHS/USCIS–003 Biometric Storage System,'' (April 6, 2007, 72 FR 17172), and has consolidated both system of records notices into ''DHS/USCIS–018 Immigration Biometric and Background Check Records System of Records,'' (July 31, 2018, 83 FR 36950).

USCIS will continue to collect and maintain biometric and associated biographic information to assist USCIS with determining an individual's eligibility for an immigration request. USCIS captures biographic and biometric data from applicants, petitioners, sponsors, beneficiaries, or other individuals making immigration requests, to facilitate three key operational functions: (1) Enroll, verify, and manage an individual's identity; (2) conduct criminal and national security background checks; and (3) produce benefit cards/documents as a proof of benefit. USCIS also uses the information to support data sharing initiatives between DHS components, other U.S. Government agencies and foreign partners in order to prevent terrorism, including terrorist travel; prevent serious crime and other threats to national security and public safety; and assist in the administration and enforcement of immigration laws.

DHS/USCIS–002 covered the collection, use, maintenance, and dissemination of information derived from background check requests and results of individuals seeking USCIS benefits, including individuals over the age of 18 residing in a prospective adoptive parent's household. DHS/USCIS–003 covered the collection, use, maintenance, and dissemination of all biometric and associated biographic data used by USCIS to conduct background checks, facilitate card production, and accurately identify individuals who submit an immigration request. USCIS uses these records to assist it with making eligibility determinations, which will result in the approval or denial of an immigration request.

As such, DHS will continue to collect and maintain biometric and associated biographic information to assist USCIS with determining an individual's eligibility for an immigration request, and will rely upon DHS/USCIS–018.

Rescinding DHS/USCIS–002 and DHS/USCIS–003 and consolidating into the new system of records notice will have no adverse impacts on individuals, but will provide transparency and promote the overall streamlining and management of DHS Privacy Act record systems.

SYSTEM NAME AND NUMBER:

Department of Homeland Security/U.S. Citizenship and Immigration Services–002 Background Check Service System of Records and Department of Homeland Security/U.S. Citizenship and Immigration Services–003 Biometric Storage System.

HISTORY:

Department of Homeland Security/U.S. Citizenship and Immigration Services–002 Background Check Service System of Records, (June 5, 2007, 72 FR 31082), and Department of Homeland Security/U.S. Citizenship and Immigration Services–003 Biometric

Storage System, (April 6, 2007, 72 FR 17172).

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04977 Filed 3–10–20; 8:45 am]

BILLING CODE 9111–17–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0061]

Privacy Act of 1974; System of Records

AGENCY: Office of Immigration Statistics, Department of Homeland Security.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records.'' This system of records allows DHS/Office of Immigration Statistics (OIS) to collect and maintain records on members of the public for whom federal agencies have collected information related to individuals' interactions with the immigration system. Information collected includes that pertaining to the granting of immigration requests, such as nonimmigrant admissions, grants of lawful permanent residence, changes in legal status, and naturalizations, as well as information related to the enforcement of immigration law, from across DHS and other federal immigration agencies. Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**.

This newly established system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before April 10, 2020. This new system will be effective upon publication. Routine uses will be effective April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2019–0061 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2019–0061. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''Department of Homeland Security/ALL–045 Statistical Immigration Data Production and Reporting System of Records.'' Federal statutes, including the Immigration and Nationality Act of 1965, as amended, and the Homeland Security Act of 2002, as amended, as well as Executive Orders and congressional mandates, require DHS's Office of Immigration Statistics (OIS) to regularly prepare an extensive series of analytical and statistical reports on border security, immigration enforcement activities, refugee and asylum claims, and other immigration events. For instance, in December 2015, Congress's explanatory statement accompanying DHS's 2016 appropriations legislation specifically directed the DHS Office of Strategy, Policy, and Plans (which includes OIS), to report on the ''enforcement lifecycle,'' defined as ''the full scope of immigration enforcement activities, from encounter to final disposition, including the use of prosecutorial discretion.'' Further, Congress directed that ''[a]ll data necessary to support a better picture of this lifecycle and the Department's effectiveness in enforcing immigration laws shall be considered and prioritized, including appropriate data collected by the [Executive Office for Immigration Review (EOIR)] at the Department of Justice [DOJ].''

Fulfilling these mandates requires OIS to collect data related to the granting of immigration requests, such as nonimmigrant admissions, grants of lawful permanent residence, changes in legal status, naturalizations, and information related to the enforcement of immigration law, from across DHS and other federal immigration agencies. These data contain both personally identifiable information (PII) and sensitive PII (SPII). OIS is establishing this system of records notice (SORN) to inform the public of its collection and use of PII to create its statistical products.

DHS's immigration Components and other federal immigration agencies initially collect this data for operational purposes in accordance to their own mission and authorities. While the data that are first collected for operations purposes are covered by their respective SORNs, OIS is developing its own SORN to cover the records it creates and has aggregated as they enter OIS's analytical environment. Once in this environment, OIS processes the records in preparation for use in statistical analysis. Analyses may include merging of records from these distinct data systems to create new records.

Data within this system of records are intended only for analytical and statistical purposes, and are not intended for operational uses. This is reflected in the routine uses, which allow for the use of and sharing of data in this system of records solely for these purposes.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions, except for data that the DHS Information Sharing and Safeguarding Governance Board (ISSGB) has granted a waiver from this requirement on behalf of the Secretary of Homeland Security. In addition, DHS/OIS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by

the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–045 Statistical Immigration Data Production and Reporting System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/ALL–045 Statistical Immigration Data Production and Reporting.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the U.S. Citizenship and Immigration Services Headquarters on behalf of the Office of Immigration Statistics and at the Office of Immigration Statistics in Washington, DC.

SYSTEM MANAGER(S):

The system manager is the Deputy Assistant Secretary, Office of Immigration Statistics, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Immigration and Nationality Act of 1965, as amended (8 U.S.C. 1103); Section 709 of the Homeland Security Act of 2002, as amended (6 U.S.C. 349(f)); Section 1092 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, Title X, Sec. 1092, December 23, 2016); 6 U.S.C. 223(f); Executive Order 13767, Border Security and Immigration Enforcement Improvements; and Executive Order 13768, Enhancing Public Safety in the Interior of the United States.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to support DHS/OIS in fulfilling its mandate to regularly prepare an extensive series of analytical and statistical reports on border security, immigration enforcement activities, refugee and asylum claims, and other immigration requests and events.

CATEGORIES OF INDIVIDUALS COVERED:

Categories of individuals covered by this system include individuals and their dependents (and individuals acting on their behalf such as attorneys) interacting with the U.S. Government in its role of implementing and enforcing its immigration system and laws, including those who have applied for immigration requests or received immigration benefits, such as adjustment of status to lawful permanent resident, and those who are subject to immigration enforcement actions, including those arrested, detained, or removed from the United States for criminal or administrative violations of the Immigration and Nationality Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Alien Registration Number(s) (A-Number);
- Receipt file number(s);
- Full name and any aliases used;
- Known or possible addresses;
- United States destination address;
- Phone numbers and email addresses;
- Date of birth;
- Place of birth (city, state, and country);
- Countries of citizenship and nationality(ies);
- Ethnic origin;
- Languages spoken;
- Religion;
- Gender;
- Marital and family status;
- Place of marriage;
- Government-issued identification (*e.g.,* passport information, permanent resident card, Trusted Traveler Program card) and travel document information, such as document type, issuing country or entity, document number, and expiration date;
- Arrival/Departure information (*e.g.,* record number, expiration date, class of admission);
- Federal Bureau of Investigation (FBI) Identification Number;
- Fingerprint Identification Number or other biometric identifying numbers;
- Digital fingerprints (*i.e.,* numerical identification number);
- Other unique identifying numbers (*e.g.,* federal, state, local, and tribal identification numbers);
- Detention data, including: Location, facility, transportation information, identification numbers, book-in/book-out dates and times, custody recommendation, information about an alien's release from custody on bond, recognizance, or supervision, information related to prosecutorial discretion determinations, and other alerts;
- Immigration enforcement and court case-related data, including: Descriptive information of events involving alleged law violations; arrests and charges; case number; status; record number; case category; proceedings and immigration judge decisions; schedule info; court appointments; bonds; motions; appeals; disposition; case agent; date initiated and completed;
- Immigration status and history (*e.g.,* citizenship/naturalization certificate number, removals, explanations);
- Visa information;
- Travel history;
- Port(s) and clearance processing lane or location of crossing, secondary examination status, date(s) and time(s) of entry, status at entry(ies);
- Carrier-related information, such as airline carrier code, flight number, vessel name and country of registry/flag, individual's status on board the aircraft, and the location where passengers and crew members will undergo customs and immigration clearance by CBP;
- Education history;
- Occupation and employment history;
- Professional accreditation information;
- Criminal history;
- Benefit case processing information, such as date applications were filed or received by USCIS, application/petition status, and fee receipt data;
- Specific benefit eligibility information as required by the benefit being sought;
- Claimed basis of eligibility for benefit(s) sought;
- Notices and communications, including Appointment notices, Receipt notices, Requests for evidence, Notices of Intent to Deny (NOID), Decision notices and assessments, or proofs of benefit;
- Information on preparers, representatives, and interpreters, including name, law firm/recognized organization, and physical and mailing addresses;
- Electronic biographic information on individual applicants for admission to the United States as refugees, Special Immigrant Visa individuals electing resettlement benefits, and U.S.-based relatives, including: A-Number, name, date and place of birth, nationality, U.S. ties, resettlement agency, arrival date, relationship to principal applicant, and destination city and state; and
- One-time person-level identifer created and used by OIS to link records

across datasets each time the data are matched.

RECORD SOURCE CATEGORIES:

Records are obtained from operational immigration Components within DHS, including U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), as well as the Executive Office for Immigration Review (EOIR), within the Department of Justice (DOJ), and the Department of State (DOS). Source systems SORNs that cover these records in their native form include:

- DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, 82 FR 43556 (September 18, 2017);
- DHS/USCIS–010 Asylum Information and Pre-Screening System of Records, 80 FR 74781 (November 30, 2015);
- DHS/USCIS–007 Benefits Information System, 84 FR 54622 (October 10, 2019);
- DHS/CBP–007 Border Crossing Information, 81 FR 89957 (December 13, 2016);
- DHS/CBP–023 Border Patrol Enforcement Records (BPER), 81 FR 72601 (October 20, 2016);
- DHS/CBP–011 TECS, 73 FR 77778 (December 19, 2008);
- DHS/ICE–011 Criminal Arrest Records and Immigration Enforcement Records (CARIER) System of Records, 81 FR 72080 (October 19, 2016);
- EOIR–001 Records and Management Information System, 69 FR 26179 (May 11, 2004), and as amended by 82 FR 24147 (May 25, 2017); and
- State-59 Refugee Case Records, 77 FR 5865 (February 6, 2012).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

H. To appropriate Federal Governmental agencies, with the approval of the Chief Privacy Officer, when OIS is aware of a need to use relevant data for purposes of testing new technology related to its own mission.

I. To the Departments of Health and Human Services, Justice, Labor, and State, to support analytical, reporting, and statistical needs and mission related to immigration enforcement and benefits processing, provided that the records support DHS programs and activities that relate to the purpose(s) stated in this SORN, and that they will not be used in whole or in part in making any determination regarding an individual's rights, benefits, or privileges under federal programs, and are not published publicly in any manner that identifies an individual.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/OIS stores records in this system electronically in secure facilities. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

OIS does not retrieve records by personal identifier for the purpose of making decisions about individuals. However, records are retrieved by a one-time person-level identifer created and used by OIS to link records across datasets each time the data are matched to ensure the data are correctly attributed to one individual across multiple datasets. The purpose of this is to enable OIS to examine large trends in groups or cohorts of those who interact with the immigration system. While these analyses will inform high-level strategic operational planning, data OIS possesses are not used directly for operational purposes, such as the vetting of an individual or the adjudication of a benefit. OIS data are strictly used for statistical analysis and reporting. However, records may be retrieved by any value or range of values of any field, including personal identifiers. Please see the categories of records section of this SORN for fields within this system of records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

OIS has an established NARA-approved retention schedule, N1–563–09–3 (January 1, 2009), which classifies OIS records into several categories of records. Records containing PII that OIS uses to complete its statistical analyses and reporting fall into Section 6: ''Research and background material used to produce the Yearbook of Immigration Statistics.'' The scheduled

disposition provides for the data to be evaluated for remaining business need or destruction three years following the end of the fiscal year in which the yearbook is produced. However, the schedule authorizes longer retention periods if records are needed for business use beyond this period. Due to many tables in the Yearbook of Immigration Statistics and accompanying reports containing tabulations of ten years, the need in some cases for OIS to compare new records with records going back several decades, and the unknown nature of future requests and necessary future comparisons, a large portion of the data OIS maintains is kept for longer than three years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/OIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. OIS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable. These exemptions apply to the extent that information in this system of records is recompiled or is created from information contained in other systems of records with appropriate exemptions in place. However, DHS/OIS will consider individual requests with the original data owner to determine whether or not information may be released. Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' 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 Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about an individual may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's 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, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of DHS he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 6 CFR part 5, Appendix C, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(4), has exempted records created and aggregated by OIS in this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j)(2) and (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

None.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04978 Filed 3–10–20; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0059]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''Department of Homeland Security/ALL–044 DHS eRulemaking System of Records.'' DHS eRulemaking allows the public to search, view, download, and comment on all DHS rulemaking and notice documents in one central online system. It consists of a public facing interface, *www.regulations.gov,* and a portal visible to DHS, called the Federal Docket Management System (FDMS). This system of records notice covers the various records maintained by the Department of Homeland Security and its Components pertaining to written data, views, or arguments submitted to the Department. This newly established system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before April 10, 2020. This new system will be effective upon publication. New or modified routine uses will be effective April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2019–0059 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
• *Fax:* 202–343–4010.
• *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2019–0059. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan R. Cantor, (202) 343–1717, *Privacy@hq.dhs.gov,* Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In October 2002, the eRulemaking Program was established as a cross-agency initiative under Section 206 of the E-Government Act of 2002. The eRulemaking system, managed by the General Services Administration, effective as of October 1, 2019, is a centralized repository for all Federal rulemaking dockets, including Notices of Proposed Rulemaking, Interim Rules, supporting materials such as scientific or economic analyses, and public comments, as well as for non-rulemaking dockets, such as Notices. It consists of a public facing interface, *www.regulations.gov,* and a portal visible to DHS, called the Federal Docket Management System (FDMS). The Federal Docket Management System is a Federal-wide document management system. DHS employees may self-register to use *FDMS.gov* and will only see dockets belonging to their Component.

Persons who use eRulemaking to submit a comment on a DHS or a DHS component Federal rulemaking may be asked to provide name and contact information (email or mailing address). If that submission meets all requirements, as determined by DHS, it will be posted on the public eRulemaking website—*http://www.regulations.gov*—for public viewing, and all the contents of the posted comment will be searchable. eRulemaking provides a full text search capability, including any name and identifying information submitted in the body of the comment. Names of individuals and organizations submitting comments using the eRulemaking system, if names are provided, will be posted on the *http://www.regulations.gov* site with their respective comments for public viewing. Contact information (such as email or mailing address) will not be available for public viewing, unless the submitter includes that information in the body of the docket submission. DHS does retain submitted contact information as part of this system in FDMS.

DHS may choose not to post certain types of information contained in a docket submission yet preserve the entire submission to be reviewed and considered as part of the rulemaking docket by the Component. For example, comments containing material restricted from disclosure by Federal statute may not be publicly posted or viewable on *http://www.regulations.gov,* but will be retained and considered by DHS. Similarly, if a person chooses to submit a comment on a rulemaking through the mail rather than through *http://www.regulations.gov,* or if a person submits a comment through mail after being directed to do so by DHS instructions because of sensitive contents of that individual's comment (*e.g.,* if it constitutes Chemical-terrorism Vulnerability Information, Protected Critical Infrastructure Information, or Sensitive Security Information), that comment may not appear on the public website, but will be retained and considered by DHS as part of the rulemaking process.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–044 DHS eRulemaking may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate Federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–044 eRulemaking System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/ALL–044 eRulemaking.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the DHS Headquarters in Washington, DC, and Component offices in DHS, in both Washington, DC and field offices. Records received through *www.regulations.gov* or uploaded to FDMS are retained at GSA Headquarters in Washington, DC.

SYSTEM MANAGER(S):

Associate General Counsel for Regulatory Affairs, *dhsogcregulations@hq.dhs.gov,* Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. 3501 note); 5 U.S.C. § 553; 6 U.S.C. 101, *et seq.*

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to permit members of the public to review and comment on DHS rulemakings and notices. DHS will use any submitted contact information to seek clarification of a comment, respond to a comment when warranted, and for such other needs as may be associated with the rule making or notice process.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who provides personally identifiable information to DHS when commenting on a DHS rulemaking or notice and individuals mentioned or identified in the body of a comment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records contained in eRulemaking include:

- Name
- Mailing Address
- Email Address
- Phone Number
- Fax Number
- Representative Name
- Organization name
- Additional information provided in the submitted comment and other supporting documentation provided in response to a DHS rulemaking or notice.

RECORD SOURCE CATEGORIES:

DHS receives records from members of the public; representatives of Federal, state, or local governments; non-government organizations; and the private sector.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other Federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate Federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To the General Services Administration, as the system manager of FDMS, to provide technical or other administrative support.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS may be retrieve records by keyword, document identification number, comment tracking number, document title, Code of Federal Regulation (CFR) (search for a specific title within the CFR), CFR citation (search for the part or parts within the CFR title being searched), document type, document sub type, date posted, and comment period end date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

DHS retains records covered by the eRulemaking system in accordance with General Records Schedule (GRS) 4.2, Item 001, and 6.6, Item 30. Public comments received in response to a proposed SORN are destroyed three years after publication but may be kept longer if required for business use. Public comments received in response to a proposed rule are destroyed one year after publication of the final rule or decision to abandon publication but may be kept longer if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The GSA information technology system that hosts *regulations.gov* and FDMS is in a facility protected by physical walls, security guards, and requires identification badges. Rooms housing the information technology system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access

control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

Records in FDMS are maintained in a secure, password-protected electronic system that uses security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification and authentication of users.

DHS safeguards records maintained outside of FDMS and *www.regulations.gov* according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer or Component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' 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 Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the JRA provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's 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, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–04983 Filed 3–10–20; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2663–20; DHS Docket No. USCIS–2013–0006]

RIN 1615–ZB77

Extension of the Designation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Somalia for Temporary Protected Status (TPS) for 18 months, from March 18, 2020, through September 17, 2021. The extension allows currently eligible TPS beneficiaries to retain TPS through September 17, 2021, so long as they otherwise continue to meet the eligibility requirements for TPS. This notice also sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) to re-register for TPS and to apply for Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a September 17, 2021, expiration date to eligible beneficiaries under Somalia's TPS designation who timely re-register and apply for EADs under this extension.

DATES: *Extension of Designation of Somalia for TPS:* The 18-month extension of the TPS designation of Somalia is effective March 18, 2020, and will remain in effect through September 17, 2021. The 60-day re-registration period runs from March 11, 2020 through May 11, 2020. (Note: It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- You may contact Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit

the USCIS TPS web page at *www.uscis.gov/tps.* You can find specific information about this extension of Somalia's TPS designation by selecting ''Somalia'' from the menu on the left side of the TPS web page.

- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Through this notice, DHS sets forth procedures necessary for eligible nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to aliens who have previously registered for TPS under the designation of Somalia and whose applications have been granted.

For aliens who have already been granted TPS under Somalia's designation, the 60-day re-registration period runs from March 11, 2020 through May 11, 2020. USCIS will issue new EADs with a September 17, 2021, expiration date to eligible Somali TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs before their current EADs expire on March 17, 2020. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of these EADs previously issued under the TPS designation of Somalia for 180 days, through September 13, 2020. Therefore, TPS beneficiaries who have EADs with: (1) A March 17, 2020 expiration date and (2) an A–12 or C–19 category code, can show these EADs as proof of continued employment authorization through September 13, 2020. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Employment Eligibility Verification (Form I–9), E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Aliens who have a Somalia-based Application for Temporary Protected Status (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of March 11, 2020 do not need to file either application again. If USCIS approves an alien's Form I–821, USCIS will grant the alien TPS through September 17, 2021. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the alien a new EAD that will be valid through the same date. There are currently approximately 454 beneficiaries under Somalia's TPS designation.

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible aliens without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

When was Somalia designated for TPS?

Somalia was initially designated on September 16, 1991, on the basis of extraordinary and temporary conditions in Somalia that prevented nationals of Somalia from safely returning. *See* Designation of Nationals of Somalia for Temporary Protected Status, 56 FR 46804 (Sept. 16, 1991). Somalia's designation for TPS has been consecutively extended by multiple Administrations since its initial designation in 1991. Additionally, Somalia was newly designated for TPS in 2001, based on new extraordinary and temporary conditions. *See* Extension and Redesignation of Somalia under Temporary Protected Status Program, 66 FR 46288 (Sept. 4, 2001). In 2012, Somalia was again newly designated for TPS on the basis of extraordinary and temporary conditions and under the separate basis of ongoing armed conflict. *See* Extension and Redesignation of Somalia for Temporary Protected Status, 77 FR 25723 (May 1, 2012). Somalia's 2012 TPS designation was subsequently extended in 2013, 2015, 2107, and 2018. *See* Extension of the Designation of Somalia for Temporary Protected Status, 83 FR 43695 (Aug. 27, 2018).

What authority does the Secretary have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The decision

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any

to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, or termination of, or extension of, a designation. The Secretary, in his discretion, may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that the foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Somalia through September 17, 2021?

DHS has reviewed conditions in Somalia. Based on the review, the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Somalia's TPS designation remain.

Despite Somalia's peaceful political transition in 2017, the country is currently a terrorist safe haven, and the security situation remains volatile, with armed conflict continuing in 2018 and 2019. Civilians in Somalia continue to be displaced, injured, and killed as a result of conflicts involving government forces, clan militias, the African Union Mission in Somalia (AMISOM), al Shabaab, and a splinter group of the self-described Islamic State (IS-Somalia). The United States has provided significant support for AMISOM and Somali efforts to counter al Shabaab, and U.S. military personnel advise, assist, and accompany regional forces during counterterrorism operations. U.S. air strikes in Somalia against members of al Qaeda and al Shabaab continued in 2018 and 2019 as well. Al Shabaab currently controls many rural areas in Somalia. IS-Somalia expanded activities in 2018 from its primary base in Somalia's Puntland region, establishing influence in Mogadishu. Both al Shabaab and IS-Somalia used a range of asymmetric tactics against AMISOM and Somali security forces, members of parliament, and other government personnel, as well as soft targets such as hotels, restaurants, and cafes. Al Shabaab launched multiple, often coordinated attacks on a regular basis throughout the country, using suicide bombers, Vehicle Borne Improvised Explosive Devices, ambush-style raids, targeted killings, and mortar attacks. On December 28, 2019, al Shabaab launched a suicide car bomb attack in Mogadishu. At least 79 civilians, including many students, were killed and at least 90 were wounded. It was reportedly the worst terrorist attack in Mogadishu since 2017. IS-Somalia carried out a number of roadside Improvised Explosive Device and small arms attacks, suicide bombings, and targeted killings, primarily in Bosasso in Puntland and the Bakara Market area of Mogadishu, as well as in smaller towns. The United Nations Assistance Mission in Somalia reported 982 civilian casualties from January-October 2018, over half from al Shabaab attacks.

Civilians continue to suffer human rights abuses and violations, including those involving unlawful or arbitrary killings by security forces, clan militias, and unknown assailants; forced disappearances; torture; arbitrary and politically motivated arrests and detentions; forced evictions; sexual abuse; and the forced recruitment of children. Civilian movements are severely limited in many areas of the country due to regular and active hostilities or military operations, and al Shabaab restrictions on civilians leaving territory under its control.

According to a needs assessment conducted by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), approximately 4.2 million Somalis—37 percent of the country's estimated population of 11.3 million—required humanitarian assistance in 2019. UNOCHA reported that this represents a reduction as compared to previously reported figures, which UNOCHA attributed to improvements in the humanitarian situation, a more focused definition of humanitarian needs, and a change in how humanitarian needs are calculated.

As of December 2019, more than 2.6 million people in Somalia were displaced, representing an increase of more than 500,000 from the 2.1 million reported displaced as of April 2018, according to the United Nations High Commissioner for Refugees (UNHCR). Forced evictions, fed by growing population density and rising property prices, as well as weak land tenure protections, continue to negatively affect displaced populations in Somalia. According to the U.S. Department of State (DOS) 2018 Human Rights Report for Somalia, more than 204,000 displaced individuals were forced from their places of shelter in 2018, further undermining humanitarian efforts. 173,255 people were evicted from January-August 2019, with the majority of evictions taking place in Mogadishu.

According to UNHCR, there were 752,038 Somali refugees in neighboring countries as of December 2019. This is a decrease of more than 66,000 from the 819,000 reported refugees in neighboring countries as of May 2018. Since December 2014, more than 91,000 Somali refugees have voluntarily returned to Somalia with the assistance of UNHCR from countries including Djibouti, Eritrea, Kenya, Libya, Sudan, and Yemen. In addition, some 38,000 Somali nationals who had been in Yemen have returned to Somalia since March 2015. According to UNHCR, Somalia hosted 35,523 refugees and asylum seekers, mainly from Ethiopia (21,707) and Yemen (13,259).

Access to medical care continued to worsen in 2018 due to widespread violence, and Somalia's health system remains fragmented, under-resourced, and ill-equipped to provide lifesaving and preventative services. Three million people in Somalia require urgent and essential healthcare services, according to UNOCHA. Women and children are particularly exposed to elevated health risks—Somalia has the world's highest child mortality rate and faces the sixth highest lifetime maternal death risk in the world, also according to UNOCHA.

Somalia experienced signs of economic recovery in 2018. Both the World Bank and the International Monetary Fund reported Gross Domestic Product growth of 2.8 percent. The World Bank projects further growth of 3.0 to 3.5 percent in 2019 and 2020. Nevertheless, an estimated 69 percent of Somalia's population lives in poverty, the sixth highest poverty rate of all countries in the world. In 2018, average

reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

per capita income was $332 U.S. dollars per year, according to the World Bank.

Based upon this review, and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions supporting Somalia's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Somalia and, due to such conflict, requiring the return to Somalia of Somali nationals (or aliens having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Somalia that prevent Somali nationals (or aliens having no nationality who last habitually resided in Somalia) from returning to Somalia in safety, and it is not contrary to the national interest of the United States to permit Somali TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Somalia for TPS should be extended for an 18-month period, from March 18, 2020, through September 17, 2021. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Somalia

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, the conditions supporting Somalia's designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Somalia for 18 months, from March 18, 2020, through September 17, 2021. *See* INA section 244(b)(1)(A), (b)(1)(C); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C).

Chad F. Wolf,

Acting Secretary.

Required Application Forms and Application Fees to Re-Register for TPS

To re-register for TPS based on the designation of Somalia, you must submit an Application for Temporary Protected Status (Form I–821). There is no Form I–821 fee for re-registration. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

Through this **Federal Register** notice, your existing EAD issued under the TPS designation of Somalia with the expiration date of March 17, 2020, is automatically extended for 180 days, through September 13, 2020. Although not required to do so, if you want to obtain a new EAD valid through September 17, 2021, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). If you do not want a new EAD, you do not have to file Form I–765 and pay the Form I–765 fee. If you do not want to request a new EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

If you have a Form I–821 and/or Form I–765 that was still pending as of March 11, 2020, then you do not need to file either application again. If USCIS approves your pending TPS application, USCIS will grant you TPS through September 17, 2021. Similarly, if USCIS approves your pending TPS-related Form I–765, it will be valid through the same date.

You may file the application for a new EAD either prior to or after your current EAD has expired. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by September 13, 2020.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may complete a Request for Fee Waiver (Form I–912). For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

Refiling a TPS Re-Registration Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. USCIS will review this situation to determine whether you established good cause for late TPS re-registration. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *www.uscis.gov/tps.* Following denial of your fee waiver request, you may also refile your Form I–765 with fee either with your Form I–821 or at a later time, if you choose.

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of re-registration, and can wait to seek an EAD until after USCIS has approved your TPS re-registration application. If you choose to do this, to re-register for TPS you would only need to file the Form I–821 with the biometrics services fee, if applicable, (or request a fee waiver).

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you would like to send your application by:	Then, mail your application to:
U.S. Postal Service	U.S. Citizenship and Immigration Services, Attn: TPS Somalia, P.O. Box 6943, Chicago, IL 60680–6943.
A non-U.S. Postal Service courier	U.S. Citizenship and Immigration Services, Attn: TPS Somalia, 131 S Dearborn Street—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us to verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at *www.uscis.gov/tps* under ''Somalia.''

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at *www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833). If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS at *my.uscis.gov/en/appointment/v2.* However, we strongly encourage you first to check Case Status Online or call the USCIS Contact Center for assistance before requesting an appointment online.

Am I eligible to receive an automatic 180-day extension of my current EAD through September 13, 2020, through this Federal Register notice?

Yes. Provided that you currently have a Somalia TPS-based EAD with a marked expiration date of March 17, 2020, bearing the notation A–12 or C–19 on the face of the card under Category, this notice automatically extends your EAD through September 13, 2020. Although this **Federal Register** notice automatically extends your EAD through September 13, 2020, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS.

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?

You can find the Lists of Acceptable Documents on the third page of Form I–9 as well as the Acceptable Documents web page at *www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within 3 days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *www.uscis.gov/I–9Central.*

An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended employment authorization for a new job?'' of this **Federal Register** notice for further information. If your EAD has an expiration date of March 17, 2020, and states A–12 or C–19 under Category, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through September 13, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. If you have an EAD with a marked expiration date of March 17, 2020, that states A–12 or C–19 under Category, and you received a Notice of Action (Form I–797C) that states your EAD is automatically extended for 180 days, you may choose to present your EAD to your employer together with this Form I–797C as a List A document that provides evidence of your identity and employment authorization for Form I–9 through September 13, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. See the subsection titled, ''How do my employer and I complete the Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?'' for further information.

As an alternative to presenting evidence of your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or an acceptable receipt.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though your EAD has been automatically extended, your employer is required by law to ask you about your continued employment authorization, and you will need to present your employer with evidence that you are still authorized to work. Once presented, your employer should update the EAD expiration date in Section 2 of Form I–9. *See* the section ''What corrections should my current employer make to Form I–9 if my employment authorization has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through September 13, 2020. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of your EAD when you initially presented it.

The last day of the automatic extension for your EAD is September 13, 2020. Before you start work on September 14, 2020, your employer is required by law to reverify your

employment authorization in Section 3 of Form I–9. At that time, you must present any document from List A or any document from List C on Form I–9, Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9, and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I–9Central* for the most current version of Form I–9.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Somali citizenship or a Form I–797C showing I re-registered for TPS?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the Lists of Acceptable Documents. Therefore, employers may not request proof of Somali citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with an EAD that has been automatically extended, employers should accept such a document as a valid List A document, so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I–9 using my automatically extended employment authorization for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before September 14, 2020, for Section 1, you should:

a. Check ''An alien authorized to work until'' and enter September 13, 2020 as the expiration date; and

b. Enter your USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

For Section 2, your employer should:

a. Determine if the EAD is auto-extended by ensuring it is in Category A–12 or C–19 and has a Card Expires date of March 17, 2020;

b. Write in the document title;

c. Enter the issuing authority;

d. Enter either the employee's A-Number or USCIS number from Section 1 in the Document Number field on Form I–9; and

e. Write September 13, 2020, as the expiration date.

Before the start of work on September 14, 2020, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my current employer make to Form I–9 if my employment authorization has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to re-inspect your current EAD if the employer does not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a Card Expires date of March 17, 2020. If your employer determines that your EAD has been automatically extended, your employer should update Section 2 of your previously completed Form I–9 as follows:

a. Write EAD EXT and September 13, 2020, as the last day of the automatic extension in the Additional Information field; and

b. Initial and date the correction.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day automatic extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By September 14, 2020, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3. If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9 and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I–9Central* for the most current version of Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by providing the employee's A-Number or USCIS number from Form I–9 in the Document Number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify has automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on September 14, 2020, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at

888–897–7781 (TTY 877–875–6028) or email USCIS at *I–9Central@dhs.gov.* USCIS accepts calls in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A ''Final Nonconfirmation'' (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *www.justice.gov/ier* and on the USCIS and E-Verify websites at *www.uscis.gov/i-9-central* and *www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, TPS beneficiaries presenting an EAD referenced in this **Federal Register** Notice do not need to show any other document, such as an I–797C Notice of Action, to prove that they qualify for this extension. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, and/or that may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

- Your current EAD;
- A copy of your Form I–797C, Notice of Action, for your Form I–765 providing an automatic extension of your currently expired or expiring EAD;
- A copy of your Form I–797C, Notice of Action, for your Form I–821 for this re-registration;
- A copy of your Form I–797, the notice of approval, for a past or current Form I–821, if you received one from USCIS; and
- Any other relevant DHS-issued document that indicates your immigration status or authorization to be in the United States, or that may be used by DHS to determine whether you have such status or authorization to remain in the United States.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an alien has TPS, each agency's procedures govern whether they will accept an unexpired EAD, I–797, or I–94. You should:

a. Present the agency with a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your alien or I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response showing the validity of your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or auto-extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *www.uscis.gov/save.*

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6161–N–03]

Fair Market Rents for the Housing Choice Voucher Program,Moderate Rehabilitation Single Room Occupancy Program, and Other ProgramsFiscal Year 2020; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of revised fiscal year (FY) 2020 fair market rents (FMRs) and discussion of comments on FY 2020 FMRs.

SUMMARY: This notice updates the FY 2020 FMRs for six areas based on new survey data: Asheville, NC HUD Metro FMR Area (HMFA), Eugene-Springfield, OR Metropolitan Statistical Area (MSA),

Portland, ME HMFA, Santa Maria-Santa Barbara, CA MSA, Worcester, MA HMFA, and Guam. Further, HUD responds to comments received on the FY 2020 FMRs.

DATES: *Effective Date:* The revised FY 2020 FMRs for these six areas are effective on April 10, 2020.

FOR FURTHER INFORMATION CONTACT: Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (toll-free).

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff.

For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free) or access the information on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html.* The FY 2020 EXCEL files have been updated to include these revised FMRs and this data is included in our query system by FMR area. For informational purposes, the 50th percentile rents for all FMR areas are updated and published at *http://www.huduser.gov/portal/datasets/50per.html.*

SUPPLEMENTARY INFORMATION: On August 30, 2019 HUD published the FY 2020 FMRs, requesting comments on the FY 2020 FMRs, and outlining procedures for requesting a reevaluation of an area's FY 2020 FMRs (84 FR 45789). This notice revises FY 2020 FMRs for six areas based on data provided to HUD. In addition to providing revised FY 2020 FMRs, this notice also provides responses to the public comments HUD received on the notice referenced above.

I. Revised FY 2020 FMRs

The FMRs appearing in the following table supersede the use of the FY 2019 FMRs for the five areas requesting reevaluation and for Guam, which has been using FY 2020 FMRs. The updated FY 2020 FMRs are based on surveys conducted by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to April 1, 2020.

The FMRs for the affected area are revised as follows:

2020 Fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Asheville, NC HUD Metro FMR Area	$1,039	$1,045	$1,255	$1,717	$2,203
Eugene-Springfield, OR MSA	773	893	1,176	1,696	1,989
Portland, ME HUD Metro FMR Area	1,072	1,167	1,516	1,982	2,413
Santa Maria-Santa Barbara, CA MSA	1,684	1,964	2,324	3,101	3,572
Worcester, MA HUD Metro FMR Area	1,013	1,100	1,398	1,742	1,894
Guam	952	1,043	1,374	1,982	2,412

The FY 2020 FMRs are amended and are available on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html.* The FY 2020 Small Area FMRs (SAFMRs) for metropolitan areas with revised FMRs have also been updated commensurate with the metropolitan area revisions and may be found at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

II. Public Comments on FY 2020 FMRs

A total of 20 comments were received and posted on regulations.gov, *https://www.regulations.gov/docket?D=HUD-2019-0070.* Of the 20 comments received, nine were reevaluation requests for nine FMR areas. HUD granted requests for reevaluation for 8 FMR areas, and rejected one request submitted by a tenant looking for affordable housing in Memphis, TN. HUD could not approve this request because the request was not made by housing agencies administering more than half of the vouchers in the FMR area as required by item 1 in the request for reevaluation procedures in the August 30, 2019 **Federal Register** notice. HUD discussed these requests for reevaluation in a posting available at *https://www.huduser.gov/portal/datasets/fmr/fmr2020/Areas-where-FY2019-;FMRs-Remain-in-Effect.pdf.*

Public housing agencies in the eight areas where HUD agreed to reevaluate the FY 2020 FMRs continued to use FY 2019 FMRs during the reevaluation period as mandated by the Housing Opportunities Through Modernization Act. Five of these eight areas have continued to use FY 2019 FMRs since January 10, 2020 because they provided valid survey data to revise the FY 2020 FMRs. FY 2020 FMRs became effective on January 13, 2020 for the three areas where local survey data was not submitted by the January 10, 2020 cut-off date. HUD published a list of the three FMR areas not providing data on January 13, 2020 stating that the FY 2020 FMRs become effective on January 13, 2020 (*https://www.huduser.gov/portal/datasets/fmr/fmr2020/FMR-Areas-Requesting-Re-evaluation-and-No-Data-Submission.pdf*). This notice provides the reevaluated FY 2020 FMRs for the five areas requesting reevaluation and for Guam.

General Comments

Most of the comments not related to specific areas requesting a reevaluation discussed inaccuracies of the FMRs and a need for more current and local data. *These comments and their responses are discussed in greater detail below.*

Comment: Several commenters suggested that HUD should provide additional funding to PHAs who undertake local area surveys. One comment noted that the cost for address-based mail surveys is in the $5,000 to $10,000 range.

HUD Response: HUD reminds PHAs that paying for local area rent surveys is an eligible expense to be paid from on-going administrative fees or their administrative fee reserve account. The estimate of $5,000 to $10,000 per survey is incorrect. This value is apparently based on a study conducted in 2012 for very small metropolitan areas with fewer than 20,000 rental units. Far fewer than 100 survey cases were acceptable at this time, but no longer because over time HUD has imposed a minimum 100 observation requirement to reduce year to year fluctuations in FMRs. The cost of the survey increases with the size of the FMR, the size of the rental market and the availability and cost of good rental market lists.

Comment: HUD's reliance on setting FMRs at the 40th percentile is flawed because this only works if there is a normal distribution of rental units. Sub-standard housing should be removed

because this only works if there is a normal distribution of rental units. Substandard housing should be removed from the distribution when calculating a 40th percentile rent.

HUD Response: The purpose of using a percentile instead of an average is to account for abnormal distributions. HUD removes responses from the American Community Survey (ACS) when the respondent reports the unit does not have a complete kitchen or complete plumbing to address substandard units. In addition, HUD determines a ''public housing cut-off rent'' to eliminate the bottom end of the distribution of rental units from the ACS before the 40th percentile rent is calculated as a proxy to remove units with low rents that are likely in non-market transactions (*e.g.,* rented from relatives), subsidized (ACS does not ask whether households receive rental subsidies), or are otherwise inadequate in some manner not measured by the ACS. HUD uses a consistent method to calculate this distribution cut off for each HUD region. HUD continues to explore alternatives for removing assisted units from the ACS responses before the 40th percentile rent is calculated for the purpose of calculating FMRs.

Comment: HUD needs to conduct its *own* analysis or research to address market anomalies and account for erratic fluctuations in FMRs between years and by bedroom size.

HUD Response: HUD did conduct research into different methods of calculating the trend factor and implemented metropolitan and regional forecasting into the calculation of the trend factor in the FY 2020 FMRs.

To correct erratic fluctuations in FMRs year over year, HUD has implemented steps to attenuate the fluctuations found in the annually updated survey data. HUD has made methodology changes that call for averaging bedroom ratios over three years of data and averaging base rents over the same period when the data is limited. The statutory directive to use the most recent data available compels HUD to update the data behind each area's FMR calculation when new data is released. Consequently, FMRs will change from year to year in accordance with changes in the underlying survey data. HUD emphasizes that the primary data source for FMRs is a survey (ACS) and while surveyors do their best to select unbiased random samples of the population, sampling error persists within survey statistics.

Comment: Along with inadequate administrative fees, inadequate FMRs result in voucher underutilization nationwide. HUD's methodology for setting FMRs also often results in a reduction of choice and in many places relegates voucher holders to the poorest areas.

HUD Response: HUD's methodology for calculating FMRs has been revised to improve choice in metropolitan areas through the use of Small Area FMRs and in all FMR areas by the use of local or regional trend factors as opposed to one national trend factor. Outside the voucher program, however, especially for programs that only allow for the use of area-wide FMRs, the FMR may cover the cost of units with rent above the 40th percentile found in the poorest of areas.

Comment: HUD should create new administrative mechanisms to cope with inaccurate FMRs.

HUD Response: HUD does have procedures that provide flexibility in the voucher program that allow PHAs to keep payment standards constant when FMRs decline. For areas where rents increase more rapidly than what is captured by the most recent data available to HUD in calculating FMRs, the department provides a mechanism for more recent data collected in a survey to be supplied to HUD. Lastly, HUD has eased the exception payment standard regulations in metropolitan areas to allow for the use of up to 110 percent of the Small Area FMR as an exception payment standard with no approval needed from HUD. The only requirement is for PHAs to notify HUD of their use of Small Area FMRs in this manner. New administrative procedures would have to be developed by the programs other than the Housing Choice Voucher program to allow for use of payment standards to provide additional flexibility. Each program required to use FMRs without similar flexibility to payment standards would have to amend its regulations to allow for flexible application of FMRs if statute permits.

Comment: Adjustments to FMRs must be followed by the commensurate adjustments in the Renewal Funding Inflation Factors (RFIF), particularly in the years following rapid growth and increase in the FMR.

HUD Response: HUD includes revised FMRs in that year's RFIFs. This gives those areas that provided new survey data with an increase in their RFIF in the first year over what they would have had under the FMRs without the revision. In subsequent years, while the survey is still effective, their FMRs will only increase by normal factors, and the RFIFs change accordingly.

Comment: Proper consideration is not being paid by HUD to rapidly escalating market rents; HUD should tie FMR calculations to the qualifier provided in Comprehensive Housing Market Analysis (CMHA) and other such publications. The qualifiers include economy, sales market and rental market and include categorical ranking and description that give more insight into local market conditions than older census survey data.

HUD Response: HUD's Comprehensive Housing Market Analysis (CHMA) and other such publications are undertaken primarily to assess the demand for construction of new housing units over a three-year market horizon. Moreover, CHMAs are not conducted in all areas and are typically not annually updated. Finally, the area over which a CHMA is conducted is at the discretion of HUD's Field Economist organization and may not align with FMR area boundaries. This is to ensure the construction demand estimates provided in the CHMAs are targeted appropriately. These reasons make CHMAs a poor source of data for calculating FMRs. Finally, the FY 2020 appropriations statute directs HUD to undertake a research study to determine alternative methods for calculating FMRs in markets with rapidly rising rents. HUD is in the initial stages of beginning this research effort and expects to have the research completed sometime in 2021.

Comment: HUD should increase transparency of the FMR calculation, especially for FMR areas that are based on local rent surveys. Unless full transparency is provided into the calculations and methodology used in determining FMRs, the argument that HUD cannot use private data is invalid. HUD should publish a forecast at 6 months into the year of the trend factor, so agencies are given plenty of time to plan a rent survey or deal with other negative impacts to funding.

HUD Response: For the FY 2020 FMRs, HUD modified its Documentation System to provide better information for areas that receive an FMR based on current or past surveys.

Comment: HUD should continue to refine its methodology for calculating FMRs. A high priority should be placed on improving the data that is used to derive more accurate FMRs. HUD should explore ''scraping'' local rent data or purchase this data for access to rents in newer Class A properties. HUD should use more timely data when calculating FMRs. In addition, HUD needs to use data to exclude rent controlled units from FMR calculations. Other than various private data sources, HUD could enter into an interagency agreement with the IRS to get

information on monthly rent and size of units from landlord tax filings.

HUD Response: There is no other data on gross rents paid that is consistently collected on a nationwide basis, available to HUD, that is more current than the data we receive through the ACS. Proprietary rental data cannot be used as the basis for the FMR calculations because it is not consistently available for all areas and is not collected in such a way that it is statistically representative of the rental markets it covers. Some of these sources focus on rents for major apartment projects only. Additionally, rents for single family homes, which are at least 30 percent of the rental market in major metropolitan areas and a greater portion in rural areas, are typically compiled from internet-based ads, or the small subset of professionally managed single-family rental units and generally are not representative of the entire rental stock of single family homes. Online listings of rents are similar to newspaper ads which have been excluded as a source of rent data for FMRs since the mid-1980s due to a directive issued by HUD's Inspector General because they do not constitute a statistically representative sample of the rental market for an area.

HUD can only exclude rent control units if it has some basis for determining the scope of rents in an area that are governed by rent control.

The Federal Government invests a substantial amount of resources in collecting socio-economic data through the American Community Survey (ACS). Furthermore, the Census Bureau has statutory advantages in compelling responses to the ACS and receives significantly higher response rates than HUD could achieve if it was to undertake its own survey program. The IRS is prohibited by law from releasing taxpayer information such as rental income, even to other Federal agencies.

Comment: HUD should use the 2017 American Community Survey data to compare the gross rent by FMR area to the FY 2017 FMRs to determine accuracy of FMRs and report back to the industry.

HUD Response: HUD undertook an analysis such as this and reported the results in a recent report to Congress. Please see the section labeled ''Accuracy of FMRs'' in HUD's report ''Proposals To Update the Fair Market Rent Formula'', page 3, available at *https://www.huduser.gov/portal/sites/default/files/pdf/Proposals-To-Update-the-Fair-Market-Rent-Formula.pdf.* Between 2009 and 2016 for areas with sufficiently large ACS recent mover rental unit samples, the ACS-measured 40th percentile gross rents were within 90 to 110 percent of the published FMRs in 83.4 to 94.3 percent of cases. These results do not adjust for more recent improvements in the FMR estimation method.

III. Environmental Impact

This Notice involves establishment of a rate and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: March 5, 2020.

Todd M. Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2020–04996 Filed 3–10–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N029; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Michael McKoy (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse incidental to construction in Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before April 10, 2020.

ADDRESSES: *Obtaining documents:* Documents are available for public inspection by appointment during regular business hours at either of the following locations or by email:

- Atlanta Regional Office, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.
- Alabama Ecological Services Office, U.S. Fish and Wildlife Service, 1208 Main Street, Daphne, AL 36526.
- Email a request to *William_Lynn@fws.gov,* please reference TE46613D–0 in the subject line.

Submitting comments: If you wish to submit comments on any of the documents, you may do so in writing by either of the following methods. Please reference TE46613D–0 in all comments.

U.S. mail: You may mail comments to either of the Fish and Wildlife Service Offices listed above.

Hand-delivery: You may hand-deliver comments to either of the Fish and Wildlife Service Offices listed above.

Email: You may email comments to *david_dell@fws.gov.* Please include your name and email address in your email. If you do not receive an email from us confirming that we have received your message, contact us directly at either telephone number in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: David Dell, Regional HCP and Safe Harbors Coordinator, at the Atlanta Regional Office (see **ADDRESSES**), or by telephone at 404–679–7313, or Mr. William Lynn, Project Manager, at the Alabama Ecological Services Office (see **ADDRESSES**), or by telephone at 251–441–5868. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Michael McKoy (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates;* ABM) incidental to the construction of a single-family home (project) in Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*) To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 50-year ITP to take Alabama beach mice incidental to the conversion of approximately 0.18 acres of occupied Alabama beach mouse habitat to construct a single-family home on a 0.74-acre lot in Baldwin County, Alabama. The applicant proposes to implement standard ABM minimization and mitigation measures to mitigate for take of the species. The standard mitigation and minimization measures include reducing the construction footprint to the maximum extent possible, installing sea turtle-friendly exterior lighting and tinted windows, planting landscaping with native vegetation, and constructing a driveway with materials that will not disperse in a storm surge. The applicant will utilize refuse control measures during construction, as well as restore ABM habitat after tropical storms, and future residents also would be required implement such measures. Free-roaming cats and the use of exterior rodenticide also would be prohibited on the parcel. Prior to engaging in any project activities, the applicant will contribute an in-lieu fee of $2.30-per-square-foot of impacts to the Alabama Coastal Heritage Trust. The fee will be utilized by the Bon Secour National Wildlife Refuge to monitor the ABM or enhance the species' habitat within the refuge.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information may be made available to the public. While you may request that we withhold your information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the Alabama beach mouse and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion as well as that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue ITP number TE46613D–0 to the applicant Michael McKoy.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

William J. Pearson,

Field Supervisor, Alabama Field Office.

[FR Doc. 2020–04958 Filed 3–10–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N030; FXES11140400000–178–FF04E00000]

Endangered and Threatened Wildlife; Incidental Take Permit Application, Habitat Conservation Plan for the Alabama Beach Mouse, Gulf Shores, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the City of Gulf Shores, Alabama (applicant), to modify incidental take permit TE84363C–0 (ITP) under the Endangered Species Act. The ITP authorizes take of the federally listed Alabama beach mouse incidental to construction in Gulf Shores, Alabama. We request public comment on the application, which includes the applicant's proposed modified habitat conservation plan (HCP), and the Service's preliminary determination that the HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before April 10, 2020.

ADDRESSES: *Obtaining Documents:* Documents are available for public inspection by appointment during regular business hours at either of the following locations:

- Atlanta Regional Office, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.
- Alabama Ecological Services Office, U.S. Fish and Wildlife Service, 1208 Main Street, Daphne, AL 36526.
- Email a request to *William_Lynn@fws.gov,* please reference TE84363C–1 in the subject line.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by either of the following methods. Please reference TE84363C–1 in all comments.

U.S. Mail: You may mail comments to either of the Fish and Wildlife Service Offices listed above.

Hand-Delivery: You may hand-deliver comments to either of the Fish and Wildlife Service Offices listed above.

Email: You may email comments to *david_dell@fws.gov.* Please include your name and email address in your email. If you do not receive an email from us confirming that we have received your message, contact us directly at either telephone number in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: David Dell, Regional HCP and Safe Harbors Coordinator, at the Atlanta Regional Office (see **ADDRESSES**) or by telephone at 404–679–7313 or William Lynn, Project Manager, at the Alabama Ecological Services Office (see **ADDRESSES**) or by telephone at 251–441–5868. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from the City of Gulf Shores, Alabama (applicant), to modify an existing 50-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to the construction of a parking lot with associated facilities (project) in Gulf Shores, Alabama. The ITP modification would reduce the amount of take from

0.89 to 0.86 acres of occupied ABM habitat. We request public comment on the application, which includes the proposed modified habitat conservation plan (HCP) and the Service's preliminary determination that the HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests to modify its ITP to authorize take of the ABM via conversion of approximately 0.86 acres of the species' occupied associated with construction of a parking lot with amenities on 1.37 acres of a 5.1-acre parcel in Baldwin County, Alabama. The applicant proposes to implement standard ABM minimization and mitigation measures to mitigate for take of the species. The standard minimization and mitigation measures include, but are not limited to, reducing the construction footprint, shifting the project to the west and north to increase habitat continuity for the species, installing sea turtle-friendly exterior lighting and tinted windows, planting landscaping with native vegetation, and constructing a driveway with materials that will not disperse in a storm surge. The applicant will utilize refuse control measures during construction, as well as restore species' habitat after tropical storms. Free-roaming cats and use of exterior rodenticide also would be prohibited on the parcel. The applicant will conduct on-site monitoring of the Alabama beach mouse population via fall and spring trapping surveys (twice a year) over the remaining term of the ITP. Other minimization and mitigation measures include trapping and relocating ABM, dune enhancement, and restoration and installation of sand fencing. The applicant also would create and contribute to a dune enhancement fund to which future developers could also contribute. The applicant would make an annual contribution to the fund over the span of the ITP. The proceeds from the fund would be used to enhance habitat elsewhere within the city limits where ABM might be found.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment including your personal identifying information may be made available to the public. While you may request that we withhold your information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the proposed minimization and mitigation measures, would have a minor or negligible effect on the Alabama beach mouse and the environment. Therefore, we have preliminarily determined that modification of the incidental take permit would qualify for categorical exclusion and the modified HCP would be ''low effect'' and categorically excluded under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with those of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant individual or cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and comments to determine whether to issue the requested modified permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether to modify the ITP and issue ITP number TE84363C–1 to the City of Gulf Shores.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

William Pearson,

Field Supervisor, Alabama Field Office.

[FR Doc. 2020–04959 Filed 3–10–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–N163; FXES11130100000C4–201–FF01E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 129 Species in Oregon, Washington, Idaho, Hawaii, Montana, California, and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews for 129 species in Oregon, Washington, Idaho, Hawaii, Montana, California, and Nevada under the Endangered Species Act of 1973. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last reviews.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 11, 2020. However, we will continue to accept new information about any species at any time.

ADDRESSES: Submitting Information on Species:

- *Gentner's fritillary:*
- *U.S. mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; or
- *Email: fw1ofwo@fws.gov.*
- *Bull trout, MacFarlane's four-o'clock, and slickspot peppergrass:*
- *U.S. mail:* Project Leader, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S Vinnell Way, Suite 368, Boise, ID 83709; or
- *Email: ifwo@fws.gov.*
- *Any of the 125 species occurring in Hawaii:*
- *U.S. mail:* Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850; or
- *Email: pifwo_admin@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance. For information about the various species, contact the following people.

• *Gentner's fritillary:* Jeff Dillon, Oregon Fish and Wildlife Office, 503–231–6179.

• *Bull trout, MacFarlane's four-o'clock, and slickspot peppergrass:* Kathleen Hendricks, Idaho Fish and Wildlife Office, 208–378–5243.

• *Any of the 125 species occurring in Hawaii:* Megan Laut, Pacific Islands Fish and Wildlife Office, 808–792–9400.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year status reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531, *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year status reviews, refer to our factsheet at *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status reviews, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for these species.

Which species are under review?

This notice announces our active review of the 129 species listed in the table below.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
ANIMALS				
Birds:				
Millerbird, Nihoa	*Acrocephalus familiaris kingi*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Duck, Laysan	*Anas laysanensis*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Akekee	*Loxops caeruleirostris*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Akikiki	*Oreomystis bairdi*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Petrel, Hawaiian	*Pterodroma sandwichensis*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Finch, Laysan	*Telespyza cantans*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Finch, Nihoa	*Telespyza ultima*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Fishes:				
Trout, bull (coterminous U.S. distinct population segment).	*Salvelinus confluentus*	Threatened	Washington, Oregon, Idaho, Nevada, Montana.	64 FR 58910, 11/01/1999.
Snails:				
Snail, Newcomb's	*Erinna newcombi*	Threatened	Hawaii	65 FR 4162, 1/26/2000.
Arachnids:				
Spider, Kauai cave wolf or pee pee maka ole.	*Adelocosa anops*	Endangered	Hawaii	65 FR 2348, 1/14/2000.
Crustaceans:				
Amphipod, Kauai cave	*Spelaeorchestia koloana*	Endangered	Hawaii	65 FR 2348, 1/14/2000.
Insects:				
Fly, Hawaiian picture-wing	*Drosophila musaphilia*	Endangered	Hawaii	71 FR 26835, 5/9/2006.
Fly, Hawaiian picture-wing	*Drosophila sharpi*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
PLANTS				
Flowering Plants:				
No common name	*Amaranthus brownii*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
Painiu	*Astelia waialealae*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Olulu	*Brighamia insignis*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Awikiwiki	*Canavalia napaliensis*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Papala	*Charpentiera densiflora*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haha	*Cyanea asarifolia*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Haha	*Cyanea dolichopoda*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haha	*Cyanea eleeleensis*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haha	*Cyanea kolekoleensis*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haha	*Cyanea kuhihewa*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haha	*Cyanea recta*	Threatened	Hawaii	61 FR 53070, 10/10/1996.
Haha	*Cyanea remyi*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Haha	*Cyanea rivularis*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Cyanea undulata*	Endangered	Hawaii	56 FR 47695, 9/20/1991.
Mapele	*Cyrtandra cyaneoides*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Haiwale	*Cyrtandra limahuliensis*	Threatened	Hawaii	59 FR 9304, 2/25/1994.
Haiwale	*Cyrtandra oenobarba*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Haiwale	*Cyrtandra paliku*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Delissea rhytidosperma*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Naenae	*Dubautia imbricata* ssp. *imbricata*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Naenae	*Dubautia kalalauensis*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Naenae	*Dubautia kenwoodii*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Koholapehu	*Dubautia latifolia*	Endangered	Hawaii	57 FR 20580, 5/13/1992.
Naenae	*Dubautia pauciflorula*	Endangered	Hawaii	56 FR 47695, 9/20/1991.
Naenae	*Dubautia plantaginea* ssp. *magnifolia*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Naenae	*Dubautia waialealae*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Akoko	*Euphorbia eleanoriae*	Endangered	Hawaii	75 FR 18960, 4/13/2010.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
Akoko	*Euphorbia haeleeleana*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
Akoko	*Euphorbia halemanui*	Endangered	Hawaii	57 FR 20850, 5/13/1992.
Akoko	*Euphorbia remyi* var. *kauaiensis*	Endangered	Hawaii	76 FR 15609, 5/5/2011.
Akoko	*Euphorbia remyi* var. *remyi*	Endangered	Hawaii	76 FR 15609, 5/5/2011.
Heau	*Exocarpos luteolus*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Fritillary, Gentner's	*Fritillaria gentneri*	Endangered	Oregon, California	64 FR 69195, 12/10/1999.
Nohoanu	*Geranium kauaiense*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Gouania meyenii*	Endangered	Hawaii	56 FR 55770, 10/29/1991.
No common name	*Hesperomannia lydgatei*	Endangered	Hawaii	56 FR 47695, 9/20/1991.
Kauai hau kuahiwi	*Hibiscadelphus distans*	Endangered	Hawaii	51 FR 15903, 4/29/1986.
Hau kuahiwi	*Hibiscadelphus woodii*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Hibiscus, Clay's	*Hibiscus clayi*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Kokio keokeo	*Hibiscus waimeae* ssp. *hannerae*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Aupaka	*Isodendrion laurifolium*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
No common name	*Kadua st.-johnii*	Endangered	Hawaii	56 FR 49639, 9/30/1991.
No common name	*Keysseria erici*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Keysseria helenae*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Koki'o	*Kokia kauaiensis*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Kamakahala	*Labordia helleri*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Kamakahala	*Labordia lydgatei*	Endangered	Hawaii	56 FR 47695, 9/20/1991.
Kamakahala	*Labordia pumila*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Kamakahala	*Labordia tinifolia* var. *wahiawaensis*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Peppergrass, Slickspot	*Lepidium papilliferum*	Threatened	Idaho	81 FR 55058, 8/17/2016.
Nehe	*Lipochaeta fauriei*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Nehe	*Lipochaeta micrantha*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Nehe	*Lipochaeta waimeaensis*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Lobelia niihauensis*	Endangered	Hawaii	56 FR 55770, 10/29/1991.
Lehua makanoe	*Lysimachia daphnoides*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Lysimachia filifolia*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Lysimachia iniki*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Lysimachia pendens*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Lysimachia scopulensis*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Lysimachia venosa*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Alani	*Melicope degeneri*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Alani	*Melicope haupuensis*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Alani	*Melicope pallida*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Alani	*Melicope paniculata*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Alani	*Melicope puberula*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Alani	*Melicope quadrangularis*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Four-o'clock, MacFarlane's	*Mirabilis macfarlanei*	Threatened	Oregon, Idaho	44 FR 61912, 10/26/1979.
Kolea	*Myrsine knudsenii*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Kolea	*Myrsine linearifolia*	Threatened	Hawaii	61 FR 53070, 10/10/1996.
Kolea	*Myrsine mezii*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Aiea	*Nothocestrum peltatum*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Lau ehu	*Panicum niihauense*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
No common name	*Phyllostegia knudsenii*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Phyllostegia renovans*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Phyllostegia waimeae*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Phyllostegia wawrana*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Hoawa	*Pittosporum napaliense*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Pilo kea lau lii	*Platydesma rostrata*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Bluegrass, Mann's	*Poa mannii*	Endangered	Hawaii	59 FR 56330, 11/10/1994.
Bluegrass, Hawaiian	*Poa sandvicensis*	Endangered	Hawaii	57 FR 20580, 5/13/1992.
No common name	*Poa siphonoglossa*	Endangered	Hawaii	57 FR 20580, 5/13/1992.
No common name	*Polyscias bisattenuata*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Polyscias flynnii*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Polyscias racemosa*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Loulu	*Pritchardia hardyi*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Loulu	*Pritchardia napaliensis*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Loulu	*Pritchardia remota*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
Loulu	*Pritchardia viscosa*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Kopiko	*Psychotria grandiflora*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Kopiko	*Psychotria hobdyi*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Kaulu	*Pteralyxia kauaiensis*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Remya kauaiensis*	Endangered	Hawaii	56 FR 1450, 1/14/1991.
No common name	*Remya montgomeryi*	Endangered	Hawaii	56 FR 1450, 1/14/1991.
Maolioli	*Schiedea apokremnos*	Endangered	Hawaii	56 FR 49639, 9/30/1991.
No common name	*Schiedea attenuata*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Schiedea helleri*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Schiedea kauaiensis*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
Kuawawaenohu	*Schiedea lychnoides*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Schiedea membranacea*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Schiedea spergulina* var. *leiopoda*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Schiedea spergulina* var. *spergulina*	Threatened	Hawaii	59 FR 9304, 2/25/1994.
Laulihilihi	*Schiedea stellarioides*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
No common name	*Schiedea verticillata*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
No common name	*Schiedea viscosa*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Aiakeakua, popolo	*Solanum sandwicense*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Stenogyne campanulata*	Endangered	Hawaii	57 FR 20580, 5/13/1992.
No common name	*Stenogyne kealiae*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Viola helenae*	Endangered	Hawaii	56 FR 47695, 9/20/1991.
Nani waialeale	*Viola kauaiensis* var. *wahiawaensis*	Endangered	Hawaii	61 FR 53070, 10/10/1996.
Iliau, dwarf	*Wilkesia hobdyi*	Endangered	Hawaii	57 FR 27859, 6/22/1992.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
No common name	*Xylosma crenatum*	Endangered	Hawaii	57 FR 20580, 5/13/1992.
Ferns:				
No common name	*Asplenium dielmannii*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
No common name	*Asplenium dielpallidum*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Doryopteris angelica*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Aumakua, Palapalai	*Dryopteris crinalis* var. *podosorus*	Endangered	Hawaii	75 FR 18960, 4/13/2010.
Wawaeiole	*Huperzia nutans*	Endangered	Hawaii	59 FR 14482, 3/28/1994.

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for any species listed in the table, please submit your comments and materials to the appropriate contact in **ADDRESSES**.

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices to which the comments are submitted.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews addressing species for which our Regional Office has lead responsibility is available at *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5year.html.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Mary M. Abrams,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–04942 Filed 3–10–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM954000.L14400000.BJ0000.BX0000.19XL1109AF]

Notice of Filing of Plats of Survey; New Mexico; and Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed 30 days after the date of this publication in the Bureau of Land Management (BLM), New Mexico Office, Santa Fe, New Mexico. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the New Mexico Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico, 87508–1560. Protests of the survey should be sent to the New Mexico State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Michael J. Purtee, Cadastral Surveyor; (505) 954–2032; *mpurtee@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat, representing the dependent resurvey of a portion of the south boundary of the Picuris Pueblo Grant, certain private claim boundaries, Townships 22 and 23 North, Range 12, East, and a portion of the north boundary and the subdivisional lines of Township 22 North, Range 12 East, accepted October 7, 2019, for Group 1125, New Mexico.

The remonumentation of the corner of sections 10, 11, 14 and 15, Township 16 North, Range 19 West, approved March 5, 2020.

This plat and remonumentation were prepared at the request of the Bureau of Indian Affairs.

The Indian Meridian, Oklahoma

The remonumentation of certain corners along the Chickasaw and Choctaw Boundary, Townships 2, 3, and 5 North, and 1 and 3 South, Range 8 East.

This remonumentation was prepared at the request of the Chickasaw Nation.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the New Mexico Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please 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 comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap 3.

Michael J. Purtee,

Chief Cadastral Surveyor of New Mexico, Oklahoma, Texas and Kansas.

[FR Doc. 2020–04952 Filed 3–10–20; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1005 (Remand)]

Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production; Notice of a Commission Determination Vacating the Portion the Final Determination Relating To United States Patent No. 6,180,373 and the Limited Exclusion Order Based Thereon

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the portion of its final determination relating to United States Patent No. 6,180,373 (''the '373 patent'') and its limited exclusion order based thereon.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 27, 2018, the United States Court of Appeals for the Federal Circuit found that a portion of the consolidated appeal in *Ajinomoto Co., Inc.* v. *International Trade Commission,* Appeal Nos. 2018–1590, –1629, was moot by reason of the expiration of the '373 patent and remanded the investigation to the Commission to determine whether to vacate the portion of the underlying final determination relating to the '373 patent.

The Federal Circuit appeal at issue stemmed from *Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production,* Investigation No. 337–TA–1005. This investigation was instituted based on a complaint filed by Complainants Ajinomoto Co., Inc. of Tokyo, Japan and Ajinomoto Heartland Inc. of Chicago, Illinois (collectively, ''Complainants''). *See* 81 FR 38735–36 (June 14, 2016). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of certain claims of U.S. Patent No. 7,666,655 (''the '655 patent'') and U.S. Patent No. 6,180,373 (''the '373 patent''). *See id.* The notice of investigation identified CJ CheilJedang Corp. of Seoul, Republic of Korea, CJ America, Inc. of Downers Grove, Illinois, and PT CheilJedang Indonesia of Jakarta, Indonesia (collectively, ''Respondents'') as respondents in this investigation. *See id.* The Office of Unfair Import Investigations was not a party to the investigation. *See id.*

On August 11, 2017, the Administrative Law Judge issued his final initial determination finding no violation of section 337. On December 18, 2017, the Commission reversed and found a section 337 violation with respect to both the '655 and the '373 patents. The '373 patent expired on January 30, 2018.

On February 27, 2018, Respondents filed a notice of appeal of the Commission's final determination with the Court of Appeals for the Federal Circuit. Their appeal was consolidated with Complainant's appeal filed on February 16, 2018. In addition, on May 25, 2018, Respondents filed a corrected motion that sought partial dismissal of the appeal with respect to the now-expired '373 patent, vacatur of the related portions of the Commission's final determination, and remand to the Commission with an instruction to dismiss the related portion of the complaint. The Commission did not file a response to Respondents' motion. On June 4, 2018, Complainants filed a response to Respondents' motion and indicated that while it agreed to the partial dismissal of the appeal, it objected to the vacatur of the portion of the Commission's final determination.

On June 27, 2018, the Federal Circuit granted Respondents' motion ''to the extent that this matter is remanded for the limited purposes of allowing the Commission to address whether to vacate its final determinations relating to the '373 patent.'' *Ajinomoto Co., Inc.* v. *Int'l Trade Comm'n,* Consolidated Appeal Nos. 18–1590, –1629, Order at 3 (ECF No. 38) (Fed. Cir. June 27, 2018). The Federal Circuit retained jurisdiction over the remainder of the appeal, which it affirmed on August 6, 2019. *Ajinomoto Co., Inc.* v. *Int'l Trade Comm'n,* 932 F.3d 1342 (Fed. Cir. 2019). A petition for writ of certiorari was filed with the Supreme Court on February 24, 2020. *CJ CheilJedang Corp.* v. *Int'l Trade Comm'n,* No. 19–1062 (filed Feb. 24, 2020).

The Commission has determined to vacate the portion of its final determination relating to the '373 patent and its limited exclusion order based thereon. The Commission's opinion is being issued concurrently herewith. The Commission hereby terminates this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–04934 Filed 3–10–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1082]

Certain Gas Spring Nailer Products and Components Thereof; Notice of Commission Determination Finding a Violation of Section 337; Issuance of Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined to find a violation of section 337. Specifically, the Commission has determined to affirm in part, reverse in part, and modify in part both an initial determination (''ID'') and a remand initial determination (''RID'') of the presiding administrative law judge (''ALJ''). The Commission has issued a limited exclusion order (''LEO'') directed against infringing gas spring nailer products and components thereof of respondent Hitachi Koki U.S.A., Ltd. (''Hitachi'') of Braselton, Georgia and a cease and desist order (''CDO'') directed

against Hitachi. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 20, 2017, based on a complaint filed on behalf of Kyocera Senco Brands Inc. (''Kyocera'') of Cincinnati, Ohio. 82 FR 55118–19 (Nov. 20, 2017). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gas spring nailer products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,011,547 (''the '547 patent''); 8,267,296 (''the '296 patent''); 8,27,297 (''the '297 patent''); 8,387,718 (''the '718 patent''); 8,286,722 (''the '722 patent''); and 8,602,282 (''the '282 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Hitachi as a respondent. The Office of Unfair Import Investigations is not participating in the investigation. The '547 patent has been terminated from the investigation and the notice of investigation was amended to add claim 30 of the '297 patent to the investigation. Order No. 13 (June 4, 2018), *unreviewed by* Comm'n Notice (June 22, 2018); Order No. 15 (June 19, 2018), *unreviewed by* Comm'n Notice (July 9, 2018), 83 FR 32685–66 (July 15, 2018). Prior to the evidentiary hearing, the parties stipulated that the '718 patent is the only remaining patent at issue because no violation could be shown as to the '296, '297, '722, and '282 patents based on an evidentiary ruling limiting the Kyocera's expert's testimony. *See* ID at 1–2. At the hearing, Kyocera asserted claims 1, 10, and 16 (the ''asserted claims'') of the '718 patent. *Id.* at 2, 21.

On June 7, 2019, the ALJ issued a final ID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry (''DI'') that practices the '718 patent. Specifically, the ID finds that Kyocera failed to show that the accused products or the domestic industry products practice the asserted claims. The ID also finds that Kyocera satisfied the economic prong of the DI requirement under section 337(a)(3)(B). The ID also includes a recommended determination on remedy and bonding (''RD'') during the period of Presidential review. The RD recommends an LEO directed to gas spring nailer products and components thereof that infringe the asserted claims of the '718 patent, and recommends a CDO directed against Hitachi. The RD does not recommend imposing a bond.

On August 14, 2019, the Commission determined to review the ID in part and remand in part. *See* Comm'n Notice (Aug. 14, 2019). Specifically, the Commission determined to review the ID's finding that Kyocera did not establish: (1) Either direct or induced infringement of the asserted claims of the '718 patent, and (2) practice of the asserted claims by the DI products to satisfy the DI requirement. The Commission also determined to review the ID's finding that Kyocera has satisfied the economic prong of the DI requirement. *Id.* The Commission remanded the issues of whether Kyocera has established, by a preponderance of the evidence, that: (1) The remaining limitations (irrespective of the ''system controller'' limitation, *i.e.,* ''a circuit configured to control operation based on received input signals'') of the asserted claims of the '718 patent are met by the accused products; (2) the remaining limitations of the asserted claims are practiced by the DI products (''the DI products''); and (3) Hitachi induced infringement of the asserted claims. *Id.*

On October 28, 2019, the ALJ issued an RID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry that practices the '718 patent. Specifically, the RID finds that: (1) Neither the accused products nor the DI products satisfy the ''displacement volume'' limitation (*i.e.,* ''(A) a hollow cylinder comprising a cylindrical wall with a movable piston therewith, said hollow cylinder containing a displacement volume created by a stroke of said piston'') and the ''initiating a driving cycle'' limitation (*i.e.,* ''initiating a driving cycle by pressing said exit end against a workpiece and actuating said trigger, thereby causing said fastener driving mechanism to force the driver member to move toward said exit end and drive a fastener into said workpiece'') of the asserted claims; and (2) Kyocera failed to establish that Hitachi possesses the requisite specific intent to induce infringement of the claims.

On November 12, 2019, Kyocera petitioned, and Hitachi contingently petitioned, for review of the RID. On November 20, 2019, Kyocera and Hitachi each filed a response in opposition to the other party's petition for review.

On December 12, 2019, the Commission determined to review the RID in part. Specifically, the Commission determined to review the RID's finding that Kyocera did not establish: (1) Direct infringement of the asserted claims with respect to the ''displacement volume'' and ''initiating a driving cycle'' limitations; (2) practice of the asserted claims by the DI products with respect to these limitations; and (3) induced infringement of the asserted claims. 84 FR 69391–92 (Dec. 18, 2019). The Commission determined not to review the remainder of the RID. *Id.* The Commission also requested the parties to respond to certain questions concerning the issues under review with respect to the ID and RID, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.*

On January 3 and 10, 2020, Kyocera and Hitachi each filed a brief and a reply brief, respectively, on all issues for which the Commission requested written submissions. Having reviewed the record in this investigation, including the final ID, the RID, and the parties' written submissions, the Commission has determined to find a violation of section 337. Specifically, the Commission has determined that: (1) The accused and DI products meet the ''system controller,'' ''displacement volume,'' and ''initiating a driving cycle'' limitations of the asserted claims 1, 10, and 16 of the '718 patent, and therefore the accused products infringe these claims; (2) the DI products practice these claims and therefore Kyocera has satisfied the technical prong of the DI requirement; (3) Hitachi has induced infringement of the asserted claims; and (4) Kyocera has

satisfied the economic prong of the DI requirement under section 337(a)(3)(C). The Commission reverses the ID's and RID's findings to the contrary and takes no position on the ID's finding that Kyocera has satisfied the economic prong of the DI requirement under section 337(a)(3)(B). Accordingly, the Commission finds a violation based on Hitachi's induced infringement of the asserted claims. The Commission has issued an opinion explaining the basis for the Commission's determination.

Having found a violation of section 337 as to the '718 patent, the Commission has determined that the appropriate form of relief is an LEO prohibiting the entry of unlicensed gas spring nailer products and components thereof that infringe one or more of claims 1, 10, and 16 of the '718 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Hitachi, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. Appropriate relief also includes a CDO prohibiting Hitachi from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for gas spring nailer products and components thereof that infringe one or more of claims 1, 10, and 16 of the '718 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d)(1) and 337(f)(1) (19 U.S.C. 1337(d)(1) and 1337(f)(1)) do not warrant denying relief. Finally, the Commission has determined that no bond is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–04925 Filed 3–10–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1157]

Certain Female Fashion Dresses, Jumpsuits, Maxi Skirts, and Accoutrements; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 9) granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 29, 2019, based on a complaint filed on behalf of Style Pantry LLC (''Style Pantry'') of Beverly Hills, California. 84 FR 24816 (May 29, 2019). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain female fashion dresses, jumpsuits, maxi skirts, and accoutrements by reason of false designation, false description, dilution, and obtaining sales by false claim of association, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named Amazon.com Inc. (''Amazon'') of Seattle, Washington; Xunyun, Jiaxing Xunyung Imp & Exp Co. Ltd of Zhejiang, China; and Jianzhang Liao, Pinkqueen Apparel Inc. of Xiamen, China as respondents. The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

Respondents Xunyun, Jiaxing Xunyung Imp & Exp Co. Ltd and Jianzhang Liao, Pinkqueen Apparel Inc. were found in default pursuant to 19 CFR 210.16, for failure to respond to the complaint and notice of investigation. *See* Order No. 7 (Dec. 3, 2019), *not rev'd by* Comm'n Notice (Dec. 26, 2019).

On January 22, 2020, Style Pantry and Amazon filed a joint motion to terminate the investigation based on a settlement agreement. On February 3, 2020, OUII filed a response in support of the motion.

On February 4, 2020, the ALJ issued the subject ID granting the joint motion to terminate pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)). *See* Order No. 9 at 1–2 (Feb. 4, 2020). The ALJ found that the motion to terminate complies with the Commission's rules, and there is no evidence that terminating this investigation by settlement would be contrary to the public interest. *Id.* at 2. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Dated: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–04924 Filed 3–10–20; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting on June 23, 2020. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: June 23, 2020.

Time: 9 a.m.–5 p.m.

ADDRESSES: Administrative Office of the U.S. Courts, One Columbus Circle NE, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

Authority: 28 U.S.C. 2073.

Dated: March 5, 2020.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2020–04894 Filed 3–10–20; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on February 21, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Linda Shave (individual member), Endwell, NY; Patricia C. Franks (individual member), North Ward, AUSTRALIA; and NetApp Inc., Waltham, MA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on September 6, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2019 (84 FR 55586).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–04917 Filed 3–10–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open RF Association, Inc.

Notice is hereby given that, on February 21, 2020 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Open RF Association, Inc. and (2) the nature and objectives of Open RF Association, Inc. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the members of Open RF Association, Inc. are the following companies: Broadcom Inc., San Jose, CA; Qorvo, Hillsboro, OR; and Skyworks Solutions, Inc., Irvine CA. The general areas of Open RF Association, Inc.'s general areas of planned activity are to promote the development and adoption of global, open, accessible RFFE (Radio Frequency Front End) interoperability standards and/or specifications for 4/5G Mobile Devices (''Specifications''), and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Membership in Open RF Association, Inc. remains open and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

Suzanne Morris,

Chief, Premerger and Division Statistics.

[FR Doc. 2020–04914 Filed 3–10–20; 8:45 am]

BILLING CODE 4410–11–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278; NRC–2020–0061]

Exelon Generation Company, LLC and PSEG Nuclear, LLC Peach Bottom Atomic Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent renewed licenses and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Subsequent Renewed Facility Operating Licenses Nos. DPR–44 and DPR–56 to Exelon Generation Company, LLC and PSEG Nuclear, LLC (Exelon, PSEG, or the licensees), for Peach Bottom Atomic Power Station, Units 2 and 3, respectively. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to issue Subsequent Renewed Facility Operating License Nos. DPR–44 and DPR–56.

DATES: The Subsequent Renewed Facility Operating Licenses Nos. DPR–44 and DPR–56 were issued on March 5, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0061 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0061. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bennett Brady, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2981, email: *Bennett.Brady@nrc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the NRC has issued Subsequent Renewed Facility Operating Licenses Nos. DPR–44 and DPR–56 to Exelon Generation Company, LLC and PSEG Nuclear, LLC (Exelon, PSEG, or the licensees), for Peach Bottom Atomic Power Station, Units 2 and 3, respectively. Exelon is the operator of the facility. Subsequent Renewed Facility Operating Licenses Nos. DPR–44 and DPR–56 authorize operation of Unit 2 and Unit 3, respectively, by Exelon at reactor core power levels not in excess of 4,016 megawatts thermal for each unit, in accordance with the provisions of the Peach Bottom, Units 2 and 3 renewed licenses and technical specifications. Notice is also given that the ROD that supports the NRC's decision to issue Subsequent Renewed Facility Operating Licenses Nos. DPR–44 and DPR–56 is available in ADAMS under Accession No. ML20024G429.

As discussed in the ROD and the final supplemental environmental impact statement (FSEIS) for Peach Bottom, Units 2 and 3, Supplement 10, Second Renewal, to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Subseqent License Renewal for Peach Bottom Atomic Power Station, Unit 2 and Unit 3, Final Report,'' dated January 2020 (ADAMS Accession No. ML20023A937), the NRC staff considered a range of reasonable alternatives that included a new nuclear power alternative, a supercritical pulverized coal alternative, a natural gas combined-cycle alternative, and a combination alternative of natural gas combined-cycle, wind, solar, and purchased power. The FSEIS documents the environmental review, including the determination that the adverse environmental impacts of subsequent license renewal for Peach Bottom Units 2 and 3 are not so great that preserving the option of subsequent license renewal for energy planning decisionmakers would be unreasonable. In addition to the NRC staff's independent environmental review, the FSEIS conclusion is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, (2) information provided in the environmental report submitted by Exelon, and (3) consultation with Federal, State, local, and Tribal agencies.

Peach Bottom Units 2 and 3 are single-cycle, forced-circulation boiling water reactors located in Peach Bottom Township, near Delta, York County, Pennsylvania. The application for the subsquent renewed licenses, ''Subsequent License Renewal Application, Peach Bottom Atomic Power Station Units 2 and 3,'' dated July 10, 2018 (ADAMS Package Accession No. ML18193A689), as supplemented by letters dated through October 9, 2019, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and NRC regulations in chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC has made appropriate findings, which are set forth in the licenses.

A public notice of the proposed issuance of the renewed licenses and an opportunity for a hearing was published in the **Federal Register** on September 6, 2018 (83 FR 45285). An NRC Atomic Safety and Licensing Board denied an intervention petition and terminated the adjudicatory proceeding. An appeal and motions related to a request to file a new contention are pending before the Commission. Because the termination of the proceeding has not been stayed pending Commission review, and the NRC staff has determined that issuance of the subsequent renewed licenses prior to Commission action on the pending appeal and motions would not foreclose or prejudice any Commission action, issuance of the subsequent renewed licenses is permissible.

For further details with respect to this action, see: (1) Exelon Generation Company's subsequent license renewal application for Peach Bottom Units 2 and 3, dated July 10, 2018 (ADAMS Package Accession No. ML18193A689), as supplemented by letters dated through October 9, 2019; (2) the NRC's safety evaluation report, dated Februrary 2020 (ADAMS Package Accession No. ML20044D902); (3) the NRC's final environmental impact statement (NUREG–1437, Supplement 10, Second Renewal) for Peach Bottom Units 2 and 3, dated January 2020 (ADAMS Accession No. ML20023A937); and (4) the NRC's ROD (ADAMS Accession No. ML20024G429).

Dated at Rockville, Maryland, this 6th day of March, 2020.

For the Nuclear Regulatory Commission.

Anna H. Bradford, Director,

Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–04941 Filed 3–10–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 9, 16, 23, 30, April 6, 13, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of March 9, 2020

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.

Week of March 30, 2020—Tentative

Tuesday, March 31, 2020

10 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Kellee Jamerson: 301–415–7408)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Thursday, April 2, 2020

10 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of April 6, 2020—Tentative

There are no meetings scheduled for the week of April 6, 2020.

Week of April 13, 2020—Tentative

There are no meetings scheduled for the week of April 13, 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 6th day of March 2020.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–04975 Filed 3–9–20; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension: Form 5

SEC File No. 270–323, OMB Control No. 3235–0362.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered pursuant to Section 12 of the Exchange Act, or who is a director or an officer of the issuer of such security (collectively ''reporting persons''), must file statements setting forth their security holdings in the issuer with the Commission. Form 5 (17 CFR 249.105) is an annual statement of beneficial ownership of securities. Approximately 3,904 reporting persons file Form 5 annually and we estimate that it takes approximately one hour to prepare the form for a total of 3,904 annual burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04943 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88332; File No. SR–NYSENAT–2020–01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

March 5, 2020.

On January 3, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 8, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates April 22, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87986 (January 16, 2020), 85 FR 3974.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

disapprove, the proposed rule change (File No. SR–NYSENAT–2020–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04910 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88328 File No. SR–CboeEDGX–2020–011]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

March 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule in connection with its standard removing liquidity fees. The Exchange proposes to implement the proposed change to its fee schedule on March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.00170 per share for orders that add liquidity and assesses a fee of $0.00265 per share for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

As stated above, the Exchange currently provides a standard fee of $0.00265 per share for liquidity removing orders (*i.e.,* those yielding fee codes N, W, 6, BB, and ZR) in securities priced at or above $1.00. Orders in securities priced below $1.00 that remove liquidity are assessed a fee of 0.30% of the dollar value. The Exchange now proposes to increase the current standard fee of $0.00265 per share to $0.00270 per share for orders that remove liquidity for securities priced at or above $1.00. Orders that remove liquidity in securities priced below $1.00 would continue to be assessed a fee of 0.30% of the dollar value. Although this proposed standard fee for liquidity removing orders is higher than the current base rate for such orders, the proposed fee is in line with similar fees for liquidity removing orders in place on other exchanges.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[5] in general, and furthers the requirements of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient.

In particular, the Exchange believes that the proposed amendment is reasonable, equitable and non-discriminatory because the proposed change represents a modest fee increase and such fee is equally applicable to all liquidity removing orders and thus is also equally applicable to all Members of the Exchange. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Moreover, the proposed standard fee for

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (February 21, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/*. This market share percentage is based on a Month-to-Date volume summary.

[4] *E.g.,* the Nasdaq base fee rate of $0.0030 for liquidity removing orders in securities priced at or above $1.00. *See https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78(b)(4).

liquidity removing orders is still lower than that offered at other exchanges for similar transactions.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all liquidity removing orders equally, and thus applies to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[8] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[10] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeEDGX–2020–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGX–2020–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGX–2020–011, and should be submitted on or before April 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04906 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* supra note 4.

[8] *See* supra note 3.

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[10] NetCoaliton v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)) .

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30b–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 144, SEC File No. 270–112, OMB Control No. 3235–0101.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 144 (17 CFR 239.144) is used to report the sale of securities during any three-month period that exceeds 5,000 shares or other units or has an aggregate sales price that does not exceed $50,000. Under Sections 2(a)(11), 4(a)(1), 4a(2), 4(a)(4) and 19(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11), 77d(a)(1), 77d(a)(2), 77d(a)(4) and 77s (a)) and Rule 144 (17 CFR 230.144) there under, the Commission is authorize to solicit the information required to be supplied by Form 144. Form 144 takes approximately 1 burden hour per response and is filed by 400 respondents for a total of 400 total burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04944 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88331; File No. SR–NYSEAMER–2020–03]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

March 5, 2020.

On January 3, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 8, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates April 22, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEAMER–2020–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04909 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88322; File No. SR–BX–2020–003]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct and Clarify Rules 4702(b)(3)(B) and 4703(d)

March 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to correct and clarify Rules 4702(b)(3)(B) and 4703(d).

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87989 (January 16, 2020), 85 FR 3995.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 4702 and 4703 to correct and clarify its various descriptions of the circumstances in which the Exchange will cancel certain types of midpoint pegged Orders [3] after they post to the Exchange Book [4] and the National Best Bid and National Best Offer (''NBBO'') or the Inside Bid and Inside Offer subsequently shifts.[5] The Exchange intended for these descriptions to be consistent and comprehensive, but upon review, they are somewhat discordant and confusing.

In 2015, the Exchange restated its Rules that describe its Order Types (Rule 4702) and Attributes (Rule 4703).[6] Among the topics that the restated Rules described were the circumstances in which the Exchange cancels orders priced at the Midpoint of the NBBO (the Inside Bid and the Inside Offer) or priced at their limit price when the NBBO (the Inside Bid and the Inside Offer) changes after the order posts to the Exchange Book. The Exchange described these circumstances in two different provisions of its Rules pertaining to Orders with Midpoint pegging (''Midpoint-Pegged Orders'').

First, in Rule 4702(b)(3)(B), the Exchange states as follows in describing the cancellation of a Non-Displayed Order with a Midpoint Pegging Order Attribute assigned to it:

If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute, and if, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order is no longer at the Midpoint between the NBBO, the Non-Displayed Order will be cancelled back to the Participant. In addition, if a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Attribute and also has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), the Order will nevertheless be accepted at its limit price and will be cancelled if the midpoint between the NBBO moves lower than (higher than) the price of an Order to buy (sell).

Second, in describing the Midpoint Pegging Attribute, Rule 4703(d) explains when the Exchange will cancel an Order with this Attribute enabled:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price that is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. Thereafter, if the NBBO changes so that: the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Pegged Order will be cancelled back to the Participant.

The Exchange intended for these two Rules to be substantively identical. That is, the Rules should have provided for the Exchange to cancel Midpoint-Pegged Orders in the same circumstances when entered through OUCH or FLITE. Upon review, however, the Exchange has determined that the Rules provide somewhat opaque descriptions of the circumstances in which a change in the NBBO/Inside Bid and Inside Offer will and will not result in the cancellation of a Midpoint-Pegged Order. Each Rule states that the Exchange will cancel an Order to buy (sell) if, after entry, the NBBO/Inside Bid and Inside Offer shifts so that the Midpoint is lower (higher) than the price of the buy (sell) Order. However, these descriptions in the Rules do not clearly distinguish between Midpoint-Pegged Orders that post to the Exchange Book at the Midpoint of the NBBO/Inside Bid and Inside Offer (*i.e.,* orders with limit prices more aggressive than the Midpoint) from those Orders that post to the Book at their limit prices (*i.e.,* orders with limit prices at or less aggressive than the Midpoint). In the former case, any post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation of the Order. In the latter case, however, a post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation only if the Midpoint shifts lower than (higher than) the limit price of an Order to buy (sell). If the Midpoint is higher than (lower than) the limit price of an Order to buy (sell) upon Order entry, and it remains so after shifting, then the Order will remain on the Book at its limit price. The Exchange believes that this result is implicit in the notion that these Order Types may post to the Exchange Book at their limit prices when the Midpoints are higher (lower) than the limit prices of Orders to buy (sell). Nevertheless, the Rules do not describe this scenario expressly.

Similarly, the Rules do not distinguish the particular circumstances in which a crossed Inside Bid and Inside Offer will and will not result in a cancellation of an Order. The Midpoint Pegging Attribute rule simply states that the Exchange will cancel Orders when the Inside Bid and Inside Offer becomes crossed after these Orders are posted to the Exchange Book. However, the Exchange will only cancel a Midpoint-Pegged Order that is ranked at its limit price where the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed quotation remains equal to or higher (lower) than the limit price of the Order to buy (sell), and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint-Pegged Order. If an Order to buy (sell) posts to the Exchange Book at its limit price, and the Inside Bid and Inside Offer subsequently become crossed but the Midpoint remains equal to or higher than (lower than) the limit price of the Order (and there are no contra-side orders that lock or cross the Order), then the Exchange will not cancel the Order. Likewise, if a Midpoint-Pegged Order is ranked at the

[3] Pursuant to Rule 4701(e), the term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the System by a Participant. An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System.

[4] Pursuant to Rule 4701(a)(1), the ''Exchange Book'' refers to a montage for Quotes and Orders that collects and ranks all Quotes and Orders submitted by Participants. The term ''Quote'' means a single bid or offer quotation submitted to the System by a Market Maker or Equities ECN and designated for display (price and size) next to the Participant's MPID in the Exchange Book. *See* Rule 4701(d).

[5] Pursuant to Rule 4703(d), the terms ''Inside Bid'' and ''Inside Offer'' mean the price to which an Order is pegged for purposes of Rule 4703. The term ''Midpoint'' means the midpoint of the NBBO or the Inside Bid and Inside Offer.

[6] *See* Securities Exchange Act Release No. 34–75291 (June 24, 2015), 80 FR 37698 (July 1, 2015) (SR–BX–2015–015).

Midpoint of the Inside Bid and Inside Offer and the Inside Bid and Inside Offer becomes crossed but the Midpoint does not change, then the Exchange will not cancel the order unless a new Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

To address the foregoing issues and to increase clarity, the Exchange proposes to amend and restate Rules 4702(b)(3)(B) and 4703(d), as follows.

First, the Exchange proposes to delete entirely the language of Rule 4702(b)(3)(B) excerpted above. This language, which again describes the behavior of a Non-Displayed Order with a Midpoint Pegging Attribute enabled, is duplicative of the general description of the behavior of a Midpoint Pegging Attribute in Rule 4703(d). The Exchange believes that the concept described in these two Rules is best stated only once to avoid unintended discrepancies. In this instance, the Exchange believes that the language is most appropriate for inclusion in Rule 4703(d).

Second, the Exchange proposes to restate the relevant language of Rule 4703(d) as follows:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Exchange Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter, the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

The Exchange believes that the restated language is more precise than the existing language because it specifies that the Exchange will cancel an Order with Midpoint Pegging that posts to the Exchange Book at its limit price, when the Inside Bid and Inside Offer later shift, only when the Inside Bid and Inside Offer shift so that the Midpoint of the Inside Bid and Inside Offer becomes lower (higher) than the limit price of an Order to buy (sell). Again, where the Inside Bid and Inside Offer shift after the Order posts such that the Midpoint of the Inside Bid and Inside Offer remains or becomes higher (lower) than the limit price of an Order to buy (sell), cancellation of the Order is unnecessary because the Order can simply remain on the Exchange Book at its limit price. The restated language is also more precise because it specifies that for an Order with Midpoint Pegging with a limit price that is more aggressive than the Midpoint of the Inside Bid and Inside Offer, any change to the Midpoint will result in cancellation of the Order.

Likewise, the restated language is more precise than the existing language in that the restated language specifies that the Exchange will cancel an Order with Midpoint Pegging to buy (sell) that posts at its limit price, when the Inside Bid and Inside Offer subsequently become crossed and the Midpoint of the crossed Inside Bid and Inside Offer remains equal to or higher (lower) than the limit price of the Order to buy (sell), only when a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order. The restated language also specifies that the Exchange will cancel an Order with Midpoint Pegging to buy (sell) that posts at the Midpoint of the Inside Bid and Inside Offer, when the Inside Bid and Inside Offer subsequently become crossed and the Midpoint of the crossed Inside Bid and Inside Offer remains the same, only when the Exchange receives a new sell (buy) Order at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer. Other than in these two circumstances, cancellation of an Order simply because the Inside Bid and Inside Offer cross is unnecessary because the Order need not be re-priced. When an Order to buy (sell) is ranked at its limit price, and the Inside Bid and Inside Offer become crossed while the Midpoint remains at or above (below) the limit price, the crossed market does not impact the Order, which can still rest on the Exchange Book at its limit price because the Inside Bid and Inside Offer could uncross prior to the Order executing. Likewise, when an Order to buy (sell) is ranked at the Midpoint of the Inside Bid and Inside Offer, and the Inside Bid and Inside Offer become crossed but the Midpoint does not change, the crossed market also does not impact the Order, which can continue to rest on the Exchange Book at the Midpoint because the Inside Bid and Inside Offer could uncross (with the Midpoint still remaining unchanged) prior to the Order executing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposal will protect investors by amending Rules 4702 and 4703 so that they will describe more clearly what the Rules currently imply with respect to the circumstances in which the Exchange will not cancel Midpoint-Pegged Orders. That is, the Exchange believes that concept of a limit price fairly implies that the Exchange has no need to and thus, it does not presently, cancel a Midpoint-Pegged Order to buy (sell) when such an Order is posted at its limit price and the Inside Bid and Inside Offer shifts thereafter but the Midpoint remains above (below) the limit price; however, Rule 4702(a)(3)(B) merely states that any post-entry shift in the Midpoint will result in the cancellation of a Midpoint-Pegged Order. To avoid confusion, the proposal clarifies that the Exchange will cancel a Midpoint-Pegged Order posted at its limit price if the Inside Bid and Inside Offer shifts after entry such that the Midpoint becomes lower (higher) than the limit price. In this circumstance,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

cancellation is warranted because the Order would need to be re-priced, and a Midpoint-Pegged Order entered using OUCH or FLITE cannot be re-priced. Similarly, if a Midpoint-Pegged Order posts to the Exchange Book at the Midpoint of the Inside Bid and Inside Offer and then the Midpoint shifts in either direction, the Order will be cancelled because it would need to be re-priced, and again, OUCH or FLITE do not allow for re-pricing to occur.

Similarly, the Exchange believes that it is helpful to investors to clarify the circumstances in which the Exchange does and does not cancel Midpoint-Pegged Orders in a crossed market. Rule 4703(d) states generally that the Exchange will cancel Midpoint-Pegged Orders if the Inside Bid and Inside Offer become crossed. However, as discussed above, the Exchange does not need to, and thus it does not presently, cancel Midpoint-Pegged Orders in all such instances. Although cancellation is warranted to prevent Orders from actually executing in a crossed market,[9] the Exchange does not believe that cancellation is warranted simply because the markets cross if there remains a possibility that the markets will uncross prior to an execution occurring. Thus, the Exchange proposes that it will not cancel a Midpoint-Pegged Order to buy (sell) when the Order is ranked at its limit price and the Inside Bid and Inside Offer become crossed thereafter (and the Midpoint remains equal to or more aggressive than its limit price), but no new sell (buy) Order is received that locks or crosses the limit price of the resting Midpoint-Pegged Order. Unless or until the Exchange receives a new Order that locks or crosses the limit price of the resting Midpoint-Pegged Order while the market remains crossed, cancellation is unnecessary because the Midpoint-Pegged Order can continue to rest at its limit price and the market may uncross before the Midpoint-Pegged Order executes. Likewise, as was also discussed above, the Exchange proposes that it will not cancel a Midpoint-Pegged Order that is ranked at the Midpoint of the Inside Bid and Inside Offer where the market becomes crossed, provided that while the market is crossed, the Midpoint of the crossed Inside Bid and Inside Offer does not change, and the Exchange does not receive a new Order that would lock or cross the Midpoint. Again, cancellation is unnecessary in this scenario because the Midpoint-Pegged Order can continue to rest at the Midpoint while the market is crossed and because the market may uncross (with the Midpoint remaining unchanged) prior to execution of the Order.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange intends for the proposal to improve the precision with which the Rules describe the circumstances in which it will cancel Midpoint-Pegged Orders after entry, as described above. The Exchange does not expect that these changes will have any impact whatsoever on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[9] *See* Securities Exchange Act Release No. 34–79290 (Nov. 10, 2016), 81 FR 81184, 81186 (Nov. 17, 2016) (stating that the ''midpoint of a crossed market is not a clear and accurate indication of a valid price'' and that cancellation in a crossed market ''would avoid mispriced executions'').

[10] If at any point after the Midpoint-Pegged Order posts to the Exchange Book at the Midpoint, the Inside Bid and Inside Offer changes so that the price of the Order is no longer at the Midpoint, then the order must be cancelled because orders entered through OUCH or FLITE cannot be re-priced.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Number SR–BX–2020–003, and should be submitted on or before April 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04913 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–456, OMB Control No. 3235–0515]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Schedule TO

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule TO (17 CFR 240.14d–100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Schedule TO takes approximately 43.5 hours per response and is filed by approximately 816 issuers annually. We estimate that 50% of the 43.5 hours per response (21.75 hours) is prepared by the issuer for an annual reporting burden of 17,748 hours (21.75 hours per response × 816 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04951 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88335; File No. SR–NYSECHX–2020–01]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

March 5, 2020.

On January 3, 2020, NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. On January 14, 2020, the Exchange filed Amendment No. 1 to the proposal. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 8, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates April 22, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–NYSECHX–2020–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04911 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form D; SEC File No. 270–072, OMB Control No. 3235–0076

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87988 (January 16, 2020), 85 FR 4028.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form D (17 CFR 239.500) is a notice of sales filed by issuers making an offering of securities in reliance on an exemption under Regulation D (17 CFR 230.501 *et seq.*) or Section 4(a)(5) of the Securities Act of 1933 (15 U.S.C. 77d(a)(5)). Regulation D sets forth rules governing the limited offer and sale of securities without Securities Act registration. The purpose of Form D is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the Form D allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D (17 CFR 230.501 *et seq.*) and Section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)) as capital-raising devices for all businesses. Form D information is required to obtain or retain benefits under Regulation D. Approximately 23,571 issuers file Form D and it takes approximately 4 hours per response. We estimate that 25% of the 4 hours per response (1 hour per response) is prepared by the issuer for an annual reporting burden of 23,571 hours (1 hour per response × 23,571responses).

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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04945 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 147(f)(1)(iii) Written Representation as to Purchaser Residency, SEC File No. 270–805, OMB Control No. 3235–0756

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 147 is a safe harbor under the Securities Act Section 3(a)(11)(15 U.S.C. 77c(a)(11)) exemption from registration. To qualify for the safe harbor, Rule 147(f)(1)(iii) (17 CFR 230.147) will require the issuer to obtain from the purchaser a written representation as to the purchaser's residency. Under Rule 147, the purchaser in the offering must be a resident of the same state or territory in which the issuer is a resident. While the formal representation of residency by itself is not sufficient to establish a reasonable belief that such purchasers are in-state residents, the representation requirement, together with the reasonable belief standard, may result in better compliance with the rule and maintaining appropriate investor protections. The representation of residency is not provided to the Commission. Approximately 700 respondents provide the information required by Rule 147(f)(1)(iii) at an estimated 2.75 hours per response for a total annual reporting burden of 1,925 hours (2.75 hours × 700 responses).

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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04948 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33811; 813–00389]

Two Sigma Investments, LP and Two Sigma Luna, LLC

March 5, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act and the rules and regulations thereunder, except sections 9, 17, 30, and 36 through 53 of the Act, and the rules and regulations thereunder (the ''Rules and Regulations''). With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e), and (h) of the Act, and the Rules and Regulations, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

Summary of Application: Applicants request an order to exempt certain limited liability companies, limited partnerships, corporations, business trusts or other entities (''Funds'') organized by Two Sigma Investments, LP (''Two Sigma Investments'') and its affiliates from certain provisions of the Act. Each series of a Fund will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicants: Two Sigma Investments, LP and Two Sigma Luna, LLC.

Filing Dates: The application was filed on June 30, 2017, and was amended on December 22, 2017, June 4, 2018, November 27, 2018, May 24, 2019, and December 6, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 30, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 100 Avenue of the Americas, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Two Sigma Investments (together with its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), ''Two Sigma,'' and each, a ''Two Sigma Entity'') is a Delaware limited partnership. Two Sigma Investments has organized Two Sigma Luna, LLC, a Delaware limited liability company (the ''Initial LLC'') and will in the future organize limited liability companies, limited partnerships, corporations, business trusts or other entities (each a ''Future Fund'' and, collectively with the Initial LLC, the ''Funds'') as ''employees' securities companies,'' as defined in section 2(a)(13) of the Act. The Funds are intended to provide investment opportunities that are competitive with those at other investment management and financial services firms and to facilitate the recruitment and retention of high caliber professionals.

2. The Initial LLC was formed on May 3, 2013 as a Delaware limited liability company. Two Sigma Principals, LLC, a Delaware limited liability company, acts as managing member to the Initial LLC. Two Sigma Investments serves as investment adviser to the Initial LLC. The Initial LLC seeks to achieve absolute U.S. dollar-denominated returns by investing all or substantially all of its assets in various private investment vehicles that are managed by Two Sigma (the ''Initial LLC's Underlying Funds''). The investment objective and strategies of the Initial LLC's Underlying Funds are set forth in the offering and/or governing documents of the applicable Initial LLC's Underlying Fund.

3. A Future Fund may be structured as a domestic or offshore limited or general partnership, limited liability company, corporation, business trust or other entity. Two Sigma may also form parallel funds organized under the laws of various jurisdictions in order to create similar investment opportunities for Eligible Employees (defined below) in other jurisdictions. Interests in a Fund may be issued in one or more series, each of which corresponds to particular Fund investments (each, a ''Series''). Each Series will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a closed-end management investment company, and a particular Fund may operate as a ''diversified'' or ''non-diversified'' vehicle within the meaning of the Act.

4. Two Sigma will control each Fund within the meaning of section 2(a)(9) of the Act. Each Fund has, or will have, a general partner, managing member or other such similar entity that manages, operates and controls such Fund (a ''Managing Member''). The Managing Member will be responsible for the overall management of each Fund, and will appoint a Two Sigma Entity to serve as investment adviser (''Investment Adviser'') to a Fund and delegate to the Investment Adviser the authority to make all decisions regarding the acquisition, management and disposition of Fund investments.

5. Each Managing Member and Investment Adviser is an investment adviser within the meaning of section 9 and 36 of the Act and is subject to those sections. The Managing Member or Investment Adviser may receive a performance-based fee or allocation (an ''Incentive Allocation'') based on the net gains of the Fund's investments, in addition to any amount allocable to the Managing Member's or Investment Adviser's capital contribution.[1]

6. If the Managing Member elects to recommend that a Fund enter into any side-by-side investment with an unaffiliated entity, the Managing Member will be permitted to engage as a sub-investment adviser the unaffiliated entity (an ''Unaffiliated Subadviser''), which will be responsible for the management of such side-by-side investment.

7. Interests in the Funds will be offered in a transaction exempt from registration under section 4(a)(2) of the Securities Act of 1933, as amended (the ''1933 Act''), or Regulation D or Regulation S promulgated thereunder, and will be sold only to ''Qualified Participants,'' which term refers to: (i) Eligible Employees (as defined below); (ii) Eligible Family Members (as defined below); (iii) Eligible Investment Vehicles (as defined below); and (iv) Two Sigma. Prior to offering interests in a Fund to a Qualified Participant, Two Sigma must reasonably believe that the Eligible Employee or Eligible Family Member will be capable of understanding and evaluating the merits and risks of participation in a Fund and that each such individual is able to bear the economic risk of such participation and afford a complete loss of his or her investments in the Fund.

8. The term ''Eligible Employees'' is defined as current and former employees, officers and directors of Two Sigma (including people in administration, marketing, and operations) and current consultants engaged on retainer to provide services and professional expertise on an ongoing basis to Two Sigma.[2] The term

[1] If a Managing Member or an Investment Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act''), the Incentive Allocation payable to it by a Fund will be pursuant to an arrangement that complies with rule 205–3 under the Advisers Act. All or a portion of the Incentive Allocation may be paid to individuals who are officers, employees or stockholders of the Managing Member or Investment Adviser or its affiliates. If the Managing Member or Investment Adviser is not required to register under the Advisers Act, the Incentive Allocation payable to it will comply with section 205(b)(3) of the Advisers Act (with such Fund treated as though it were a business development company solely for the purpose of that section).

[2] Applicants represent that persons or entities whom Two Sigma has engaged on retainer to provide services and professional expertise on an ongoing basis as regular consultants or business or legal advisers to Two Sigma (''Consultants'') share a community of interest with Two Sigma and Two Sigma's employees. In order to participate in the Funds, Consultants must be currently engaged by Two Sigma and will be required to be sophisticated investors who qualify as accredited investors (''Accredited Investors'') under rule 501(a) of Regulation D. If a Consultant is an entity (such as, for example, a law firm or consulting firm), and the Consultant proposes to invest in the Fund through a partnership, corporation or other entity that is controlled by the Consultant, the individual participants in such partnership, corporation or other entity will be limited to senior level employees, members or partners of the Consultant who are responsible for the activities of the Consultant or the activities of the Consultant in relation to Two Sigma and will be required to qualify as Accredited Investors. In addition, such entities will be limited to businesses controlled by

''Eligible Family Members'' is defined as spouses, parents, children, spouses of children, brothers, sisters and grandchildren of Eligible Employees, including step and adoptive relationships.[3] The term ''Eligible Investment Vehicles'' is defined as: (i) A trust of which a trustee, grantor and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation or other entity created or controlled [4] by an Eligible Employee; [5] and (iii) a trust or other entity established solely for the benefit of Eligible Employees and/or Eligible Family Members. Each Eligible Employee and Eligible Family Member will be an Accredited Investor under rule 501(a)(5) or rule 501(a)(6) of Regulation D under the 1933 Act, except that a maximum of 35 Eligible Employees who are sophisticated investors but who are not Accredited Investors may become investors in a Fund, if each of them falls into one of the following categories: (i) An Eligible Employee who (a) has a graduate degree in business, law or accounting, (b) has a minimum of five years of consulting, investment management, investment banking, legal or similar business experience, and (c) had reportable income from all sources (including any profit shares or bonus) of $100,000 in each of the two most recent years immediately preceding the Eligible Employee's admission as an investor of the Fund and has a reasonable expectation of income from all sources of at least $140,000 in each year in which the Eligible Employee will be committed to make investments in the Fund; [6] or (ii) Eligible Employees who are ''knowledgeable employees'' (as defined in rule 3c–5 under the Act) of the Fund (with the Fund treated as though it were a ''covered company'' for purposes of the rule).

9. A Qualified Participant may purchase an interest through an Eligible Investment Vehicle only if either (i) the investment vehicle is an Accredited Investor, as defined in rule 501(a) of Regulation D under the 1933 Act or (ii) the Eligible Employee is a settlor [7] and principal investment decision-maker with respect to the investment vehicle. Eligible Investment Vehicles that are not Accredited Investors will be counted in accordance with Regulation D toward the 35 non-Accredited Investor limit discussed above.

10. The terms of each Fund will be fully disclosed to each Qualified Participant (or person making the investment on behalf of the Qualified Participant) at the time the Qualified Participant is invited to participate in the Fund. A Fund will send its investors an annual financial statement with respect to those investments in which the investor had an interest within 120 days after the end of each fiscal year of the Fund, or as soon as practicable after the end of the Fund's fiscal year. The financial statement will be audited [8] by independent certified public accountants. In addition, as soon as practicable after the end of each calendar year, a report will be sent to each investor setting forth the information with respect such investor's share of income, gains, losses, credits, and other items for U.S. federal and state income tax purposes resulting from the operation of the Fund during that year.

11. Interests in a Fund will not be transferable except with the express consent of the Managing Member, and then only to a Qualified Participant. No sales load or similar fee of any kind will be charged in connection with the sale of interests in a Future Fund.

12. A Managing Member may have the right, but not the obligation, to repurchase, cancel, or transfer to another Qualified Participant the interest of (i) an Eligible Employee who ceases to be an employee, officer, director or current consultant of any Two Sigma Entity for any reason or (ii) any Eligible Family Member of any person described in clause (i). The governing documents for each Fund will describe, if applicable, the amount that an investor would receive upon repurchase, cancellation or transfer of its interest. The investor will, at a minimum, be paid the lesser of (i) the amount actually paid by or on behalf of the investor to acquire the interest (plus interest, as reasonably determined by the Managing Member) less any amounts paid to the investor as distributions, and (ii) the fair value, determined at the time of repurchase in good faith by the Managing Member, of such interest.

13. A Future Fund may invest in one or more pooled investment vehicles (including private funds relying on sections 3(c)(1) and 3(c)(7) under the Act and funds relying on section 3(c)(5) under the Act) and/or registered investment companies sponsored by Two Sigma or by third parties (each, an ''Underlying Fund'').[9] One Fund may also invest in another Fund in a ''master-feeder'' or similar structure. A Fund may also be operated as a parallel fund making investments on a side-by-side basis with Two Sigma Entities.

14. A Fund may co-invest in a portfolio company (or a pooled investment vehicle) with a Two Sigma Entity or with an investment fund or separate account organized primarily for the benefit of investors who are not affiliated with Two Sigma (''Third Party

individuals who have levels of expertise and sophistication in the area of investments in securities that are comparable to other Eligible Employees who are employees, officers or directors of Two Sigma and who have an interest in maintaining an ongoing relationship with Two Sigma. The individuals participating through such entities will belong to that class of persons who will have access to the directors and officers of the Managing Member and its affiliates and/or the officers of Two Sigma responsible for making investments for the Funds similar to the access afforded other Eligible Employees who are employees, officers or directors of Two Sigma.

[3] In order to ensure that a close nexus between the Qualified Participants and Two Sigma is maintained, the terms of each governing document for a Fund will provide that any Eligible Family Member participating in such Fund (either through direct beneficial ownership of an interest or as an indirect beneficial owner through an Eligible Investment Vehicle) will not, in any event, be more than two generations removed from an Eligible Employee.

[4] Any reference to an Eligible Investment Vehicle which is an entity created by, rather than controlled by, an Eligible Employee refers only to a corporate blocker entity created, and continuing to operate, for the purpose of facilitating (a) the tax efficient investment of Eligible Employees or other Eligible Investment Vehicles in a Fund and (b) the charitable giving of Eligible Employees. The mandate of an Eligible Investment Vehicle created by an Eligible Employee is determined by the relevant Eligible Employee and will be limited to permitted investments in vehicles managed by Two Sigma (such as a Fund).

[5] The inclusion of partnerships, corporations, or other entities that are ''created'' by Eligible Employees in the definition of Eligible Investment Vehicle is intended to enable an Eligible Employee to make tax-efficient investments in the Funds through a corporate blocker entity created by an Eligible Employee for the purpose of his/her charitable giving. Investments in a corporate blocker entity may be made through Eligible Investment Vehicles controlled by an Eligible Employee. No persons or entities other than Eligible Employees or the Eligible Investment Vehicles they control will contribute funds to a corporate blocker entity for investment. The inclusion of partnerships, corporations, or other entities that are ''controlled'' by Eligible Employees in the definition of Eligible Investment Vehicle is intended to enable Eligible Employees to make investments in the Funds through personal investment vehicles for the purpose of personal and family investment and estate planning objectives.

[6] An Eligible Employee that is not an Accredited Investor will only be permitted to invest in a Fund if such individual represents and warrants that he or she will not commit in any year more than 10% of his or her income from all sources for the immediately preceding year, in the aggregate, in a Fund and in all other Funds in which that investor has previously invested.

[7] If such investment vehicle is an entity other than a trust, the term ''settlor'' will be read to mean a person who created such vehicle, alone or together with other eligible individuals, and contributed funds to such vehicle.

[8] ''Audit'' has the meaning defined in rule 1–02(d) of Regulation S–X.

[9] Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern a Fund's eligibility to invest in an Underlying Fund relying on section 3(c)(1) or 3(c)(7) of the Act or an Underlying Fund's status under the Act.

Investors'') over which a Two Sigma Entity exercises investment discretion or which is sponsored by a Two Sigma Entity (an ''Two Sigma Third Party Fund''). Co-investments with a Two Sigma Entity or with a Two Sigma Third Party Fund in a transaction in which Two Sigma's investment was made pursuant to a contractual obligation to a Two Sigma Third Party Fund will not be subject to Condition 3 below. All other side-by-side investments held by Two Sigma Entities involving a joint enterprise or other joint arrangement will be subject to Condition 3.

15. If Two Sigma makes loans to a Fund, the lender will be entitled to receive interest, provided that the interest rate will be no less favorable to the borrower than the rate obtainable on an arm's length basis. The possibility of any such borrowings, as well as the terms thereof, would be disclosed to Qualified Participants prior to their investment in a Fund. Any indebtedness of the Fund will be the debt of the Fund and without recourse to the investors. A Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own securities of the Fund (other than short-term paper). A Fund will not lend any funds to a Two Sigma Entity.

16. A Fund will not acquire any security issued by a registered investment company if immediately after such acquisition such Fund will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act if and to the extent that such exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that in connection with any order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the Commission deems it necessary and appropriate in the public interest or for the protection of investors. Applicants submit that it would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act for the Commission to issue an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act and the rules and regulations thereunder, except sections 9, 17, 30, and 36 through 53 of the Act, and the Rules and Regulations. With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e), and (h) of the Act, and the Rules and Regulations, and rule 38a–1 under the Act, Applicants request a limited exemption as set forth in the application.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling or purchasing any security or other property to or from the investment company. Applicants request an exemption from section 17(a) to the extent necessary to (a) permit a Two Sigma Entity or a Two Sigma Third Party Fund (or any affiliated person of such Two Sigma Entity or Two Sigma Third Party Fund), or any affiliated person of a Fund (or affiliated persons of such persons), acting as principal, to engage in any transaction directly or indirectly with any Fund or any company controlled by such Fund; and (b) permit a Fund to invest in or engage in any transaction with any Two Sigma Entity, acting as principal, (i) in which such Fund, any company controlled by such Fund or any Two Sigma Entity or any Two Sigma Third Party Fund has invested or will invest, or (ii) with which such Fund, any company controlled by such Fund or any Two Sigma Entity or Two Sigma Third Party Fund is or will become otherwise affiliated; and (c) permit a Third Party Investor, acting as a principal, to engage in any transaction directly or indirectly with a Fund or any company controlled by such Fund. The transactions to which any Fund is a party will be effected only after a determination by the Managing Member that the requirements of Conditions 1, 2 and 6 (set forth below) have been satisfied. Applicants, on behalf of the Funds, represent that any transactions otherwise subject to section 17(a) of the Act, for which exemptive relief has not been requested, would require approval of the Commission.

4. Applicants submit that an exemption from section 17(a) is consistent with the policy of each Fund and the protection of investors. Applicants state that the investors in each Fund will have been fully informed of the possible extent of such Fund's dealings with Two Sigma and of the potential conflicts of interest that may exist. Applicants also state that, as professionals employed in the investment management and securities businesses, or in administrative, financial, accounting, legal, sales, marketing, risk management or operational activities related thereto, the investors will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the investors in each Fund, on the one hand, and Two Sigma, on the other hand, is the best insurance against any risk of abuse. Applicants acknowledge that the requested relief will not extend to any transactions between a Fund and an Unaffiliated Subadviser or any affiliated person of the Unaffiliated Subadviser, or between a Fund and any person who is not an employee, officer or director of Two Sigma or is an entity outside of Two Sigma and, in each case, is an affiliated person of the Fund as defined in section 2(a)(3)(E) of the Act (''Advisory Person'') or any affiliated person of such person.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such a person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit affiliated persons of each Fund, or affiliated persons of any of such persons to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Fund or a company controlled by such Fund is a

participant. The exemption would permit, among other things, co-investments by each Fund, Two Sigma Third Party Fund and individual members or employees, officers, directors or consultants of Two Sigma making their own individual investment decisions apart from Two Sigma. Applicants acknowledge that the requested relief will not extend to any transaction in which an Unaffiliated Subadviser or Advisory Person or an affiliated person of either has an interest.

6. Applicants assert that compliance with section 17(d) would prevent each Fund from achieving a principal purpose, which is to provide a vehicle for Eligible Employees (and other permitted investors) to co-invest with Two Sigma or, to the extent permitted by the terms of the Fund, with other employees, officers, directors or consultants of Two Sigma or Two Sigma Entities or with a Two Sigma Third Party Fund. Applicants further contend that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because an investor in such Fund or other affiliated person of such Fund (or any affiliated person of such a person) also had, or contemplated making, a similar investment. Applicants submit that it is likely that suitable investments will be brought to the attention of a Fund because of its affiliation with Two Sigma's large capital resources and investment management experience, and that attractive investment opportunities of the types considered by a Fund often require each participant in the transaction to make funds available in an amount that may be substantially greater than those the Fund would independently be able to provide. Applicants contend that, as a result, a Fund's access to such opportunities may have to be through co-investment with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. In addition, Applicants represent that any transactions otherwise subject to section 17(d) of the Act and rule 17d–1 thereunder, for which exemptive relief has not been requested, would require approval by the Commission.

7. Co-investments with a Two Sigma Entity or with a Two Sigma Third Party Fund in a transaction in which Two Sigma's investment was made pursuant to a contractual obligation to a Two Sigma Third Party Fund will not be subject to Condition 3 below. Applicants believe that the interests of the Eligible Employees participating in a Fund will be adequately protected in such situations because Two Sigma is likely to invest a portion of its own capital in Two Sigma Third Party Fund investments, either through such Two Sigma Third Party Fund or on a side-by-side basis (which Two Sigma investments will be subject to substantially the same terms as those applicable to such Two Sigma Third Party Fund, except as otherwise disclosed in the governing documents of the relevant Fund). Applicants assert that if Condition 3 were to apply to Two Sigma's investment in these situations, the Two Sigma Third Party Fund would be indirectly burdened. Applicants further assert that the relationship of a Fund to a Two Sigma Third Party Fund is fundamentally different from such Fund's relationship to Two Sigma. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Funds from any overreaching by Two Sigma in the employer/employee context, whereas the same concerns are not present with respect to the Funds vis-à-vis the investors in a Two Sigma Third Party Fund.

8. Section 17(e) of the Act and rule 17e–1 thereunder limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Two Sigma Entity (including the Managing Member and the Investment Adviser) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Fund in connection with the purchase or sale by the Fund of securities, provided that the fees or other compensation are deemed ''usual and customary.'' Applicants state that for purposes of the application, fees or other compensation that are charged or received by a Two Sigma Entity will be deemed to be ''usual and customary'' only if (i) the Fund is purchasing or selling securities alongside other unaffiliated third parties, Two Sigma Third Party Funds or Third Party Investors who are also similarly purchasing or selling securities, (ii) the fees or other compensation being charged to the Fund are also being charged to the unaffiliated third parties, Two Sigma Third Party Funds or Third Party Investors and (iii) the amount of securities being purchased or sold by the Fund does not exceed 50% of the total amount of securities being purchased or sold by the Fund and the unaffiliated third parties, Two Sigma Third Party Funds or Third Party Investors. Applicants state that compliance with section 17(e) would prevent a Fund from participating in a transaction in which Two Sigma, for other business reasons, does not wish to appear as if the Fund is being treated in a more favorable manner (by being charged lower fees) than other third parties also participating in the transaction. Applicants assert that the concerns of overreaching and abuse that section 17(e) and rule 17e–1 were designed to prevent are alleviated by the conditions that ensure that (i) the fees or other compensation paid by a Fund to a Two Sigma Entity are those negotiated at arm's length with unaffiliated third parties and (ii) the unaffiliated third parties have as great or greater interest as the Fund in the transaction as a whole.

9. Rule 17e–1(b) under the Act requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires each Fund to comply with the fund governance standards defined in rule 0–1(a)(7) under the Act. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Fund to comply with rule 17e–1(b) without the necessity of having a majority of the directors (or members of a comparable body) of the Fund who are not ''interested persons'' take such actions and make such approvals as are set forth in rule 17e–1(b). Applicants note that in the event that all the directors of the Managing Member or other governing body of the Managing Member will be affiliated persons, a Fund could not comply with rule 17e–1(b) without the relief requested. Applicants represent that in such event, the Fund will comply with rule 17e–1(b) by having a majority of the directors (or members of a comparable body) of the Fund or its Managing Member take such actions and make such approvals as are set forth in rule 17e–1(b), and that each Fund will otherwise comply with all other requirements of rule 17e–1(b). Applicants further request an exemption from rule 17(e)–1(c) to the extent necessary to permit each Fund to comply with rule 17e–1 without the necessity of having a majority of the directors (or members of a comparable body) of the Fund or its Managing Member be ''disinterested persons'' as is set forth in rule 17e–1(c). Applicants note that in the event that all the directors (or members of a comparable governing body) of the Fund or its

Managing Member will be affiliated persons, a Fund could not comply with rule 17e–1 without the relief requested. Applicants represent that each Fund will otherwise comply with all other requirements of rule 17e–1(c).

10. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange or the company itself in accordance with Commission rules. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request relief from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Managing Member or the Investment Adviser for purposes of paragraph (b) of the rule; (b) for purposes of paragraph (d) of the rule, (i) employees of Two Sigma or its affiliates (including the Managing Member) will be deemed to be employees of the Funds, (ii) officers or managers of the Managing Member of a Fund will be deemed to be officers of the Fund and (iii) the Managing Member of a Fund or its board of directors will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under rule 17f–2(f), verification will be effected quarterly by two employees of the Investment Adviser who are also employees of Two Sigma responsible for the administrative, legal and/or compliance functions for funds managed or sponsored by Two Sigma and who have specific knowledge of custody requirements, policies and procedures of the Funds. Applicants expect that, with respect to certain Funds, many of their investments will be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that, for such a Fund, these instruments are most suitably kept in the files of the Managing Member or its Investment Adviser, where they can be referred to as necessary. Applicants represent that they will comply with all other provisions of rule 17f–2, including the recordkeeping requirements of paragraph (e).

11. Section 17(g) of the Act and rule 17g–1 thereunder generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not ''interested persons'' of a registered investment company take certain actions and give certain approvals relating to fidelity bonding. Among other things, the rule also requires that the board of directors of an investment company relying on the rule satisfy the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from rule 17g–1 to the extent necessary to permit a Fund to comply with rule 17g–1 by having the Managing Member of the Fund take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that in the event all the directors of the Managing Member or other governing body of the Managing Member will be affiliated persons, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants contend that the filing requirements are burdensome and unnecessary as applied to the Funds and represent that the Managing Member of each Fund will designate a person to maintain the records otherwise required to be filed with the Commission under rule 17g–1(g). Applicants further contend that the notices otherwise required to be given to the board of directors will be unnecessary as the Funds will not have boards of directors. Applicants represent that each Fund will comply with all other requirements of rule 17g–1.

12. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from section 17(j) and the provisions of rule 17j–1 (except for the anti-fraud provisions of rule 17j–1(b)) because they assert that these requirements are burdensome and unnecessary as applied to the Funds. The relief requested will extend only to entities within Two Sigma and is not requested with respect to any Unaffiliated Subadviser or Advisory Person.

13. Sections 30(a), (b) and (e) of the Act and the rules thereunder generally require that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the investors in such Fund. Applicants request relief under sections 30(a), (b) and (e) to the extent necessary to permit each Fund to report annually to its investors in the manner described in the application. Section 30(h) of the Act requires that every officer, director, member of an advisory board, investment adviser or affiliated person of an investment adviser of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Exchange Act. Applicants request an exemption from section 30(h) of the Act to the extent necessary to exempt the Managing Member of each Fund, directors, and officers of the Managing Member and any other persons who may be deemed members of an advisory board or investment adviser (and affiliated persons thereof) of such Fund from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of interests in such Fund under section 16 of the Exchange Act. Applicants assert that, because there will be no trading market and the transfers of interests are severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

14. Rule 38a–1 requires registered investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Fund will comply will rule 38a–1(a), (c) and (d), except that: (i) To the extent the Fund does not have a board of directors, the board of directors of the Managing Member or other governing body of the Managing Member will fulfill the responsibilities assigned to the Fund's board of directors under the rule; (ii) to the extent the board of directors or other governing body of the Managing Member does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained; and (iii) to the extent the board of directors

or other governing body of the Managing Member does not have any independent members, the Funds will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of directors or other governing body of the Managing Member as constituted. Applicants represent that each Fund has adopted written policies and procedures reasonably designed to prevent violations of the terms and conditions of the application, has appointed a chief compliance officer and is otherwise in compliance with the terms and conditions of the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder to which a Fund is a party (the ''Section 17 Transactions'') will be effected only if the Managing Member determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund and the investors and do not involve overreaching of such Fund or its investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund and the investors, such Fund's organizational documents and such Fund's reports to its investors.

In addition, the Managing Member will record and preserve a description of all Section 17 Transactions, the Managing Member's findings, the information or materials upon which the Managing Member's findings are based and the basis for such findings. All such records will be maintained for the life of the Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff.[10]

2. The Managing Member will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of such a person, promoter or principal underwriter.

3. The Managing Member will not cause the funds of any Fund to be invested in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and a Co-Investor are participants, unless prior to such investment any such Co-Investor agrees, prior to disposing of all or part of its investment, to: (a) Give the Managing Member sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrain from disposing of its investment unless the Fund has the opportunity to dispose of the Fund's investment prior to or concurrently with, on the same terms as, and on a pro rata basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund (other than a Two Sigma Third Party Fund); (b) Two Sigma (except when a Two Sigma Entity co-invests with a Fund and a Two Sigma Third Party Fund pursuant to a contractual obligation to the Two Sigma Third Party Fund); (c) an officer or director of a Two Sigma Entity; or (d) an entity (other than a Two Sigma Third Party Fund) in which Two Sigma acts as a managing member or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor, including step or adoptive relationships, or a trust or other investment vehicle established for any Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act; (ii) NMS stocks, pursuant to section 11A(a)(2) of the Exchange Act and rule 600(b) of Regulation NMS thereunder; (iii) government securities as defined in section 2(a)(16) of the Act; (iv) ''Eligible Securities'' as defined in rule 2a–7 under the Act; or (v) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Fund and its Managing Member will maintain and preserve, for the life of such Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the investors in such Fund, and each annual report of such Fund required to be sent to such investors, and agree that all such records will be subject to examination by the Commission and its staff.[11]

5. Within 120 days after the end of the fiscal year of each Fund, or as soon as practicable thereafter, the Managing Member of each Fund will send to each investor in such Fund who had an interest in any capital account of the Fund, at any time during the fiscal year then ended, Fund financial statements audited by the Fund's independent accountants, except in the case of a Fund formed to make a single portfolio investment. In such cases, financial statements will be unaudited, but each investor will receive financial statements of the single portfolio investment audited by such entity's independent accountants. At the end of each fiscal year and at other times as necessary in accordance with customary practice, the Managing Member will make a valuation or cause a valuation to be made of all of the assets of the Fund as of the fiscal year end. In addition, as soon as practicable after the end of each tax year of a Fund, the Managing Member of such Fund will send a report to each person who was an investor in such Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the investor of his, her or its U.S. federal and state income tax returns and a report of the investment activities of the Fund during that fiscal year.

6. If a Fund makes purchases or sales from or to an entity affiliated with the Fund by reason of an officer, director or employee of Two Sigma (a) serving as an officer, director, managing member or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

[10] Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[11] Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04912 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88325; File No. SR–NASDAQ–2020–001]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price Below $0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 or More to One Over the Prior Two-Year Period

March 5, 2020.

On January 2, 2020, The Nasdaq Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the delisting process for securities that are in a bid price compliance period and have a bid price below $0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 or more to one over the prior two-year period. The proposed rule change was published for comment in the **Federal Register** on January 22, 2020.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 7, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates April 21, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2020–001).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04903 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Regulation D Rule 504(b)(3)—Felons and Other Bad Actors Disclosure Statement, SEC File No. 270–798, OMB Control No. 3235–0746

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation D Rule 504(b)(3) provides that no exemption under Rule 504 shall be available for the securities of any issuer if such issuer would be subject to disqualification under Rule 506(d) of Regulation D on or after January 20, 2017; provided that disclosure of prior ''bad actor'' events shall be required in accordance with Rule 506(e) of Regulation D. Rule 504(b)(3) requires the issuer in a Rule 504 offering to furnish to each purchaser, a reasonable time prior to sale, a written description of any disqualifying events that occurred before effectiveness of the amendments to Rule 504 (*i.e.,* before January 20, 2017) and within the time periods described in the list of disqualification events set forth in Rule 506(d)(1) of Regulation D, for the issuer or any other ''covered person'' associated with the offering.

Approximately 800 issuers relying on Rule 504 of Regulation D will spend on average one additional hour to conduct a factual inquiry to determine whether any covered persons had a disqualifying event that occurred before the effective date of the amendments for a total of 800 hours. In addition, approximately eight issuers (or approximately 1% of 800 issuers) will spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 504(b)(3) of Regulation D had they occurred on or after the effective date of the amendments (January 20, 2017) for total burden 80 hours (8 issuers × 10 hours per response).

For Purposes of the PRA, we estimate the total paperwork burden for all affected Rule 504 issuers to comply with Rule 504(b)(3) requirements would be approximately 808 issuers and a total of 880 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04947 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87982 (January 15, 2020), 85 FR 3736.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88329; File No. SR–NYSE–2020–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

March 5, 2020.

On January 3, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 8, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates April 22, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2020–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04907 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87990 (January 16, 2020), 85 FR 3963.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88327; File No. SR–CboeEDGA–2020–007]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to EDGA Rules 15.1(a) and (c)

March 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to EDGA Rules 15.1(a) and (c). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule in connection with its Add/Remove Volume Tiers, effective March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0018 per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 25, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/*.

exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to the competitive environment described above, the Exchange offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. The Exchange currently provides for such tiers pursuant to footnote 7 of the fee schedule, which specifically offers Add/Remove Volume Tiers. To illustrate, Add Volume Tier 1 provides Members an opportunity to receive a reduced fee of $0.0026 for their liquidity adding orders that yield fee codes ''3'',[4] ''4'',[5] ''B'',[6] ''V'',[7] and ''Y'' [8] where that Member has an ADAV [9] of greater than or equal to 0.10% of the TCV [10]. Likewise, Remove Volume Tier 1 provides Members an opportunity to receive an enhanced rebate for their liquidity removing orders that yield fee codes ''N'',[11] ''W'',[12] ''6'',[13] and ''BB'' [14] where that Member adds or removes an ADV [15] of greater than or equal to 0.05% of the TCV. The Exchanges proposes to add adopt an additional Add Volume Tier and an additional Remove Volume Tier under footnote 7.

First, the Exchange proposes to adopt Add Volume Tier 3, which would provide a Member with an opportunity to receive a reduced fee of $0.0016 for qualifying, liquidity adding orders (*i.e.,* yielding fee code 3, 4, B, V, or Y) where a Member adds or removes an ADV of greater than or equal to 0.65% of the TCV. Second, the Exchange proposes to adopt Remove Volume Tier 3, which would provide a Member with an opportunity to receive an enhanced rebate of $0.0028 for qualifying, liquidity removing orders (*i.e.,* yielding fee code N, W, 6, or BB) where a Member adds or removes an ADV of greater than or equal to 0.65% of the TCV. The proposed criteria in both tiers are designed to incentivize Members to increase their overall order flow, both adding and removing orders, in order to receive a reduced fee on their liquidity adding orders as well as an enhanced rebate on their liquidity removing orders. The proposed tiers provide both liquidity providing Members and liquidity executing Members additional opportunities to receive a reduced fee and an enhanced rebate. Thus, it provides liquidity adding Members on the Exchange a further incentive to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange a further incentive to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tiers are available to all Members and are competitively achievable for all Members that submit add and/or remove order flow, in that, all firms that submit the requisite order flow could compete to meet the tiers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that both proposed Add Volume Tier 3 and Remove Volume Tier 3 are reasonable because they each provide an additional opportunity for Members to receive either a discounted rate or an enhanced rebate by means of liquidity adding and/or removing orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[19] including the Exchange,[20] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct

[4] Appended to orders that add liquidity to EDGA, pre and post market (Tapes A or C).

[5] Appended to orders that add liquidity to EDGA, pre and post market (Tape B).

[6] Appended to orders that add liquidity to EDGA (Tape B).

[7] Appended to orders that add liquidity to EDGA (Tape A).

[8] Appended to orders that add liquidity to EDGA, (Tape C).

[9] ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[10] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] Appended to orders that remove liquidity from EDGA (Tape C).

[12] Appended to orders that remove liquidity from EDGA (Tape A).

[13] Appended to orders that remove liquidity from EDGA, pre and post market (All Tapes).

[14] Appended to orders that remove liquidity from EDGA (Tape B).

[15] ADV means daily volume calculated as the number of shares added to, removed from, or routed by, the exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] *See e.g.,* the Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118(a)(1); and the Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), both of which generally provide credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; *see also* Cboe BYX U.S. Equities Exchange Fee Schedule, Footnote 1, Add/Remove Volume Tiers, which provides similar incentives for liquidity adding and removing orders.

[20] *See generally,* Cboe EDGA U.S. Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and fees and rebates.[21]

Specifically, the Exchange believes the proposed tier criteria under Add Volume Tier 3 and Remove Volume Tier 3, that is, an ADV threshold component as a percentage of TCV for, is a reasonable means to further incentivize Members to increase their overall order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive a reduced rate and/or enhanced rebate. As such, adopting criteria based on a Member's adding and removing orders will encourage liquidity providing Members to provide for a deeper, more liquid market, and Members executing on the Exchange to increase transactions and take such execution opportunities provided by increased liquidity. The Exchange believes that an increase in overall order flow as a result of the proposed tiers would benefit all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

In line with the relative difficulty of the proposed criteria for Add Volume Tier 3 and Remove Volume Tier 3, the Exchange believes that providing a greater reduced fee and an additional enhanced rebate, respectively, is reasonable as they are commensurate with the proposed criteria, that is, they reasonably reflect the scaled difficulty (Add Volume Tier 3) or different, yet comparable criteria (Remove Volume Tier 3) from achieving respective Tiers 1 and 2 to achieving the proposed ADV threshold as a percentage TCV in the respective proposed tiers. Also, the proposed fee and rebate corresponding to the proposed criteria do not represent a significant departure from the fees and rebates current offered, or criteria required, under the Exchange's existing tiers. For example, the discounted fees assessed under the existing Add Volume Tiers, for which a Member must have an daily volume add (ADAV) of 0.10% or greater than the TCV (Add Volume Tier 1) or a daily volume add (ADAV) of 0.45% or greater than the TCV (Add Volume Tier 2), is $0.0026 per share and $0.0022 per share, respectively. The Exchange believes that, as proposed, the percentage of TCV that a Member's add or remove ADV must meet is a meaningful increase over the percentage of TCV that other threshold components must meet in Add Volume Tiers 1 and 2. Therefore the proposed criteria is incrementally more difficult to achieve and, thus, commensurate with a greater reduced fee. Similarly, the enhanced rebates under the existing Remove Volume Tiers, for which a Member must have an add or remove ADV of 0.05% of the TCV (Tier 1), is $0.0022, or a remove ADV of greater than or equal to 0.10% of the TCV plus a Step-Up Remove TCV from October 2019 of greater than or equal to 0.05% (Tier 2), is $0.0028. The Exchange believes that, as proposed, the percentage of TCV that a Member's add or remove ADV must meet is a meaningful increase over the percentage of TCV that other threshold components must meet in respective Tiers 1 and 2, however, Tier 2 also provides for two-pronged criteria that a Member must achieve to receive the corresponding enhanced rebate. Therefore the Exchange believes that the proposed criteria in Tier 3 is similar in difficulty to achieve from Tier 2 and, thus, commensurate with the same enhanced rebate. Also, as stated, the proposed reduced fee offered for liquidity adding orders and enhanced rebate offered for liquidity removing orders is in line with fees and rebates for liquidity adding or removing orders in place on other equities exchanges.[22]

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Add and Remove Volume tiers, and would have the opportunity to meet the tiers' criteria and would receive the proposed fee and/or rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the new Add or Remove Volume tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that at least four Members will be able to compete for and reach each of the proposed tiers. The Exchange anticipates that the tiers will include various Member types, including liquidity providers (*e.g.* wholesale firms that mainly make markets for retail orders), broker-dealers (*e.g.* bulge bracket firms that conduct trading on behalf of customers), and proprietary firms, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other reduced fee or enhanced rebate tiers. Rather, should a Member not meet the proposed criteria under the respective tiers, the Member will merely not receive that reduced fee/enhanced rebate. Furthermore, the proposed reduced fee and enhanced rebate would uniformly apply to all Members that meet the required criteria under the respective proposed tiers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of

[21] *See supra* note 19. Nasdaq offers credits between $0.0025 and $0.0029 and BX offers between $0.0014 and $0.0029 per share for liquidity removing orders depending on different Consolidated Volume-based criteria achieved, which are substantially similar to the rebate rate which the Exchange proposes for liquidity removing orders. BX charges between $0.0024 and $0.0028 per share between for liquidity adding orders for certain Consolidated Volume-based criteria achieved, which is substantially similar to the reduced fee rate which the Exchange proposes for liquidity adding orders.

[22] *See supra* note 21.

individual stocks for all types of orders, large and small.'' [23]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tiers, have a reasonable opportunity to meet the tiers' criteria and will all receive the proposed fee and/or rebate if such criteria is met. Additionally the proposed tier changes are designed to attract additional order flow to the Exchange. The Exchange believes that the additional tier criteria would incentivize market participants to direct liquidity and executing order flow to the Exchange, bringing with it improved price transparency. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[24] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [25] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution' [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. [26] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [27] of the Act and subparagraph (f)(2) of Rule 19b–4 [28] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [29] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CboeEDGA–2020–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGA–2020–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No.

[23] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[24] *See supra* note 3.

[25] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[26] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2)(B).

SR–CboeEDGA–2020–007, and should be submitted on or before April 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04905 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88326; File No. SR–CboeEDGA–2020–006]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Dark Routing Technique Routing Option; To Eliminate References to the ROUD, ROUE, and ROUQ Routing Options; and To Reflect Additional Routing Strategies for Which the Exchange May Route Orders With a Short Sale Instruction

March 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to make certain changes to Rule 11.11 (Routing to Away Trading Centers) and to make corresponding amendments to its Fee Schedule.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Adopt the DRT routing option under proposed Rule 11.11(g)(2); (ii) amend Rule 11.11(g) to eliminate the ROUD, ROUE, and ROUQ routing options and to eliminate any such references in its Fee Schedule; and (iii) amend Rule 11.11(a) to make clear that if a User[5] selects the RDOT, RDOX, or INET routing options, orders with a short sale[6] instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO[7] (the ''SSCB'') is in effect are eligible for routing by the Exchange. The Exchange intends to implement the proposed rule changes on March 2, 2020.

Adopting DRT

The Exchange proposes to adopt the DRT under subparagraph (g)(2) as a new routing option available on the Exchange. As noted in proposed Rule 11.11(g)(2), the DRT routing option would instruct the System[8] to route to alternative trading systems (''ATSs'') included in the System routing table.[9] The proposed description of DRT is identical to existing Cboe BZX Exchange, Inc. (''BZX'') and Cboe BYX Exchange, Inc. (''BYX'') Rules 11.13(b)(3)(D) and Cboe EDGX Exchange, Inc. (''EDGX'') Rule 11.11(g)(2).[10] Thus, the proposed amendment is intended to add certain system functionality currently offered by BZX, BYX, and EDGX in order to provide a consistent technology offering for Users across the Cboe affiliated exchanges.

Currently, for routing mechanisms that route orders to ATSs, the Exchange routes such orders using a preselected sequence of venues pursuant to the applicable System routing table and every order is routed to such venues in that sequence.[11] Stated another way, all orders entered with a routing strategy that is eligible for routing to ATSs will first seek liquidity on the Exchange and any unexecuted portion of the order will then be routed in accordance with the pre-established sequence in the System routing table.

As proposed, the DRT routing mechanism would instead use a randomly generated, weighted permutation to prioritize off-exchange venues based on a ''score''[12] for each off-exchange venue, where a higher score will result in a greater likelihood that the off-exchange venue will be selected earlier in the permutation. The DRT routing mechanism will be established in the System routing table and replace the existing routing mechanism that routes orders to ATSs. The Exchange believes that converting from this mechanical, sequential routing strategy to the more dynamic strategy applied with DRT will allow an off-exchange venue with a lower score to occasionally be selected before an off-exchange venue with a higher score, and thus provides the Exchange with the most accurate view of the quality at each market. As a result, the Exchange believes that DRT may result in improved execution quality. Additionally, converting to DRT will result in uniformity that will simplify the Exchange's routing logic and

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(ee).

[6] *See* Exchange Rule 11.6(o). The term ''short sale'' is defined as ''any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.'' 17 CFR 242.200(a).

[7] *See* 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

[8] *See* Exchange Rule 1.5(cc).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.11(g).

[10] The Exchange notes that EDGX Rule 11.11(g)(2) was recently modified to mirror BZX/BYX Rules 11.13(b)(3)(D). *See* Securities Exchange Act Release No. 88154 (February 12, 2020), 85 FR 8327 (February 13, 2020) (SR–CboeEDGX–2020–006).

[11] The Exchange notes that the current routing mechanism is set forth in the System routing table, and is not referenced in Exchange Rules. Nonetheless, the Exchange proposes to adopt the DRT under subparagraph (g)(2) of Rule 11.11 to harmonize the Exchange's rules with BZX/BYX Rule 11.13(b)(3)(D) and EDGX Rule 11.11(g)(2).

[12] ''Scores'' are assigned to each off-exchange venue by the Exchange and are determined based on various factors, such as order fill percentage, latency, and price improvement.

management across the Cboe equities platforms.

Eliminating ROUE, ROUQ, and ROUD

In connection with the adoption of the DRT mechanism, the Exchange proposes to amend Rule 11.11(g) and the Fee Schedule to eliminate any references to routing options that are redundant due to such adoption.

Currently, Rule 11.11(g) provides for a variety of routing options under which the System will consider the quotations only of accessible Trading Centers.[13] Rules 11.11(g)(2) and 11.11(g)(3)(D) currently provides for the ROUD and ROUQ routing options, respectively, which are detailed in the System routing table.[14] For orders entered with a ROUD or ROUQ routing options, the System is first checked for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the EDGA Book,[15] unless otherwise instructed by the User. The ROUD and ROUQ routing options first seek liquidity on the Exchange's book, and will subsequently route any unfilled portion of the order pursuant to the System routing table. Given the proposed implementation of DRT, the ROUD and ROUQ routing option will first seek liquidity on the Exchange's book, and will subsequently route any unfilled portion via DRT. Such a strategy is duplicative of the Exchange's ROUZ routing option.[16] Therefore, the Exchange proposes to eliminate subparagraph (g)(2) and (g)(3)(D) of Rule 11.11, as well as Fee Code T from the Exchange's Fee Schedule.[17] Additionally, the Exchange proposes to eliminate any references to the ROUD and ROUQ routing options in subparagraph (g)(14) of Rule 11.11 and Fee Code Q.

Similarly, the ROUE routing option provided in Rule 11.11(g)(3)(A) first seeks liquidity on the Exchange's book, second will route any unfilled portion of the order to ATSs pursuant to the System routing table, and third will route any unfilled portion of the order to other Trading Centers.[18] Given the proposed implementation of DRT, the ROUE routing option will first seek liquidity on the Exchange's book, second route any unfilled portion via DRT, and third will route any unfilled portion of the order to other Trading centers. Such a strategy is duplicative of the Exchange's ROUT routing option.[19] Therefore, the Exchange proposes to eliminate subparagraph (g)(3)(A) and references to ROUE in subparagraphs (g)(14) and (g)(15) of Rule 11.11. The Exchange also proposes to remove references to the ROUE trading strategy in Fee Codes BY and K.[20]

Based on the above proposed changes the Exchange also proposes to re-alphabetize paragraph (g)(3) of Rule 11.11.

RDOT, RDOX, and INET Routing Clarification

Under Rule 201 of Regulation SHO, a short sale order in a covered security[21] generally cannot be executed or displayed by a Trading Center (such as the Exchange), at a price that is at or below the current National Best Bid (''NBB'')[22] when a SSCB is in effect for the covered security. Based on this rule, there is no reason for a Trading Center to route an order marked short when a SSCB is in effect using a routing option that does not provide for a routed order to post to another Trading Center's book. The Post to Away[23] routing option is able to post an order to another Trading Center's book and, thus, Exchange Rule 11.11(a) explicitly provides that the Exchange will route orders marked short using the Post to Away routing option when a SSCB is in effect.[24]

Similarly, RDOT,[25] RDOX,[26] and INET[27] routing options are able to post an order to another Trading Center's book. Based on this functionality, the Exchange currently allows orders marked short while a SSCB is in effect to be routed using these routing options. As such, the Exchange is proposing to amend Rule 11.11(a) in order to codify that, in addition to the Post to Away routing option, short orders using the RDOT, RDOX, and INET routing strategies are also able to be routed when a SSCB is in effect. Given that orders routed via the RDOT, RDOX, and INET routing options are subjected to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO in substantially the same manner as the Post to Away routing option, the Exchange believes such functionality is appropriate and that Exchange Rules should be amended to codify such functionality.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

[13] Rule 600(b)(82) of Regulation NMS defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

[14] While the System routing table is not publicly available, the Cboe affiliated equity markets have provided a summary document of its available routing options, which is subject to change at any time. Such document details the strategies of the ROUD, ROUQ, ROUE, ROUZ, and ROUT routing options referenced herein. *See https://cdn.cboe.com/resources/features/cboe_exchange_routing-strategies.pdf*. *See also* Exchange Rule 11.11(g), which provides that the Exchange reserves the right to route orders simultaneously or sequentially, maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

[15] *See* Exchange Rule 1.5(d).

[16] *See* Exchange Rule 11.11(g)(3)(E). *See also supra* note 14.

[17] Fee Code T references both the ROUD and ROUE routing options, both of which are proposed to be eliminated from the Fee Schedule. As such, the Exchange proposes to eliminate Fee Code T in its entirety.

[18] *See supra* note 14.

[19] *See* Exchange Rule 11.11(g)(3)(B). *See also supra* note 14.

[20] As noted above, Fee Code T references both ROUD and ROUE routing strategies, both of which the Exchange is proposing to eliminate and, as such, the Exchange proposed above to eliminate Fee Code T.

[21] Rule 201(a)(1) of Regulation SHO defines the term ''covered security'' to mean any ''NMS stock'' as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an ''NMS stock'' as ''any NMS security other than an option.'' Rule 600(b)(47) of Regulation NMS defines an ''NMS security'' as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' *See* 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

[22] *See* Exchange Rule 1.5(o).

[23] *See* Exchange Rule 11.11(g)(14). Under the Post to Away routing option, the remainder of a routed order is routed to and posted to the order book of a destination on the ''System routing table'', as specified by the User.

[24] The Exchange notes that orders routed pursuant to the Post to Away, RDOT, RDOX, and INET routing options that include a short sale instruction are identified as ''short'' and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

[25] *See* Exchange Rule 11.11(g)(5). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. Any remainder will be posted to the NYSE, unless otherwise instructed by the User.

[26] *See* Exchange Rule 11.11(g)(6). RDOX is a routing option under which an order checks the System for available shares, is then sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they are posted on the NYSE book, unless otherwise instructed by the User.

[27] *See* Exchange Rule 11.11(g)(4). INET is a routing option under which an order checks the System for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on the Nasdaq book, unless otherwise instructed by the User.

Section 6(b) of the Act.[28] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[29] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[30] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[31] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

In particular, the proposed rule change to add the DRT routing option is generally intended to provide a consistent technology offering for the Cboe affiliated exchanges, which the Exchange believes is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further to this point, a consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, BZX, and/or EDGX. The proposed rule changes would also provide Users with access to functionality that is intended to result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. As a result, the Exchange's proposal will further remove impediments to and perfect the mechanism of a free and open market and a national market system, and will also introduce the DRT routing strategy on the Exchange which will provide market participants with greater flexibility in routing orders without developing order routing strategies on their own.

The Exchange believes the proposed rule change to remove references to ROUD, ROUQ, and ROUE from Exchange Rules and the Fee Schedule will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated above, the Exchange is proposing that its routing functionality to ATSs will use the DRT routing mechanism in the System routing table effective March 2, 2020. As a result, the ROUD, ROUQ, and ROUE routing options will function in the same manner as other existing routing options. By removing routing options that are duplicative of other existing routing options and amending Exchange Rules to reflect a new routing option, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with increased transparency regarding rules that reflect routing options currently available on the Exchange. Also, as it pertains to the proposed changes to Exchange Rule 11.11(g) and the Fee Schedule, the Exchange does not believe the proposed amendments will permit unfair discrimination among customers, brokers, or dealers because the ROUD, ROUQ, and ROUE routing options will no longer be available to all Users.

Finally, the proposed changes to Rule 11.11(a) are designed to ensure clarity in the Exchange's rulebook with respect to the routing of orders in compliance with Rule 201 of Regulation SHO. In addition, providing Users the ability to send short sale orders that are routable pursuant to RDOT, RDOX, and INET routing options provides them additional flexibility with regard to the handling of their orders. The Exchange notes that orders that include a short sale instruction routed pursuant to the RDOT, RDOX, or INET routing options are identified ''short'' and, therefore, subject to the receiving Trading Center's processes for handling short sale orders in compliance with Regulation SHO. The Exchange also notes that the Post to Away routing option is similar to the RDOT, RDOX, and INET routing options in that they route orders to other Trading Centers for posting and/or later execution. Rule 11.11(a) currently provides that orders including a short sale instruction routed pursuant to the Post to Away routing option is eligible for routing when a SSCB is in effect. Thus, the proposed amendments to Rule 11.11(a) is directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed amendment to allow orders with a short sale instruction and a RDOX, RDOT, or INET routing option to be eligible to route when a SSCB is in effect will promote consistency between other routing strategies (*i.e.,* Post to Away) that are similarly eligible to route when a SSCB is in effect and are designed to route orders to other Trading Centers for posting and/or later execution. The Exchange does not believe the proposed change will have any impact on intermarket competition as the RDOX, RDOT, and INET routing strategies are and will continue to be available to all Users.

The Exchange notes that the proposed amendments to add a reference to the DRT routing option and eliminate references to the ROUD, ROUE, and ROUQ routing options in Exchange Rules and the Fee Schedule will eliminate any potential confusion to investors, as those routing options will be duplicative of existing routing options after the implementation of the DRT routing mechanism.

The Exchange does not believe that the proposed amendments will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. The Exchange reiterates that the proposed rule change to adopt DRT and eliminate the ROUE, ROUQ, and ROUD strategies is being proposed in an effort to add a consistent technology offering across the Cboe affiliated Exchanges.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] *Id.*

[31] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [35] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has represented that adopting the DRT routing functionality and eliminating references to certain duplicative routing options will conform its routing strategies to its affiliated exchanges and will eliminate any potential confusion for its Users. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposal as operative upon filing.[36]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [37] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2020–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2020–006 and should be submitted on or before April 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

[36] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension:

Rules 15Ba1–1 through 15Ba1–8, SEC File No. 270–619, OMB Control No. 3235–0681.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rules 15Ba1–1 to 15Ba1–8 (17 CFR 240.15Ba1–1 to 17 CFR 240.15Ba1–8)—Registration of Municipal Advisors, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

On September 20, 2013 (*see* 78 FR 67468, November 12, 2013), the Commission adopted Rules 15Ba1–1 through 15Ba1–8 and Rule 15Bc4–1 under the Act to establish the rules by which a municipal advisor must obtain, maintain, and terminate its registration with the Commission. In addition, the rules interpret the definition of the term ''municipal advisor,'' interpret the statutory exclusions from that definition, and provide certain additional regulatory exemptions. The rules became effective on January 13, 2014; however, on January 13, 2014, the Commission temporarily stayed such rules until July 1, 2014 (*see* 79 FR 2777, January 16, 2014). Amendments to Form MA and Form MA–I designed to eliminate aspects of the forms that request filers to provide certain forms of

personally identifiable information (''PII''), including Social Security numbers, dates of birth, or Foreign ID numbers became effective on May 14, 2018 (*see* 83 FR 22190, May 14, 2018). Section 15B(a)(1) of the Act makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake certain solicitations of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. The rules, among other things (i) require municipal advisors to file certain forms (*i.e.,* Form MA, Form MA–A, Form MA/A, Form MA–I, Form MA–I/A, Form MA–NR, and Form MA–W) with the Commission to obtain, maintain, or terminate their registration with the Commission and maintain certain books and records in accordance with the Act, and (ii) set forth how certain entities may meet the requirements of the statutory exclusions or regulatory exemptions from the definition of ''municipal advisor.''

Form MA

The Commission estimates that approximately 35 respondents will submit new Form MA applications annually in each of the next three years.[1] The Commission further estimates that each submission will take approximately 3.5 hours. Thus, the total annual burden borne by respondents for submitting an initial Form MA application will be approximately 123 hours.[2] The Commission estimates that respondents submitting new Form MA applications would, on average, consult with outside counsel for one hour, at a rate of $400/hour. Thus, the Commission estimates that the average total annual cost that may be incurred by all respondents filing new Form MA applications will be $14,000.[3] In addition to filing initial Form MA applications, the rules require municipal advisors to amend Form MA once annually (Form MA–A) and after the occurrence of any enumerated material event (Form MA/A). The requirement to amend Form MA applies to all registered municipal advisors. There are currently approximately 535 municipal advisors registered with the Commission and, as noted above, the Commission anticipates receiving 105 new Form MA submissions over the next three years. Therefore, the Commission expects that the rules' requirement to amend Form MA will apply to approximately 570 municipal advisors in year one, approximately 605 municipal advisors in year two, and approximately 640 municipal advisors in year three. The Commission estimates that completing an annual amendment would take a municipal advisor approximately 1.5 hours and completing a material event amendment would take 0.5 hours. The Commission further estimates that each municipal advisor will submit two amendments per year (one Form MA–A and one Form MA/A). Thus, the Commission estimates that the average annual burden borne by respondents for amending Form MA during the three-year period will be approximately 1,210 hours.[4]

Form MA–I

The Commission estimates that it will receive approximately 570 new Form MA–I submissions annually.[5] The Commission further estimates that each Form MA–I submission will take approximately three hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–I will be approximately 1,710 hours.[6] The Commission also estimates that a Form MA–I respondent will submit 2.95 updating amendments per year (Form MA–I/A), and that each such amendment will take approximately 0.5 hours to complete.[7] There are currently approximately 3,385 Form MA-Is on file with the Commission for natural persons currently associated with a municipal advisor and, as noted above, the Commission expects to receive 1,710 Form MA–I submissions over the next three years.[8] Therefore, the Commission expects the rules' requirement to amend Form MA–I to apply to approximately 3,955 Form MA–Is in year one, approximately 4,525 Form MA–Is in year two, and approximately 5,095 Form MA–Is in year three. Thus, the Commission estimates that the average annual burden borne by respondents submitting Form MA–I amendments during the three-year period will be approximately 6,674 hours.[9]

Form MA–W

The Commission estimates that it will receive 46 new Form MA–W submissions annually.[10] The Commission further estimates that each Form MA–W submission will take approximately 0.5 hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–W will be approximately 23 hours.[11]

Form MA–NR

The Commission estimates that three municipal advisors will have a non-resident general partner, non-resident managing agent, or non-resident associated person and such advisors will submit a total of approximately five Form MA–NRs annually.[12] The Commission further estimates that each Form MA–NR submission will take approximately 1.5 hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–NR will be approximately 7.5 hours.[13] In addition, each respondent that submits a Form MA–NR must also provide an opinion of counsel. The Commission estimates that such an opinion of counsel would take three hours to complete, at a rate of $400/hour. Thus, the Commission estimates that the total annual burden borne by respondents providing an opinion of counsel will be

[1] The estimate is derived by averaging the number of Form MA filings over the last three years and rounding up. There were 39 Form MA submissions in 2017, 34 Form MA submissions in 2018, and 30 Form MA submissions in 2019.

[2] 35 respondents × 3.5 hours = 122.5 hours.

[3] 35 respondents × ($400/hour × 1 hour) = $14,000.

[4] ((570 respondents × 2 hours) + (605 respondents × 2 hours) + (640 respondents × 2 hours))/3 = 1,210 hours.

[5] The estimate is derived by averaging the number of Form MA–I submissions over the last three years. There were 619 Form MA–I submissions in 2017, 466 Form MA–I submissions in 2018, and 624 Form MA–I submissions in 2019.

[6] 570 submissions × 3 hours = 1,710 hours.

[7] The estimate is derived by averaging the number of updating amendments submitted by respondents over the last three years. In 2017, the average number is 2,078 Form MA–I/A/574 municipal advisors = 3.62. In 2018 the average number is 1,398 Form MA–I/A/555 municipal advisors = 2.52. In 2019, the average number is 1,442 Form MA–I/A/535 municipal advisors = 2.70. Averaging the average number of updating amendments for the last three years: 3.62 (2017) + 2.52 (2018) + 2.70 (2019)/3 = 2.95 updating amendments per year.

[8] The estimated number of active Form MA–I filings is derived by taking the total number of Form MA–I submissions with the Commission as of December 31, 2019 and subtracting the number of Form MA–I/A withdrawals as of the same date. 7,564 (Form MA–I submissions) − 4,179 (Form MA–I/A withdrawals) = 3,385 Form MA-Is on file.

[9] (((3,955 Form MA–I/As × (2.95 amendments × 0.5 hours)) + ((4,525 Form MA–I/As × (2.95 amendments × 0.5 hours)) + ((5,095 Form MA–I/As × (2.95 amendments × 0.5 hours)))/3 = 6,674.375 hours.

[10] The estimate of 46 Form MA–W submissions is derived by averaging the number of Form MA–W submissions over the last two years. There were 46 Form MA–W submissions in 2018 and 2019 respectively. The filing number from 2017 was omitted because an abnormally large number of Form MA–W submissions were submitted (116 submissions in 2017), likely due to the advent of the Municipal Securities Rulemaking Board's Series 50 exam requirement which became effective on September 12, 2017.

[11] 46 respondents × 0.5 hours = 23 hours.

[12] The estimate is derived by averaging the number of Form MA–NR submissions over the last three years. There were seven Form MA–NR submissions in 2017, four Form MA–NR submissions in 2018, and five Form MA–NR submissions in 2019.

[13] 3 respondents × (1.67 Form MA–NR submissions × 1.5 hours) = 7.5 hours.

approximately nine hours.[14] The estimated average total cost that may be incurred by all respondents providing an opinion of counsel will be $3,600.[15]

Consent to Service of Process

The Commission estimates that 35 new municipal advisors will have to develop a template document to use in obtaining written consents to service of process from their associated persons annually. The Commission further estimates that each template document will take approximately one hour to draft. Thus, the Commission estimates that the total annual burden borne by respondents developing a template document will be approximately 35 hours.[16] In addition, the Commission estimates that municipal advisors will need to obtain 570 new consents to service of process from associated persons annually. The Commission further estimates that, after the written consents are drafted, it will take municipal advisors approximately 0.10 hours to obtain each consent. Thus, the Commission estimates that the total annual burden borne by respondents obtaining consents to service of process will be 92 hours.[17]

Books and Records To Be Maintained by Municipal Advisors

The Commission estimates 570, 605, and 640 municipal advisors will be subject to the books and records rules during each of the next three years, respectively. The Commission further estimates that the average annual burden for a municipal advisor to comply with the books and records requirement is approximately 182 hours. Thus, the Commission estimates that the average annual burden borne by respondents to comply with the books and records requirements during the three-year period will be approximately 110,110 hours.[18]

Independent Registered Municipal Advisor Exemption

The Commission estimates that approximately 231 persons will seek to rely on the independent registered municipal advisor exemption annually.[19] The Commission further estimates that the one-time burden of developing a written template disclosure document will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template disclosure document will be approximately 231 hours.[20] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates that respondents may seek the exemption on approximately 8,211 transactions annually.[21] The Commission further estimates that the burden of obtaining the written representations needed from the municipal entity or obligated person client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the independent registered municipal advisor exemption will be approximately 2,053 hours.[22]

Municipal Escrow Investments

The Commission estimates that approximately 694 respondents will seek to rely on the municipal escrow investments exemption.[23] The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exemption will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 694 hours.[24] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates the respondents will seek to rely on the exemption with approximately 2,321 municipal entity clients.[25] The Commission further estimates that the burden of obtaining the required written representations from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the municipal escrow investments exemption will be approximately 580 hours.[26]

Proceeds of Municipal Securities

The Commission estimates that approximately 720 respondents will seek to rely on the proceeds of municipal securities exemption.[27] The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exemption will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 720 hours.[28] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates that respondents will seek to rely on the exemption in connection with services provided to approximately 4,056 clients.[29] The Commission further estimates that the burden of obtaining the required written consents from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on proceeds of municipal securities exemption will be approximately 1,014 hours.[30]

Written comments are invited on: (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;

[14] 3 respondents × 3 hours = 9 hours.

[15] 3 respondents × (3.0 hours × $400/hour) = $3,600.

[16] 35 respondents × 1 hour = 35 hours.

[17] 35 hours + (570 × 0.1 hours) = 92 hours.

[18] ((570 respondents × 182 hours) + (605 respondents × 182 hours) + (640 respondents × 182 hours))/3 = 110,110 hours.

[19] Estimate based on information obtained from Mergent Municipal Bond Securities Database. The estimate represents the average number of underwriters that participated in negotiated transactions from 2017 to 2019.

[20] 231 respondents × 1 hour = 231 hours.

[21] Estimate based on information obtained from Mergent Municipal Bond Securities Database. The estimate represents the average number of negotiated deals using an underwriter each year.

[22] 8,211 transactions × 0.25 hours = 2,052.75 hours.

[23] The Commission estimates in this section are based on information reported directly by state-registered investment advisers in Item 5.D.(i)(1) within Form ADV.

[24] 694 respondents × 1 hour = 694 hours.

[25] The Commission estimates in this section are based on information reported directly by state-registered investment advisers in Item 5.D.(i)(1) within Form ADV.

[26] 2,321 clients × 0.25 hours = 580.25 hours.

[27] The Commission estimates in this section are based on information reported directly by state-registered investment advisers in Item 5.D.(f)(1) within Form ADV. The number of state-registered investment advisers which have pooled investment vehicle clients (other than investment company and business development company clients) within Form ADV, Item 5.D.(f)(1) = 637. The percentage of state-registered investment advisers which have municipal government entity clients (other than investment company and business development company clients) within Form ADV, Item 5.D.(f)(1) = 4%. (637 × .04) = 26. The number of state-registered investment advisers relying on the exception to the definition of ''municipal escrow investment'' = 694. (26 + 694) = 720 respondents.

[28] 720 respondents × 1 hour = 720 hours.

[29] The number of municipal entity clients of state-registered investment advisers relying on the exception to the definition of ''municipal escrow investment'' in Item 5.D.(i)(1) within Form ADV = 2,321 clients. The number of pooled investment vehicle clients (other than investment company and business development company clients) of state-registered investment advisers in Item 5.D.(f)(1) within Form ADV = 1,735 clients. (2,321 + 1,735) = 4,056 clients.

[30] 4,056 clients × 0.25 hours = 1,014 hours.

(b) the accuracy of the Commission's estimates 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, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number. Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency, SEC File No. 270–806, OMB Control No. 3235–0757.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 147A(f)(1)(iii) (17 CFR 230.147A(f)(1)(iii)) requires the issuer to obtain from the purchaser a written representation as to the pruchase's residency in order to qualify for safe harbor under Securities Act Rule 147A (17 CFR 230.147A). Rule 147A is an exemption from registration under Securities Act Section 28 (15 U.S.C. 77z–3). Under Rule 147A, the purchaser in the offering must be a resident of the same state or territory in which the issuer is a resident. While the formal representation of residency by itself is not sufficient to establish a reasonable belief that such purchasers are in-state residents, the representation requirement, together with the reasonable belief standard, may result in better compliance with the rule and maintaining appropriate investor protections. The representation of residency is not provided to the Commission. Approximately 700 respondents provide the information required by Rule 147A(f)(1)(iii) at an estimated 2.75 hours per response for a total annual reporting burden of 1,925 hours (2.75 hours x 700 responses).

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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34–88324; File No. SR–FINRA–2020–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Trade Reporting Fees Applicable to the FINRA/NYSE Trade Reporting Facility

March 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) to modify the trade reporting fees applicable to participants that use the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE TRF'').

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA/NYSE TRF, which is operated by NYSE Market (DE), Inc. (''NYSE Market (DE)''), is one of four FINRA facilities[3] that FINRA members can use to report over-the-counter (''OTC'') trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA Facility (or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The four FINRA facilities are the FINRA/NYSE TRF, two FINRA/Nasdaq Trade Reporting Facilities (together, the ''FINRA/Nasdaq TRF''), and the Alternative Display Facility (''ADF'' and together, the ''FINRA Facilities'').

Facilities) to use to satisfy their trade reporting obligations.[4]

As discussed below, NYSE Market (DE) proposes to modify the trade reporting fees applicable to FINRA members that use the FINRA/NYSE TRF (''FINRA/NYSE TRF Participants'' or ''Participants''). Currently, the monthly fee for use of the FINRA/NYSE TRF is calculated using a tiered fee structure based on the reporting member's trading activity reported to the FINRA/NYSE TRF and, for some tiers, the reporting member's count of tape reports to the FINRA/NYSE TRF (''Trade Report Count''). NYSE Market (DE) proposes to (a) change the tier structure, such that all the tiers take into account the reporting member's Trade Report Count, while only some of the tiers take into account the reporting member's trading activity reported to the FINRA/NYSE TRF, and the number of fee tiers increases from nine to 13; and (b) exclude certain Participants from the fee.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the final quarter of 2019, under the proposed fee schedule the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease.

FINRA is proposing to amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) accordingly. There is no new product or service accompanying the proposed fee change.

Background

The FINRA/NYSE TRF

Under the governing limited liability company agreement,[5] the FINRA/NYSE TRF has two members: FINRA and NYSE Market (DE). FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), the ''Business Member,'' is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA.

The Business Member establishes pricing for use of the FINRA/NYSE TRF, which pricing is implemented pursuant to FINRA rules that FINRA must file with the Commission and that must be consistent with the Act. The relevant FINRA rules are administered by NYSE Market (DE), in its capacity as the Business Member and operator of the FINRA/NYSE TRF on behalf of FINRA,[6] and the Business Member collects all fees on behalf of the FINRA/NYSE TRF. In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NYSE TRF.

FINRA/NYSE TRF Participants are charged fees pursuant to Rule 7620B and may qualify for transaction credits under Rule 7610B (Securities Transaction Credit). In addition, pursuant to Rule 7630B (Aggregation of Activity of Affiliated Members), affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity.[7]

The FINRA/NYSE TRF is smaller than the FINRA/Nasdaq TRF in terms of reported volume: FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC. For example, from January through December 2019, the breakout of trade report activity among the FINRA Facilities was as follows:

Facility	Number of reported shares	Percentage of TRF total
FINRA/NYSE TRF	132,423,476,814	20.06
FINRA/NASDAQ TRF	527,748,470,214	79.94

Competitive Environment

According to the Business Member, the FINRA/NYSE TRF operates in a competitive environment. The FINRA Facilities have different pricing[8] and compete for FINRA members' trade report activity. In turn, FINRA members can choose which FINRA Facility they use to report OTC trades in NMS stocks. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[9]

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

By amending the tier structure and expanding the number of tiers, the Business Member believes that the proposed fee change will more closely correspond to actual usage. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more attractive options for trade reporting, potentially encouraging FINRA

[4] Members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA Facility that supports the reporting of OTC trades in NMS stocks. As set forth in *Trade Reporting Notice* (January 1, 2016) (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility must establish and maintain connectivity and report to a second FINRA Facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

[5] *See* the Second Amended and Restated Limited Liability Company Agreement of FINRA/NYSE Trade Reporting Facility LLC. The limited liability company agreement, which was submitted as part of the rule filing to establish the FINRA/NYSE TRF and was subsequently amended and restated, can be found in the FINRA Manual.

[6] FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of the FINRA/NYSE TRF operations by an outside independent audit firm.

[7] No change is proposed to be made to Rules 7610B or 7630B, and so there will be no change to the requirements for, or process of, securities transaction credits and the aggregation of affiliated member activity.

[8] Because the FINRA/NYSE TRF and FINRA/Nasdaq TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04).

members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC that they currently use it for.

Proposed Amendments to Rule 7620B

Under Rule 7620B, FINRA/NYSE TRF Participants are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.,* a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, etc.) or a separate fee for connectivity.[10] Rather than charging the same fee to all FINRA/NYSE TRF Participants irrespective of trading activity, the fees set forth in Rule 7620B are tiered.

The Current Monthly Fee

Pursuant to a recent change in the fee structure,[11] the monthly fee for use of the FINRA/NYSE TRF is calculated based on the Participant's share of total market volume reported to the FINRA/NYSE TRF. More specifically, the fees are based on the Participant's ''FINRA/NYSE TRF Market Share'' (''Market Share''), defined as the percentage calculated by dividing:

a. The total number of shares reported to the FINRA/NYSE TRF for public dissemination (or ''tape'') purposes during a given calendar month that are attributable to a FINRA/NYSE TRF Participant, by

b. the total number of all shares reported to the Consolidated Tape Association (''CTA'') or the Nasdaq Securities Information Processor (''UTP SIP''), as applicable, during that period.

Where the Market Share is below 0.10%, the Participant's Trade Report Count is a second factor in determining the applicable monthly fee.

The following chart sets forth the current tiers:

FINRA/NYSE TRF market share	Count of tape reports to FINRA/NYSE TRF	Monthly participant fee
Greater than or equal to 1.25%	n/a	$30,000
Greater than or equal to 0.75% but less than 1.25%	n/a	20,000
Greater than or equal to 0.50% but less than 0.75%	n/a	17,500
Greater than or equal to 0.25% but less than 0.50%	n/a	15,000
Greater than or equal to 0.10% but less than 0.25%	n/a	10,000
Less than 0.10%	25,000 or more trade reports	2,000
Less than 0.10%	100 or more trade reports but fewer than 25,000 trade reports	750
Less than 0.10%	1 or more trade reports but fewer than 100 trade reports	250
Less than 0.10%	No trade reports	2,000

The Proposed Monthly Fee

Under the proposed fee, each Participant would still be charged a monthly fee for use of the FINRA/NYSE Trade Reporting Facility, with the exception that ''Retail Participants'' would not be subject to a monthly fee.

Retail Participants. A Participant would be a ''Retail Participant'' if substantially all of its trade reporting activity on the FINRA/NYSE TRF comprises Retail Orders. In turn, a ''Retail Order'' would mean an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

The proposed amended Rule 7620B would set forth the definitions of ''Retail Participant'' and ''Retail Order,'' together with a description of the relevant requirements in a new paragraph (a) in Rule 7620B. The new paragraph would state that a Participant that wished to qualify as a Retail Participant and be exempt from the monthly fee in accordance with the Rule would be required to complete and submit to the FINRA/NYSE TRF an application form and a written attestation of its then-existing qualifications as a Retail Participant and its reasonable expectation that it will maintain such qualifications for a one-year period following the date of attestation. In addition, the new text would state that a Retail Participant:

- Would be required to complete and submit a written attestation to the FINRA/NYSE TRF on an annual basis to retain its status as such;
- would be required to inform the FINRA/NYSE TRF promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant; and
- may be audited by the FINRA/NYSE TRF periodically.

The new text would also state that Participants would be required to contact the FINRA/NYSE TRF for the application and attestation forms,[12] and that if the FINRA/NYSE TRF approved a Participant as a Retail Participant on or prior to the twenty-seventh day of a month, then the approval would be deemed to be effective as of the first day of that month, whereas an approval that occurred after the twenty-seventh day of the month would be deemed effective as of the first day of the following month. If a Participant notified the FINRA/NYSE TRF that it ceased to qualify as a Retail Participant during a month, then such notification would be deemed effective as of the first day of the following month.

The proposed exemption, definitions and requirements would be consistent with the exemption, definitions and requirements for retail participants of the FINRA/Nasdaq TRF set forth in FINRA Rule 7620A.[13]

Retail Participants would continue to receive unlimited use of the Client Management Tool, as well as full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation.

Proposed Tiers. The proposed amended Rule 7620B would set forth the fees for Participants that are not Retail Participants in a new paragraph (b) and would expand the current tier structure from nine to 13 tiers. Unlike now, the determination of the applicable tier would take into account the Trade Report Counts in every case. Only when the Trade Report Count is

[10] *See, e.g.,* Rules 7510(a) and 7520 (trade reporting fees and connectivity charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

[11] *See* Securities Exchange Act Release No. 87205 (October 3, 2019), 84 FR 54219, 54224 (October 9, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–024). The operative date was October 1, 2019.

[12] The Business Member expects to make the required application and attestation forms available on the FINRA/NYSE TRF website.

[13] *See* FINRA Rule 7620A, including the commentary thereto, and Securities Exchange Act Release No. 88135 (February 6, 2020), 85 FR 8079 (February 12, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–004).

above 25,000 would the Market Share be a factor in determining the relevant tier. The following chart sets forth the proposed fee tiers for Participants that are not Retail Participants:

FINRA/NYSE TRF market share	Count of Tape Reports to FINRA/NYSE TRF	Monthly participant fee
Greater than or equal to 1.25%	More than 25,000 trade reports	$30,000
Greater than or equal to 1.00% but less than 1.25%	More than 25,000 trade reports	25,000
Greater than or equal to 0.75% but less than 1.00%	More than 25,000 trade reports	20,000
Greater than or equal to 0.50% but less than 0.75%	More than 25,000 trade reports	15,000
Greater than or equal to 0.25% but less than 0.50%	More than 25,000 trade reports	10,000
Greater than or equal to 0.20% but less than 0.25%	More than 25,000 trade reports	7,500
Greater than or equal to 0.10% but less than 0.20%	More than 25,000 trade reports	5,000
Less than 0.10%	More than 25,000 trade reports	2,000
n/a	Between 15,001 and 25,000 trade reports	2,000
n/a	Between 5,001 and 15,000 trade reports	1,000
n/a	Between 101 and 5,000 trade reports	750
n/a	Between 1 and 100 trade reports	250
n/a	No trade reports	2,000

The Market Share would continue to be calculated in aggregate across all tapes [14] and be based on the number of shares attributable to a FINRA/NYSE TRF Participant. A transaction is attributed to a Participant if the Participant is identified as the executing party in a tape report submitted to the FINRA/NYSE TRF. Such calculation would continue to be based on the data available for the prior full calendar month.[15]

The monthly fee would continue to be charged at the end of the calendar month and to apply to any Participant that is not a Retail Participant and has submitted a participant application agreement to the FINRA/NYSE TRF pursuant to Rule 7220B (Trade Reporting Participation Requirements). As is true now, if a new FINRA/NYSE TRF Participant submits the participant application agreement and reports no shares traded in a given month, the Participant would not be charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.[16] The monthly fees paid by FINRA/NYSE TRF Participants will continue to include unlimited use of the Client Management Tool, as well as full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation.[17]

Application of Proposed Fee Schedule

The proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different sizes of Participants. Different types of Participants will be treated the same except that, as noted above, Retail Participants will not be charged a fee. For all other Participants, the determination of the applicable tier would be based on the Participant's Trade Report Count and, in some cases, FINRA/NYSE TRF Market Share. By expanding the structure from nine monthly Participant tiers to 13, the proposed rule change would create a more nuanced fee structure.

Proposed Exclusion of Retail Participants

The proposed exclusion of Retail Participants from the monthly fee is intended to improve the competitiveness of the FINRA/NYSE TRF for Retail Participants in light of recent initiatives by retail brokers to eliminate fees for executing retail customer transactions and the recent determination by the FINRA/Nasdaq TRF not to charge its retail participants any fees for trade reporting.[18] Recently, some large retail brokers, such as Charles Schwab Corp., TD Ameritrade Holding Corp., and E*Trade Financial Corp., have removed commission trading fees for stock trades, leading to pressure on retail brokers to reduce operational costs.[19] The Business Member believes that its proposal would support these efforts and attract Retail Participants to the FINRA/NYSE TRF.

Proposed Tiers

The current fee structure came into effect in October 2019. Based largely on its experience with the current fee structure over the last few months, the Business Member has identified two issues that the proposed change is meant to address.

First, the current structure works on the general assumption that as a Participant's Market Share goes up its Trade Report Count will increase as well. Analyzing the fees paid under the current structure, the Business Member has found instances where that assumption is wrong: In such cases, a Participant may have a Market Share that is above 0.10% but may make only a few trade reports to the FINRA/NYSE TRF, resulting in a more substantial fee per trade than if the Participant had a lower Market Share. To address the issue, the Business Member proposes to take the Trade Report Count into account for every tier. At the same time, it proposes to reduce the current focus on Market Share.

Two examples show the effect of the proposed change:

- Assume that, during a given month, a Participant has a Market Share of 0.15% and makes two trade reports to the FINRA/NYSE TRF. Under the current structure, it has a monthly fee of $10,000—the same fee that would apply if it had a Trade Report Count of 30,000. Under the proposed structure, because the Trade Report Count is taken into account, the hypothetical Participant would have a monthly fee of $250 if it made two trade reports and $5,000 if it made 30,000.

[14] There are three tapes: ''Tape A'' includes securities listed on the New York Stock Exchange, ''Tape B'' includes securities listed on NYSE American and regional exchanges, and ''Tape C'' includes securities listed on Nasdaq.

[15] For example, the bill issued in June would be for the month of May, and would be based on shares reported during May.

[16] As is the case today, after the first two calendar months, the Participant will be charged regardless of connectivity.

[17] *See* 84 FR 54219, *supra* note 13 [sic], at 54221.

[18] *See* note 15 [sic], *supra.*

[19] *See* 85 FR 8079, 8081; *see also* Lisa Beilfuss and Alexander Osipovich, ''The Race to Zero Commissions,'' Wall Street Journal, October 5, 2019, at *https://www.wsj.com/articles/the-race-to-zero-commissions-11570267802.*

• Assume that, during a given month, Participant A has a Market Share of 0.02% and a Trade Report Count of 500, and Participant B has a Market Share of 0.12% and a Trade Report Count of 500. Under the current structure, Participant A has a monthly fee of $750 and Participant B has a monthly fee of $10,000, even though their Trade Report Count is the same. Under the proposed structure, both would be charged a monthly fee of $750.

Currently, a Participant with a Market Share of less than 0.10% would pay a fee based on its Trade Report Count. Under the proposed structure, a Participant with a Market Share of less than 0.10% would pay a fee based on its Trade Report Count only if that count was more than 25,000. In all cases, if a Participant had a Trade Report Count of 25,000 or less, the fee would depend on the Trade Report Count, and the Market Share would not be a factor in determining the tier. As a result, a Participant that has a Market Share above 0.10% but has a low Trade Report Count would not be subject to the more substantial fee per trade than it would be under the current structure, addressing the first issue that the Business Member identified with the current structure.

Second, under the current structure, in some cases the applicable monthly fee increases by up to $10,000 when a customer moves from one tier to the next. As a result, for a Participant on the upper edge of a tier range, a relatively small increase in Market Share can result in a substantial fee increase. To address the issue, the proposal would increase the number of tiers to 13, adding granularity to the structure and decreasing the impact of changing tiers.

Three scenarios show the effect of the proposed change:

• Currently the monthly fee increases fivefold, from $2,000 to $10,000, if a Participant crosses the threshold between two of the middle tiers.[20] The proposed creation of two new tiers between them, with fees of $5,000 and $7,500 per month, would mean that the Participant would have to move three tiers to increase its fee from $2,000 to $10,000 per month.

• Currently the monthly fee increases from $750 to $2,000 if a Participant crosses the threshold between two of the lower tiers.[21] The proposal would introduce a tier with a $1,000 monthly fee between them.

• Currently the monthly fee increases from $20,000 to $30,000 if a Participant crosses the threshold between the two highest tiers.[22] The proposal would introduce a tier with a $25,000 fee, so that a Participant would not have its monthly fee increase by $10,000 simply by crossing the threshold between two tiers.

In addition, the proposed fee schedule uses different threshold percentages for its tiers than the current fee schedule. The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure and would help address the described issues. In making its evaluation, the Business Member utilized its activity records and its analysis of the more detailed information on the FINRA website (the ''OTC Transparency Data website'').[23]

To facilitate comparison, the following table shows the proposed and current tiers and monthly fees.

Market share & trade report counts: tiers		Monthly fee	
Current	Proposed [1]	Current	Proposed [1]
Greater than or equal to 1.25%	Greater than or equal to 1.25% *and* more than 25,000 trade reports.	$30,000	$30,000
	Greater than or equal to 1.00% but less than 1.25% *and* more than 25,000 trade reports.	.....	25,000
Greater than or equal to 0.75% but less than 1.25%	Greater than or equal to 0.75% but less than 1.00% *and* more than 25,000 trade reports.	20,000	20,000
Greater than or equal to 0.50% but less than 0.75%	Greater than or equal to 0.50% but less than 0.75% *and* more than 25,000 trade reports.	17,500	15,000
Greater than or equal to 0.25% but less than 0.50%	Greater than or equal to 0.25% but less than 0.50% *and* more than 25,000 trade reports.	15,000	10,000
	Greater than or equal to 0.20% but less than 0.25% *and* more than 25,000 trade reports.	.....	7,500
Greater than or equal to 0.10% but less than 0.25%	Greater than or equal to 0.10% but less than 0.20% *and* more than 25,000 trade reports.	10,000	5,000
Less than 0.10% *and* 25,000 or more trade reports	Less than 0.10% *and* more than 25,000 trade reports	2,000	2,000
	Between 15,001 and 25,000 trade reports	.....	2,000
	Between 5,001 and 15,000 trade reports	.....	1,000
Less than 0.10% *and* 100 or more trade reports but fewer than 25,000 trade reports.	Between 101 and 5,000 trade reports	750	750
Less than 0.10% *and* 1 or more trade reports but fewer than 100 trade reports.	Between 1 and 100 trade reports	250	250
Less than 0.10% *and* no trade reports	No trade reports	2,000	2,000

[1] Under the proposed change, Retail Participants would not be subject to monthly fees.

[20] From a Market Share of less than 0.10%, to a Market Share greater than or equal to 0.10% but less than 0.25%.

[21] From a Market Share of less than 0.10% and Trade Report Count of 100 or more trade reports but fewer than 25,000 trade reports, to a Market Share of less than 0.10% and Trade Report Count of 25,000 or more trade reports.

[22] From a Market Share greater than or equal to 0.75% but less than 1.25%, to a Market Share greater than or equal to 1.25%.

[23] *https://otctransparency.finra.org/otctransparency/AtsIssueData.* FINRA began reporting information regarding each firm's aggregate non-ATS OTC volume (number of trades and number of shares) in December 2019, increasing the information available on the OTC Transparency Data website. *See* Securities Exchange Act Release No. 86706 (August 19, 2019), 84 FR 44341 (August 23, 2019) (Order Approving File No. SR–FINRA–2019–019).

Anticipated Application of the New Structure

It is not possible to fully predict the number of FINRA members that are likely to become FINRA/NYSE TRF Participants, how many Participants would be subject to each of the proposed tiers, or whether there will be an appreciable increase—or decrease—in reporting to the FINRA/NYSE TRF.[24] The Business Member anticipates that the proposed pricing will incentivize Participants to increase their reporting to the FINRA/NYSE TRF.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the final quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. Based on those assumptions, 28 Participants would have no change in their fees and seven Participants would have a decreased or no fee. Of those seven, one would go from $17,500 to $15,000, one would go from $10,000 to $7,500, and two would go from $10,000 to $5,000. The three Retail Participants would go from $2,000 to $0.

The following table suggests how the new tiers would apply if more FINRA members were Participants. Using FINRA data for activity reported to the FINRA Facilities in December 2019 from FINRA's OTC Transparency Data website, the table indicates the number of firms that would be subject to each tier if all FINRA members were reporting to the FINRA/NYSE TRF subject to the current or proposed fee. For the proposed fee, the table shows the number of firms that would be in each tier were they to report 25%, 50% or 100% of their activity to the FINRA/NYSE TRF.

Market share & trade report counts: tiers		Number of firms per tier under current fee	Number of firms per tier based on percentage of reported volume [1]		
Current	Proposed		25%	50%	100%
Greater than or equal to 1.25%	Greater than or equal to 1.25% *and* more than 25,000 trade reports.	6	2	3	6
	Greater than or equal to 1.00% but less than 1.25% *and* more than 25,000 trade reports.	.....	0	0	2
Greater than or equal to 0.75% but less than 1.25%.	Greater than or equal to 0.75% but less than 1.00% *and* more than 25,000 trade reports.	6	0	3	4
Greater than or equal to 0.50% but less than 0.75%.	Greater than or equal to 0.50% but less than 0.75% *and* more than 25,000 trade reports.	6	1	2	6
Greater than or equal to 0.25% but less than 0.50%.	Greater than or equal to 0.25% but less than 0.50% *and* more than 25,000 trade reports.	9	5	10	6
	Greater than or equal to 0.20% but less than 0.25% *and* more than 25,000 trade reports.	.....	1	1	3
Greater than or equal to 0.10% but less than 0.25%.	Greater than or equal to 0.10% but less than 0.20% *and* more than 25,000 trade reports.	20	8	7	7
Less than 0.10% *and* 25,000 or more trade reports.	Less than 0.10% *and* 25,000 or more trade reports.	20	22	25	20
	Between 15,001 and 25,000 trade reports.	.....	9	2	5
	Between 5,001 and 15,000 trade reports.	.....	6	9	4
Less than 0.10% *and* 100 or more trade reports but fewer than 25,000 trade reports.	Between 101 and 5,000 trade reports.	81	66	71	83
Less than 0.10% *and* 1 or more trade reports but fewer than 100 trade reports.	Between 1 and 100 trade reports	96	124	111	98
Less than 0.10% *and* no trade reports.	No trade reports	0	0	0	0

[1] Number of firms that would be in each tier had the firm reported 25%, 50% or 100% of its activity to the FINRA/NYSE TRF. Total activity based on data posted on the OTC Transparency Data website for December 2019.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be March 1, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[25] in general, and Section 15A(b)(5) of the Act,[26] in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA also believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[27] which requires, among other

[24] The Business Member does not propose to change the revenue sharing structure. The Business Member notes, however, that the proposed pricing may increase revenue sharing by encouraging Participants that have a Trade Report Count of zero to make trade reports to the FINRA/NYSE TRF in order to reduce their fees from $2,000 to $250, $750 or $1,000. The Business Member believes that the increase in reporting would increase such Participants' revenue share as well as decrease their fee.

[25] 15 U.S.C. 78*o*–3(b).

[26] 15 U.S.C. 78*o*–3(b)(5).

[27] 15 U.S.C. 78*o*–3(b)(6).

things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,[28] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

As a general matter, the proposed fee schedule will be assessed in the same manner on all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not be applied differently to different sizes of Participants. Different types of Participants will be treated the same except that, as noted above, Retail Participants will not be charged a fee. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms.

The Proposed Rule Change Is an Equitable Allocation of Reasonable Fees

FINRA believes that the proposed rule change is an equitable allocation of reasonable fees for the following reasons. The Business Member believes that the proposal to exempt Retail Participants from the monthly fee is reasonable for several reasons.

Given the recent initiatives by retail brokers to eliminate fees for executing retail customer transactions, the Business Member believes that the proposed rule change would demonstrate that the FINRA/NYSE TRF is sensitive to current and potential Retail Participants' changing business models and operational costs. In addition, given the recent determination by the FINRA/Nasdaq TRF not to charge its retail participants any fees for trade reporting, the Business Member believes that the proposal is a reasonable means of strengthening the ability of the FINRA/NYSE TRF to compete for trade reporting activity, given that the proposal will treat Retail Participants in the same manner as the competing FINRA TRF, while offering current and potential Participants more attractive options for trade reporting. The Business Member notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity should continue to contribute to operating the FINRA/NYSE TRF insofar as the FINRA/NYSE TRF will continue to receive a share of the CTA and UTP SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/NYSE TRF.

The Business Member believes that the proposed exemption, definitions of ''Retail Participant'' and ''Retail Orders'' and requirements for Retail Participants would be reasonable, as they would be consistent with the exemption, definitions and requirements for retail participants of the FINRA/Nasdaq TRF set forth in FINRA Rule 7620A.[29] Using substantially similar definitions and requirements would enhance consistency and predictability for potential Retail Participants.

With respect to Participants that are not Retail Participants, the proposed structure would take the Trade Report Count into account for every tier. At the same time, it would reduce the current focus on Market Share. Specifically, if a Participant had a Trade Report Count of 25,000 or less, its Market Share would not be a factor in determining its fee. As a general matter, the proposed fees are designed such that more active Participants have a higher fee, while less active Participants pay less. By removing Market Share as a factor in determining the relevant tier for Participants with Trade Report Counts of 25,000 or less, the Trade Report Count would become the determinative factor. The Business Member believes that this proposed change would be equitable because for Participants with a lower Trade Report Count, their monthly fee would be tied to the number of trades, and not their size.

In addition to exempting Retail Participants from the fee, the proposed changes to Rule 7620B would expand the tier structure from nine monthly Participant fees to 13. As a result, for a Participant on the upper edge of a tier range, a relatively small increase in Market Share would not result in as substantial a fee increase as under the present structure, thereby adding granularity to the structure and decreasing the impact of changing tiers.

The proposed fee schedule uses different threshold percentages for its tiers than the current fee schedule. The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure and would help address the described issues. In making its evaluation, the Business Member utilized its activity records and its analysis of the information on the OTC Transparency Data website.

The Proposed Rule Change Is Not Unfairly Discriminatory

FINRA believes that the proposed rule change is not unfairly discriminatory for the following reasons.

As proposed, Retail Participants would be exempted from the monthly fee for using the FINRA/NYSE TRF. The Business Member does not believe that it would be unfair to do so, as the proposed rule change would demonstrate that the FINRA/NYSE TRF is sensitive to current and potential Retail Participants' changing business models and operational costs. Importantly, the proposed exemption would align the fees of the FINRA/NYSE TRF with those of the FINRA/Nasdaq TRF, which does not charge its retail participants any fees for trade reporting.[30] In addition, as noted above, the total fees paid by Retail Participants are relatively small: of the 35 FINRA/NYSE TRF Participants in December 2019, three were Retail Participants. Under the proposed rule, their monthly fees would go from $2,000 to $0.

The Business Member notes that the proposed changes in the fees for other Participants were not designed to offset the loss of Retail Participant trade reporting fees. Indeed, if there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the final quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease even if Retail Participants were not exempted from the monthly fee.

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

The Business Member believes that the proposed fee change may encourage more FINRA members to become FINRA/NYSE TRF Participants, including both Retail and non-Retail Participants, and use the FINRA/NYSE TRF to report trades. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more

[28] 15 U.S.C. 78*o*–3(b)(9).

[29] *See* note 15 [sic], *supra.*

[30] *See* note 15 [sic], *supra.*

attractive options for trade reporting, potentially encouraging FINRA members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC than they currently use it for.

With respect to Participants that are not Retail Participants, the proposed structure would take the Trade Report Count into account for every tier. At the same time, it would reduce the current focus on Market Share. Specifically, if a Participant had a Trade Report Count of 25,000 or less, its Market Share would not be a factor in determining its fee. As a general matter, the proposed fees are designed such that more active Participants have a higher fee, while less active Participants pay less. By removing Market Share as a factor in determining the relevant tier for Participants with Trade Report Counts of 25,000 or less, the Trade Report Count would become the determinative factor. The Business Member believes that this proposed change would not be unfairly discriminatory because for Participants with a lower Trade Report Count, their monthly fee would be tied to the number of trades, and not their size.

Finally, the Business Member believes that dividing the proposed rule into paragraphs (a) and (b) would make Rule 7620B easier for market participants to understand and to locate relevant information, thereby increasing the clarity and transparency of the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Business Member believes that, rather than impose a burden on competition, the proposed change will benefit competition because it will give all FINRA members more attractive options for trade reporting. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [31]

Intramarket Competition. FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, the Business Member understands that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF.

The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

The proposed structure would exempt Retail Participants from the monthly fee for using the FINRA/NYSE TRF. The Business Member believes that doing so would not be a burden on intramarket competition, as the proposed rule change would align the fees of the FINRA/NYSE TRF with those of the FINRA/Nasdaq TRF, which does not charge its retail participants any fees for trade reporting.[32] In addition, as noted above, the total fees paid by Retail Participants are relatively small: Of the 35 Participants in December 2019, three were Retail Participants. Under the proposed rule, their monthly fees would go from $2,000 to $0.

With respect to Participants that are not Retail Participants, the proposed structure would take the Trade Report Count into account for every tier. At the same time, it would reduce the current focus on Market Share. Specifically, if a Participant had a Trade Report Count of 25,000 or less, its Market Share would not be a factor in determining its fee. By removing Market Share as a factor in determining the relevant tier for Participants with Trade Report Counts of 25,000 or less, the Trade Report Count would become the determinative factor. The Business Member believes that this proposed change would make the FINRA/NYSE TRF more competitive for Participants with a lower Trade Report Count, as their monthly fee would be tied to the number of trades, and not their size.

The proposed changes to Rule 7620B would expand the tier structure from nine monthly Participant fees to 13. As a result, for a Participant on the upper edge of a tier range, a relatively small increase in Market Share would not result in as substantial a fee increase as under the present structure. As a result, the proposed structure would have more granularity than the current structure and the impact of changing tiers would decrease, making the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF.

The proposed fee schedule uses different threshold percentages for its tiers than the current fee schedule. The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure and would help address the described issues. In making its evaluation, the Business Member utilized its activity records and its analysis of the information on the OTC Transparency Data website.

The Business Member does not believe that the proposed fee would place certain market participants at a relative disadvantage compared to other market participants, because the proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different sizes of Participants. Different types of Participants will be treated the same except that, as noted above, Retail Participants will not be charged a fee. The proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF. At the same time, by expanding the tier structure from nine monthly Participant tiers to 13, the proposed rule change would create a structure under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

As of December 31, 2019, there were 35 Participants, of which 18 were in the $2,000 per month tier. Three of the remaining Participants were in the $30,000 per month tier, one was in the $17,500 per month tier, three were in the $10,000 per month tier, five were in the $750 per month tier, and three were in the $250 per month tier. Two were new Participants not yet subject to fees.[33] Assuming the number of Participants remained flat, the average fee incurred during December 2019 was approximately $5,085 per Participant across the 35 Participants.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed

[31] *See* note 11 [sic], *supra.*

[32] *See* note 15 [sic], *supra.*

[33] As noted above, if a new Participant submits the participant application agreement and reports no shares traded in a given month, the Participant is not charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.

the same as it was in the final quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. More specifically, assuming there was no change in reporting to the FINRA/NYSE TRF, under the proposed fee schedule the average subscriber fee that would have been incurred would have been approximately $4,478 across the 35 Participants, compared to approximately $5,085 per Participant under the current fee. Of the 35 Participants, 28 would have no change in their fees and seven Participants would have a decreased fee or no fee. Of those seven, one would go from $17,500 to $15,000, one would go from $10,000 to $7,500, and two would go from $10,000 to $5,000. The three Retail Participants would go from $2,000 to $0.

The Business Member notes that the proposed changes in the fees for other Participants were not designed to offset the loss of Retail Participant trade reporting fees. Indeed, if there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the final quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease even if Retail Participants were not exempted from the monthly fee.

Participants may potentially alter their trading activity in response to the proposed rule change. Specifically, those Participants that would incur higher fees may refrain from reporting to the FINRA/NYSE TRF and may choose to report to another FINRA Facility. Alternatively, such firms may continue reporting or new firms may start reporting to the FINRA/NYSE TRF if they find that the proposed net cost of reporting and other functionalities provided represent the best value to their business.[34] The net effect on any individual Participant of the proposed change in reporting fees will depend on whether it is a Retail Participant and, if not, its Trade Report Count and, for five tiers, its Market Share.

Lastly, the Business Member notes that Retail Participants and other Participants do not typically compete for the same business. As a result, the Business Member does not expect the proposed change to create a competitive advantage for Retail Participants relative to other Participants.

Intermarket Competition. The FINRA/NYSE TRF operates in a competitive environment. The proposed fee would not impose a burden on competition on other FINRA Facilities that is not necessary or appropriate. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. The pricing structures of the FINRA/NYSE TRF and other FINRA Facilities are publicly available, allowing FINRA members to make rational decisions regarding which FINRA Facility they use to report OTC trades in NMS stocks.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: The FINRA/NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they determine that the fees and credits of another FINRA Facility are more favorable, so long as they are participants of such other facility.

The Business Member believes that in such an environment the FINRA/NYSE TRF must adjust its fees to be competitive with other FINRA Facilities and to attract Participant reporting. By making the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF, the Business Member believes that the proposed fee change will encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF, thereby increasing competition among the FINRA Facilities and giving FINRA members more attractive options for trade reporting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [35] and paragraph (f)(2) of Rule 19b–4 thereunder.[36] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–FINRA–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2020–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2020–006, and should be submitted on or before April 1, 2020.

[34] The FINRA/NYSE TRF does not impose a fee on new Participants, and so a FINRA member that opts to become a Participant would not incur an additional cost from the FINRA/NYSE TRF. In some cases, a new Participant may incur incidental costs to connect to the FINRA/NYSE TRF, but those are not charged by the FINRA/NYSE TRF. An existing Participant that ceases to be a Participant is not subject to any change fee by the FINRA/NYSE TRF.

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04902 Filed 3–10–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88330; File No. SR–NYSEArca–2020–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Rule 11.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

March 5, 2020.

On January 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 8, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates April 22, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2020–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04908 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88337; File No. SR–ICC–2020–001]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating To Revising the ICC Clearing Rules To Consider the Possibility of ICC Receiving Proceeds From Default Insurance

March 5, 2020.

I. Introduction

On January 9, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its Clearing Rules (the ''Rules'')[3] to consider the possibility of ICC receiving proceeds from default insurance. The proposed rule change was published for comment in the **Federal Register** on January 21, 2020.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would amend Chapters 1 and 8 of the ICC Rules to allow ICC to receive proceeds from an insurance policy in the event of the default of a Clearing Participant (''CP''). The proposed rule change would incorporate these proceeds from insurance into ICC's default waterfall and therefore treat them similar to other resources that ICC uses to cover losses from CP defaults, like the guaranty fund. In terms of incorporating insurance proceeds into ICC's default waterfall, under the proposed rule change, generally ICC would use proceeds from insurance before using guaranty fund resources from non-defaulting CPs. Although the proposed rule change would establish the legal framework for ICC to maintain insurance and use insurance proceeds in the event of a CP's default, the proposed rule change would not require that ICC maintain such insurance.

With respect to Chapter 1 of the ICC Rules, which sets out the defined terms used in the Rules, the proposed rule change would add to ICC Rule 102 (''Definitions'') the term ''Insurance Proceeds'' and would refer to proposed Rule 802(b)(i)(A)(4), where the term would be defined. Proposed Rule 802(b)(i)(A)(4) would define the term ''Insurance Proceeds'' to mean insurance proceeds, if any, received by ICC in connection with a CP's default. Additionally, proposed Rule 802(b)(i)(A)(4) would state that ICC shall not be obligated to obtain or maintain any insurance policy with respect to the default of a CP, thus making explicit the point described above that the proposed rule change would not require that ICC maintain insurance against defaults.

With respect to Chapter 8 of the ICC Rules, the proposed rule change would first amend ICC Rule 802(a). ICC Rule 802(a) provides that ICC may charge against a defaulting CP's contributions to the guaranty fund losses suffered from the CP's default. Rule 802(a) lists the types of losses and expenses that ICC may charge against the defaulting CP's contributions to the guaranty fund, ordered by priority. Rule 802(a) also explains how ICC would pay out any surplus remaining after paying all of the other listed items. As explained in Rule 802(a), ICC may pay the surplus to ICC or to whomever may be lawfully entitled to receive the surplus, including any insurer, surety, or guarantor of the obligations of ICC. The proposed rule change would add to this any insurer, surety, or guarantor with respect to the obligations of the

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87987 (January 16, 2020), 85 FR 4011.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules; Exchange Act Release No. 87958 (Jan. 14, 2020); 85 FR 3446 (Jan. 21, 2020) (''Notice'').

defaulting CP. This aspect of the proposed change would thus allow ICC to pay to an insurance provider surplus guaranty fund contributions of the defaulting CP, which ICC may be required to do under the terms of a policy insuring against losses resulting from the default of a CP.

The proposed rule change would next amend Rule 802(b) to integrate default insurance into ICC's default waterfall. Rule 802(b) gives ICC the right to charge against certain financial resources losses resulting from the default of a CP. Rule 802(b) lists the financial resources to which ICC may charge such losses, in the order by which ICC may use them. The proposed rule change would add to this list the insurance proceeds, if any, that ICC receives in connection with the CP's default. ICC would be able to use the insurance proceeds only after charging losses to ICC's contributions to the guaranty fund but before using the guaranty fund contributions of non-defaulting CPs.

Under ICC Rule 802(c), the defaulting CP remains liable for any losses charged in the manner permitted under Rule 802(b). As such, Rule 802(c) permits ICC to recover the liability from the defaulting CP's margin, collateral, or other assets, or by legal process. Rule 802(c) also requires that, should ICC make any such recovery, ICC must use the money recovered to pay back certain expenses and persons, according to the order listed in Rule 802(c). The proposed rule change would add to this list in Rule 802(c) an insurance provider, to the extent the provider is entitled to such recovery. Thus, this aspect of the proposed rule change would amend Rule 802(c) to reflect that ICC may owe money recovered from or in respect of a defaulting CP to the insurance provider and would allow ICC to pay back such insurance provider as necessary.

The proposed rule change would also make two specific changes to provide ICC flexibility to cover losses while waiting for payment under an insurance policy. First, the proposed rule change would amend Rule 802(b) to provide that ICC could use the guaranty fund contributions of non-defaulting CPs prior to receipt of any insurance proceeds. In that event, ICC would be required to reimburse the non-defaulting CPs from the insurance proceeds when received. Similarly, the proposed rule change would amend Rule 808 to allow ICC to conduct reduced gains distribution where ICC has made a claim under an insurance policy but has not yet received any proceeds from the claim. In that event, the proposed rule change would make any proceeds ultimately received under the insurance policy available as a potential resource to pay back CPs that have been subject to reduced gains distribution under Rule 808.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[5] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and Rule 17Ad–22(d)(11) thereunder.[7]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[8] As discussed above, the proposed rule change would establish the legal framework for the use of default insurance by amending ICC's default waterfall to provide for the use of such insurance and by allowing ICC to pay to the insurance provider, as necessary, surplus guaranty fund contributions of the defaulting CP and money recovered from the defaulting CP. The proposed rule change would also provide ICC with the ability to use other financial resources and to engage in reduced gains distribution while awaiting payment under a default insurance policy. Although the proposed rule change explicitly would not require that ICC obtain or maintain a default insurance policy, the Commission believes that in establishing the legal framework and operational flexibility for using such a default insurance policy, the proposed rule change would provide ICC a means of obtaining an additional financial resource (*i.e.,* insurance) for offsetting losses resulting from a CP's default.

In doing so, the Commission believes that proposed rule change would enhance ICC's ability potentially to avoid the losses that could result from the default of a Clearing Participant. Because losses resulting from a CP's default could cause losses for ICC, disrupting ICC's ability to clear and settle securities transactions, the Commission believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions. Moreover, because losses resulting from a CP's default could cause losses for ICC, disrupting ICC's access to securities and funds, the Commission believes the proposed rule change would help to assure the safeguarding of securities and funds in ICC's custody and control. Finally, for these reasons, the Commission believes that the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[9]

B. Consistency With Rule 17Ad–22(d)(11)

Rule 17Ad–22(d)(11) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[10] As discussed above, the Commission believes the proposed rule change, in establishing the legal framework and operational flexibility for using a default insurance policy, would provide ICC a means of obtaining an additional financial resource (*i.e.,* insurance) for offsetting losses resulting from a CP's default. The Commission believes the proposed rule change would therefore help to ensure that ICC is able to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a CP's default by giving ICC the ability to obtain additional resources to offset losses resulting from a CP's default. Therefore the Commission finds that the proposed

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(d)(11).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 17Ad–22(d)(11).

rule change is consistent with Rule 17Ad–22(d)(11).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(d)(11) thereunder.[13]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[14] that the proposed rule change (SR–ICC–2020–001), be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04920 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 12956, March 5, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, March 10, 2020 at 9:30 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Tuesday, March 10, 2020 at 9:30 a.m., has been cancelled and will be rescheduled for a future date.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: March 9, 2020

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–05100 Filed 3–9–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–598, OMB Control No. 3235–0655]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Regulation 14N and Schedule 14N.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14N (17 CFR 240.14n–101) requires the filing of certain information with the Commission by shareholders who submit a nominee or nominees for director pursuant to applicable state law, or a company's governing documents. Schedule 14N provides notice to the company of the shareholder's intent to have the company include the shareholder's or shareholder groups' nominee or nominees for director in the company's proxy materials. This information is intended to assist shareholders in making an informed voting decision with regards to any nominee or nominees put forth by a nominating shareholder or group, by allowing shareholders to gauge the nominating shareholder's interest in the company, longevity of ownership, and intent with regard to continued ownership in the company. We estimate that Schedule 14N takes approximately 40 hours per response and will be filed by approximately 42 issuers annually. In addition, we estimate that 75% of the 40 hours per response (30 hours per response) is prepared by the issuer for an annual reporting burden of 1,260 hours (30 hours per response × 42 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send and an email to: *PRA_Mailbox@sec.gov*.

Dated: March 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04950 Filed 3–10–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11068]

Notice of Public Meeting in Preparation for International Maritime Organization Sub-Committee Meeting

The Department of State will conduct an open meeting at 9:00 a.m. on Monday, April 6, 2019, at the offices of ABS Consulting, 1525 Wilson Boulevard, Suite 625, Arlington, Virginia 22209. The primary purpose of the meeting is to prepare for the forty fourth session of the International Maritime Organization's (IMO) Facilitation Committee to be held at the IMO Headquarters, United Kingdom, April 20–24, 2020.

The agenda items to be considered include:

—Decisions of other IMO bodies
—Consideration and adoption of proposed amendments to the Convention
—Review and update of the annex of the FAL Convention
—Application of single-window concept
—Review and revision of the IMO Compendium on Facilitation and Electronic Business
—Developing guidance for authentication, integrity and confidentiality of content for the purpose of exchange via a maritime single window
—Consideration of descriptions of Maritime Services in the context of e-navigation

[11] 15 U.S.C. 17Ad–22(d)(11).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(d)(11).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

—Development of amendments to the *Recommendations on the establishment of National Facilitation Committees* (FAL.5/Circ.2)

—Development of guidelines on creating a tool to measure domestic implementation of the FAL Convention

—Unsafe mixed migration by sea

—Consideration and analysis of reports and information on persons rescued at sea and stowaways

—Guidance to address maritime corruption

—Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)

—Technical cooperation activities related to facilitation of maritime traffic relations with other organizations

—Application of the Committee's procedures on organization and method of work

—Work program

—Any other business

Members of the public may attend this meeting up to the seating capacity of 30 for the room. Members of the public may also participate via teleconference, up to the capacity of the teleconference phone line, which will handle 500 participants. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 839 604 42#. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. James Bull, by email at *James.T.Bull@uscg.mil,* by phone at (202) 372–1144, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509 not later than Monday, March 30, 2020, seven days prior to the meeting. Requests made after Monday, March 30, 2020, might not be able to be accommodated. The ABS Consulting office is accessible by taxi, public transportation, and privately owned conveyance.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2020–04989 Filed 3–10–20; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub-No. 1)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

By petition filed on December 27, 2019, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights exemption granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36377, as necessary to permit that trackage rights arrangement to expire at midnight on December 31, 2020.

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377, BNSF and Union Pacific Railroad Company (UP) entered into an agreement granting BNSF local trackage rights over two rail lines owned by UP between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF Verified Notice of Exemption 2, *BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R.,* FD 36377. BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded ballast trains to and from the ballast pit located at Elsey. (*Id.*) BNSF filed its verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7), explaining that, because the trackage rights covered by the notice in Docket No. FD 36377 are local rather than overhead rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8).*See* BNSF Verified Notice of Exemption 1 n.1, *BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R.,* FD 36377.

In this sub-docket, BNSF has now filed a petition for partial revocation of the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2020, pursuant to the parties' agreement. (*See* BNSF Pet. 1–2); *see also* BNSF Verified Notice of Exemption Ex. B at 2, *BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R.,* FD 36377. BNSF argues that granting this petition will promote the rail transportation policy. BNSF also argues that the revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3.)

Discussion and Conclusions

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. *See, e.g., New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R.,* FD 36198 (Sub-No. 1) (STB served June 20, 2018); *BNSF Ry.—Temp. Trackage Rights Exemption—Union Pac. R.R.,* FD 35963 (Sub-No. 1) (STB served Dec. 17, 2015) (granting a petition to partially revoke a trackage rights exemption involving the same lines at issue in this case).

Granting partial revocation in these circumstances to permit the trackage rights to expire at the end of 2020 would eliminate the need for BNSF to file a second pleading seeking discontinuance when the agreement expires, thereby promoting the rail transportation goals at 49 U.S.C. 10101(2), (7) and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights would have no adverse impact on shippers because the trackage rights at issue are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (*See* BNSF Pet. 2.) Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 to expire at midnight on December 31, 2020.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.

2. As discussed above, the trackage rights in Docket No. FD 36377 are permitted to expire at midnight on December 31, 2020, subject to the employee protective conditions set forth in *Oregon Short Line.*

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on April 10, 2020. Petitions for stay must be filed by March 23, 2020. Petitions for reconsideration must be filed by March 31, 2020.

Decided: March 5, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–04974 Filed 3–10–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act.

DATES: The meeting will be held on Tuesday, April 21, 2020, at 9 a.m. E.D.T.

ADDRESSES: The meeting will be held at the Surface Transportation Board headquarters at 395 E St. SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at (202) 245–0312 or *Kristen.Nunnally@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail, including coal, ethanol, and other biofuels. *Establishment of a Rail Energy Transp. Advisory Comm.,* EP 670 (STB served July 17, 2007). The purpose of this meeting is to facilitate discussions regarding issues including rail service, infrastructure planning and development, and effective coordination among suppliers, rail carriers, and users of energy resources. Potential agenda items for this meeting include a rail performance measures review, industry segment updates by RETAC members, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR part 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's website at *www.stb.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Kristen Nunnally, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: March 5, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–04937 Filed 3–10–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0131]

Commercial Driver's License Standards: Application for Exemption; Teupen North America, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption from the commercial driver's license (CDL) regulations to Teupen North America, Inc. (Teupen) for one driver, Mr. Martin Borutta, Lead Engineer for Teupen. Mr. Borutta holds a valid German commercial license and wants to test drive Teupen's new aerial lift design vehicle on U.S. roads to better understand product requirements for safe application in the U.S. market, and verify results. FMCSA believes that the requirements for a German commercial license ensure that operations under the exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: This exemption is effective March 11, 2020 and expires March 11, 2025.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202 366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0131'' in the ''Keyword'' box and click ''Search''. Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the

current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Teupen applied for an exemption for Mr. Martin Borutta from 49 CFR 383.23, which prescribes licensing requirements for drivers operating commercial motor vehicles (CMVs) in interstate or intrastate commerce. He holds a valid German commercial license but is unable to obtain a CDL because he not domiciled in this country. A copy of the exemption application is in the docket referenced at the beginning of this notice.

The exemption would allow this driver to operate CMVs in interstate or intrastate commerce to support Teupen field tests designed to better understand product requirements and ensure the safe operation of their new aerial lift design vehicle in environments in the U.S. According to Teupen, Mr. Borutta will typically drive for no more than 5 hours per day for one to two days. The test driving will typically be done on interstate highways, and driving will consist of no more than 200 miles per day. He will in all cases be accompanied by a U.S. CDL holder familiar with the routes to be traveled.

Mr. Borutta holds a valid German commercial license, and as explained by Teupen in its exemption request, the requirements for that license ensure that, operating under the exemption, Mr. Borutta would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation. Teupen requests that the exemption cover the maximum allowable period of five years.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Teupen notes that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. The Agency granted one of Navistar's drivers a similar exemption [April 15, 2019 (84 FR 15283)]. Since 2015, the Agency has also granted Daimler drivers similar exemptions: [December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)]; July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); and September 10, 2018 (83 FR 45742)]. The Agency has not received any information or reports indicating there have been safety performance problems with individuals holding German commercial licenses who operate CMVs on public roads in the United States.

V. Public Comments

On October 24, 2019, FMCSA published notice of this application and requested public comments (84 FR 57155). One commenter stated: ''Concur with request for exemption. Additionally, as this scenario is possibly encountered by military spouses without U.S. citizenship, recommend review of the regulation to consider possibilities for inclusive language while still maintaining safety standards.''

VI. FMCSA Decision

Based upon the merits of this application, including Mr. Borutta's extensive driving experience and safety record, FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a). The requirements for a German-issued commercial license ensure that drivers meet or exceed the same level of safety as if these drivers had obtained a U.S. CDL. Mr. Borutta is familiar with the operation of CMVs and will be accompanied at all times by a driver who holds a U.S. CDL and is familiar with the routes to be traveled. FMCSA has determined that the process for obtaining a commercial license in Germany is comparable to that for obtaining a CDL issued by one of the States and adequately assesses the driver's ability to operate CMVs safely in the United States.

VII. Terms and Conditions for the Exemption

FMCSA grants Teupen driver Martin Borutta an exemption from the CDL requirement in 49 CFR 383.23 to allow him to drive CMVs in this country without a State-issued CDL, subject to the following terms and conditions:

(1) The driver and carrier must comply will all other applicable provisions of the FMCSRs (49 CFR parts 350–399);

(2) the driver must be in possession of the exemption document and a valid German commercial license;

(3) the driver must be employed by and operate the CMV within the scope of their duties for Teupen;

(4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled;

(5) Teupen must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and

(6) Teupen must notify FMCSA in writing if this driver is convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if:

(1) Mr. Borutta fails to comply with the terms and conditions of the exemption;

(2) the exemption results in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

Pursuant to 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: February 19, 2020.

Jim Mullen,

Acting Administrator.

[FR Doc. 2020–04940 Filed 3–10–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0097]

Hours of Service (HOS) of Drivers: Small Business in Transportation Coalition (SBTC) Application for Exemption From ELD and Certain HOS Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the Small Business in Transportation Coalition (SBTC) has applied for an

exemption from the electronic logging device (ELD) requirements for commercial motor vehicle (CMV) drivers traveling with domestic animals, in interstate commerce. SBTC also requests an exemption from the hours-of-service requirements, allowing these drivers to drive up to 13 hours during a driving shift and up to 16 hours from the beginning of the work shift, following 10 consecutive hours off duty. FMCSA requests public comment on SBTC's application for exemption.

DATES: Comments must be received on or before April 10, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2020–0097 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: DOT solicits comments from the public to better inform its rulemaking and exemption review processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0097), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0097'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

II. Background

Current Regulations

Generally, individuals may not drive a property-carrying CMV more than 11 hours during a work shift, following 10 consecutive hours off duty. Under the current regulations all driving must be completed within 14 hours of the beginning of the work shift. (See 49 CFR 395.3.)

Drivers who are required to prepare and maintain records of duty status (RODS) to document their hours of service must generally use electronic logging devices (ELDs). (See 49 CFR 395.8.)

SBTC Exemption Application

SBTC requests that drivers of property-carrying CMVs, when accompanied by any domestic animal, be exempt from the requirement to use ELDs for their RODS (49 CFR 395.8). These drivers would prepare and maintain paper RODS as an alternative.

SBTC also requests that drivers of property-carrying vehicles accompanied by any domestic animal be granted an exemption from 49 CFR 395.3(a)(2) and (3)(i), allowing them to drive up to 13 hours during a work shift, following 10 consecutive hours off-duty. The exemption would allow them a 16-hour driving window within which to use the 13 hours of driving time. A copy of the exemption application has been placed in the docket referenced at the beginning of this notice.

III. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on SBTC's application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice

will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: March 6, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–04939 Filed 3–10–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0799]

Agency Information Collection Activity: Casket and Urn Reimbursement

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed that implements statutory authority for NCA to provide reimbursement for the purchase of caskets and urns for the interment of the remains of Veterans without next of kin (NOK) or sufficient resources available for burial.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 11, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or the National Cemetery Administration (42E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *NCA42EACTION@va.gov.* Please refer to ''OMB Control No. 2900–0799'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: *Cynnthia.harvey-pryor@va.gov* at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Casket/Urn Reimbursement, VA Form 40–10088.

OMB Control Number: 2900–0799.

Type of Review: Reinstatement of a previously approved collection.

Abstract: The Department of Veterans Affairs, National Cemetery Administration has established VA regulations to implement statutory authority for NCA to provide reimbursement for the purchase of caskets and urns for the interment of the remains of Veterans without next of kin and sufficient resources available for burial.

Affected Public: Federal Government and Community Social Services.

Estimated Annual Burden: 74 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 445.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Peformance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04921 Filed 3–10–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0696]

Agency Information Collection Activity: Availability of Educational, Licensing, and Certification Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 11, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0696'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, Veterans Benefits Administration (VBA) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323, 3689, 3690.

Title: Availability of Educational, Licensing, and Certification Records.

OMB Control Number: 2900–0696.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses this information to decide whether beneficiaries of educational assistance have been properly paid, and whether educational institutions and organizations or entities offering approved licensing and certification tests are following the applicable sections of the U.S. Code.

Affected Public: Educational Institutions and Organizations.

Estimated Annual Burden: 9,858 hours.

Estimated Average Burden per Respondent: 5 hours (300 minutes).

Frequency of Response: On Occasion.

Estimated Number of Respondents: 4,929.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04922 Filed 3–10–20; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Labor

29 CFR Part 29

Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations; Final Rule

DEPARTMENT OF LABOR

29 CFR Part 29

RIN 1205–AB85

Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: To address America's skills gap and to rapidly increase the availability of high-quality apprenticeship programs in sectors where apprenticeship opportunities are not widespread, the U.S. Department of Labor (DOL or the Department) is issuing this final rule under the authority of the National Apprenticeship Act (NAA). This final rule establishes a process for the DOL's Office of Apprenticeship (OA) Administrator (Administrator), or any person designated by the Administrator, to recognize qualified third-party entities, known as Standards Recognition Entities (SREs), which will, in turn, evaluate and recognize Industry-Recognized Apprenticeship Programs (IRAPs). This final rule describes what entities may become recognized SREs; outlines the responsibilities and requirements for SREs, as well as the standards of the high-quality Industry-Recognized Apprenticeship Programs the SREs will recognize; and sets forth how the Administrator will oversee SREs.

DATES: This final rule is effective May 11, 2020.

FOR FURTHER INFORMATION CONTACT: John V. Ladd, Administrator, Office of Apprenticeship, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5311, Washington, DC 20210; telephone (202) 693–2796 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background

A. Purpose of This Regulation

On June 25, 2019, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (84 FR 29970), proposing to amend 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) by authorizing the Administrator to recognize SREs who meet the criteria outlined herein. These SREs would, in turn, evaluate and recognize IRAPs [1] that satisfied the standards and guidelines for program quality described in the NPRM. The NPRM invited written comments from the public concerning this proposed rulemaking. These comments may be viewed at *http://www.regulations.gov* by entering docket number ETA–2019–0005.

After careful consideration of the comments received, the Department is adopting this final rule, which supplements the existing system of registered apprenticeships with a flexible, industry-led model—one that will be capable of rapidly increasing the availability of apprenticeships in emerging, high-growth sectors.

Since its enactment, the Department has implemented the NAA by registering individual apprenticeship programs and apprentices. The registration of programs and apprentices occurs either directly under the auspices of the Department's OA, or through recognized State Apprenticeship Agencies (SAAs). While registered apprenticeships have been successful in certain sectors, in particular construction and its allied trades, the existing registered apprenticeship model has not increased the availability of apprenticeships in other rapidly-expanding sectors of the economy. The proportion of apprentices constitutes only about 0.2 percent of the U.S. workforce.[2] Additionally, a 2017 Harvard Business School study identified nearly 50 occupations as ripe for apprenticeship expansion.[3]

The United States is also experiencing an economic challenge: a discrepancy between the occupational competencies that businesses need and the job skills of aspiring workers. There were 6.4 million job openings in the United States at the end of 2019.[4] Some of these jobs are going unfilled because employers have not been able to locate enough workers with the skills required to perform them. This pervasive skills gap has posed a serious impediment to job growth and productivity.[5] A recent report issued by the National Federation of Independent Businesses reinforced that a shortage of qualified, skilled workers is inhibiting small business hiring growth.[6] Another recent report produced jointly by Deloitte and the Manufacturing Institute projected that the skills gap may leave an estimated 2.4 million positions unfilled in the manufacturing sector between 2018 and 2028, placing more than $2.5 trillion in U.S. manufacturing output at risk during that period, if the skills shortage is not addressed effectively.[7]

In their comments on the NPRM, several industry groups highlighted that the skills gap has led to a lack of qualified candidates, which has stalled business growth and undermined competitiveness in the global marketplace. Another commenter stated

[1] In the NPRM for this regulation, the Department also referred to industry-recognized apprenticeship programs as ''Industry Programs.'' In the text of this final rule, however, the Department has opted to utilize the acronym ''IRAP'' to refer to this new apprenticeship model.

[2] See Robert I. Lerman, ''Proposal 7: Expanding Apprenticeship Opportunities in the United States,'' The Hamilton Project, Brookings Institution, 2014, *http://ow.ly/UlDmN*.

[3] Joseph B. Fuller and Matthew Sigelman, ''Room to Grow: Identifying New Frontiers for Apprenticeships,'' Nov. 2017, 3, *https://www.hbs.edu/managing-the-future-of-work/Documents/room-to-grow.pdf*.

[4] U.S. Bureau of Labor Statistics (BLS), ''Job Openings and Labor Turnover—December 2019,'' Feb. 11, 2020, *https://www.bls.gov/news.release/archives/jolts_02112020.pdf*.

[5] See, *e.g.,* Task Force on Apprenticeship Expansion, ''Final Report to the President of the United States,'' May 10, 2018, 16 (citing 2018 report from National Federation of Independent Business); Business Roundtable, ''Closing the Skills Gap,'' *https://www.businessroundtable.org/policy-perspectives/education-workforce/closing-the-skills-gap* (last visited Dec. 7, 2019); *cf.* Deloitte and the Manufacturing Institute, ''2018 Deloitte and The Manufacturing Institute Skills Gap and Future of Work Study,'' Nov. 2018, 2 (estimating manufacturing jobs that may go unfilled due to skills gap), *http://www.themanufacturinginstitute.org/~/media/E323C4D8F75A470E8C96D7A07F0A14FB/DI_2018_Deloitte_MFI_skills_gap_FoW_study.pdf*.

[6] *See* National Federation of Independent Businesses, ''September 2019 Jobs Report,'' Sept. 2019, *https://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/*.

[7] Deloitte and the Manufacturing Institute, ''2018 Deloitte and The Manufacturing Institute Skills Gap and Future of Work Study,'' Nov. 2018, 3–5.

that failure to close the skills gaps ''risks ceding U.S. technology leadership to other countries, with broad consequences for our nation's economic [sic] and even national security.'' Other commenters stated that they recognize the need for an expanded, well-crafted apprenticeship program in order to address the skills gap in multiple industries. A member of Congress also commented that IRAPs will equip additional Americans with the necessary skills to contribute to and benefit from a prosperous economy.

In light of these challenges, in January 2017—within days of assuming office—President Donald J. Trump and his Administration began promoting apprenticeships as a critical component of addressing the skills gap. On June 15, 2017, President Trump signed Executive Order (E.O.) 13801, ''Expanding Apprenticeships in America'' (82 FR 28229), which charged the Secretary of Labor (Secretary) with considering the issuance of regulations that promote the development of apprenticeship programs by third parties. Specifically, the proposed regulations would reflect an assessment of determining how qualified third parties may provide recognition to high-quality apprenticeship programs.[8]

Section 8 of the E.O. directed the Secretary to establish a Task Force on Apprenticeship Expansion (Task Force), to identify strategies and proposals to promote apprenticeships, especially in sectors where they are insufficient. During its 6 months of deliberations, the Task Force developed recommendations for improving the educational and credentialing aspects of apprenticeship; attracting more businesses to apprenticeship; expanding public awareness of, and access to, apprenticeships; and developing administrative and regulatory strategies to expand apprenticeship.[9]

On May 10, 2018, the Task Force transmitted its final report to President Trump. The report explained that many employers choose to establish apprenticeship programs outside of the registered apprenticeship program, in part because of the paperwork and process involved in registering a program. In addition, the report noted that there is insufficient flexibility in program requirements within the registered apprenticeship program to meet the varying needs of different industries. The report pointed out that IRAPs would provide a new apprenticeship pathway that gives industry organizations and employers more autonomy and authority to identify high-quality apprenticeship programs and opportunities.[10]

The issuance of this final rule fulfills E.O. 13801's mandate concerning IRAPs and implements key recommendations contained in the Task Force report. The final rule also reflects input from the large number of commenters who offered substantive recommendations for the refinement and improvement of the proposed rulemaking.

In this final rule, the Department has modified 29 CFR part 29 by creating two subparts—one governing the operation of registered apprenticeship programs (subpart A), and the other establishing quality guidelines for DOL-recognized SREs and IRAPs (subpart B). The existing regulatory language of 29 CFR part 29, setting forth the labor standards for the registration of apprenticeship programs, has been fully retained within the new subpart A, with minor conforming edits to accommodate the addition of the new subpart B. Subpart B establishes the process for organizations to apply to become DOL-recognized SREs of IRAPs. Once recognized by the Department, these SREs will work with employers and other entities to establish, recognize, and monitor high-quality IRAPs. The final rule includes measures and guidelines to facilitate the recognition of these high-quality IRAPs, and it sets out how the Department will oversee SREs. The final rule also adopts changes suggested by commenters that increase the Department's role in program oversight, clarify the requirements to become a recognized SRE, and heighten SRE and IRAP program transparency.

The Department expects that the issuance of this final rule will accelerate the expansion of quality apprenticeships by introducing a flexible, market-based, industry-led model that is capable of expanding apprenticeships in emerging, high-growth sectors while also reaching underserved populations. By establishing a supplementary apprenticeship pathway that addresses the varying needs of different industries, the final rule seeks to address the skills gap in the U.S. labor force while promoting the growth of high-quality, sustainable jobs for the American workforce.

This final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

B. Legal Authority

As relevant to this final rule, the NAA authorizes the Department to: (1) Formulate labor standards to safeguard the welfare of apprentices and to encourage their inclusion in apprenticeship contracts; (2) bring together employers and labor for the formulation of programs of apprentices; and (3) cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship. 29 U.S.C. 50.

This final rule implements the NAA's direction that the Secretary ''bring together employers and labor for the formulation of programs of apprenticeship'' by creating a flexible, industry-driven model for apprenticeship designed to bring together diverse groups of employers and prospective apprentices in industries and occupations that do not have a robust presence in the registered apprenticeship system. The final rule further implements the NAA's direction by establishing standards for this apprenticeship model that are designed to safeguard the welfare of apprentices. As discussed in more detail below, all IRAPs must comply with the standards for high-quality apprenticeships contained in the regulation, and with their respective SRE's policies and procedures, and must provide apprentices with a written apprenticeship agreement outlining the conditions of employment and training consistent with their respective SRE's requirements (which would include those required by this regulation).

Several commenters contended that the NPRM was inconsistent with the NAA, referring to the legislative history and purpose of the NAA. Commenters highlighted congressional comments about Federal intervention to halt manipulative and dishonest apprenticeship training programs that failed to train apprentices.

The Department has determined that it has authority under the NAA to establish this program. The NAA provides a general authorization and direction for the Secretary to create and promote standards of apprenticeship, including through contracts, and to interface with employers, labor, and States to create apprenticeships and apprenticeship standards. See 29 U.S.C. 50. This final rule does not exceed or conflict with the broad authority granted by Congress in the NAA. The NAA does not mandate or require that the current registered apprenticeship system be the exclusive apprenticeship system administered by the Department, nor does it suggest that the Department

[8] E.O. 13801, Expanding Apprenticeships in America, 82 FR 28229 (June 15, 2017), sec. 4(a).

[9] *See* Task Force on Apprenticeship Expansion, ''Final Report to the President of the United States,'' May 10, 2018, 10–11.

[10] *Id.* at 34.

is limited to one approach in executing the NAA.

One commenter stated that the NAA does not authorize the IRAP model because the legislative history of the NAA indicates it was meant ''to bring Government oversight to apprenticeship, and that it did so by directing DOL, in concert with the states, to establish minimum standards to protect apprentices from exploitation.'' Commenters argued that the IRAP model does not match this history because it places trust in private actors who could manipulate and mislead apprentices without government oversight.

In response to these particular comments, the Department notes that this regulation establishes the broad standards under which apprentices will work and train, including the requirement that apprentices enter into an apprenticeship agreement that discloses the terms and conditions of the program. In addition, the Department maintains a robust oversight role over SREs, and has a number of tools at its disposal should it determine that a recognized SRE or an SRE's recognized IRAP is not in compliance with the standards laid out in the regulation.

The Department further notes that while the NAA establishes that the Federal Government may help develop and encourage the adoption of apprenticeship standards, the text of the NAA does not require that any apprenticeship programs receive Department approval or use the standards developed by the Department—participation in the IRAP model, as with registered apprenticeship, is voluntary. Had Congress meant for the Department to mandate standards for all U.S. apprenticeships, it surely would have used stronger language than it did. Phrases like ''formulate and promote,'' ''encourage[e] the inclusion,'' ''bring together,'' and ''cooperate,'' are not how Congress typically establishes universal mandates. Cf., *e.g.,* 29 U.S.C. 654(a) (''Each employer . . . shall furnish to each of his employees employment and a place of employment . . . free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees . . . [and] shall comply with occupational safety and health standards promulgated under this Act.''). This reading of the text is supported by the NAA's legislative history. The NAA's legislative history states that the Department has no authority ''to compel adherence to its recommendations'' for apprenticeship standards but could encourage their inclusion in contracts, as well as the provision of technical assistance to employers and labor. See S. Rep. No. 75–1078, at 3. The legislative history of the NAA further indicates that Congress intended to give the Secretary multiple tools to improve the quality of American apprenticeship. It speaks not only of the importance of formulating standards for training and safety to ensure quality apprenticeship opportunities, but the need for Federal assistance in expanding the number of apprenticeship programs to fill the skills needs of industry. See H. Rep. No. 75–945, at 2–3.

Commenters also argued that the statutory text prohibits the IRAP model. One commenter argued that DOL could only create the IRAP model if Congress passed a new law, because DOL cannot deviate from the standards of registered apprenticeship. Another commenter stated that DOL must comply with the authorizations and directions of the NAA at the same time and that the proposed rule did not do so, because it did not provide for the welfare of apprentices.

As noted, the NAA does not dictate the terms of how the Department takes these steps or restrict the Department to only one particular approach, nor does the NAA require the Department to establish one set of standards. The NAA ''is written in very broad terms'' and ''contains a wide grant of authority to the Secretary of Labor.'' *Gregory Elec. Co.* v. *U.S. Dep't of Labor,* 268 F. Supp. 987, 991 (D.S.C. 1967). As discussed below, the final rule sets out an extensive list of requirements and protections in § 29.22 that are designed to safeguard the welfare of apprentices and to require quality training, progressively-advancing skills, and industry-relevant credentials. Further, unlike the commenter who suggested all provisions of the NAA must be met at the same time, the Department reads the NAA as simply listing the various activities that Congress has authorized and directed the Department to engage in. The NAA authorizes the Department to formulate and promote apprenticeship standards, to encourage the inclusion of those standards in contracts of apprenticeship, to bring employers and labor together, to cooperate with State agencies in the formulation of State standards of apprenticeship, and to cooperate with the Secretary of Education. As a practical matter, these activities may be carried out independently of each other, and nothing in the statute suggests that any particular activity engaged in by the Department must include all five activities to be a valid activity under the NAA. With that said, as discussed below, the final rule sets out an extensive list of requirements and protections in § 29.22 that are designed to safeguard the welfare of apprentices and to require quality training, progressively advancing skills, and industry-relevant credentials.

Many commenters contended that the proposed rule was problematic because it lacks specificity or does not involve States. Other commenters argued that the NAA does not authorize the proposed rule, because the rule did not provide as detailed or comprehensive a set of requirements as the Department's registered apprenticeship regulations. Several states submitted comments either opposed to the rule or urging greater State involvement in the IRAP initiative.

The NAA does not require the Department to promulgate highly specific apprenticeship standards, only those standards formulated by the Department that are necessary to safeguard the welfare of apprentices, which, as discussed above and below, the final rule accomplishes. The Department disagrees that the rule lacks specificity, as the final rule provides many requirements for IRAPs and SREs—including detailed performance metrics not required of registered apprenticeship programs. And while the NAA encourages cooperation with States in the development of their standards of apprenticeship, there is no requirement that DOL consult or operate its apprenticeship initiatives through States, nor a requirement that States participate directly in the development of this regulation or any other apprenticeship standards the Department has or may develop. Many states submitted comments on the proposed rule and the Department considered these comments in developing this final rule.

C. General Comments Received on the Notice of Proposed Rulemaking

The Department received a total of 326,798 public comments, of which 17,671 were unique. The majority of the remainder were letters associated with 290 form-letter campaigns. Almost all of the form-letter campaigns addressed the exclusion of the construction industry from the Department's proposed approach to IRAPs. This issue is discussed at length in the section-by-section discussion of § 29.30 of this final rule (§ 29.31 in the proposed rule).

The commenters represented a range of stakeholders from the public, private, and non-profit sectors. Public sector commenters included Federal, State, and local government agencies and

elected officials. Private sector commenters included employers/business owners, construction and building trades firms, and trade or industry organizations. Non-profit sector commenters included national and local labor unions, professional associations, and educational and training organizations. The majority of public comments received in response to the proposal were from private citizens, including current and former apprentices.

General Support for and Opposition to the IRAP Framework

Many commenters expressed general support for the Department's efforts in the proposed rule to establish a framework for IRAPs. Some commenters noted that there is room for more than one pathway to achieving successful apprenticeship programs. Another commenter stated that IRAPs and registered apprenticeship programs can operate in parallel, commenting that by allowing industry groups to recognize IRAPs, DOL is empowering the private sector to create more apprenticeship programs in a more efficient fashion. Commenters stated that IRAPs will equip Americans with the necessary skills to contribute to the booming economy and would allow workers to be trained for flexibility in performing their jobs and other duties. One commenter expressed support for the brevity and simplicity of the proposed rule. Another commenter remarked that workers' choice to participate in apprenticeship programs should not be restricted by the presence of a union-sponsored program in the geographical location where they would choose to attend an IRAP. Several commenters also stated that the proposed rule is beneficial because it could help cut through bureaucratic red tape to put businesses and employees at the center of the conversation; allow businesses to meet labor-market needs; allow small businesses to focus on serving program participants while also protecting apprentices from discrimination; and help industries adjust to and face changes, boost incomes, and curb student debt.

Other commenters contended that the IRAP model does not operate in the best interests of the apprentice because the model has not adopted minimum standards for IRAPs, such as formal apprentice contracts, progressive wage increases, fair discipline and proper supervision, standards for instructors' education, independent oversight, statewide uniformity, safety standards, and protection of apprentices against discrimination and harassment. Multiple commenters indicated that the IRAP model ''takes a macroeconomic view of the industry and workforce development and exhibits only a superficial investment in the interests of the apprentice.'' A few commenters predicted that the IRAP model would fail in a few years because the model enables ''profit-driven'' organizations to ''cut corners'' in order to boost profits at the expense of their workers. A commenter stated that the market-driven approach to scaling the apprenticeship model damages the skilled workforce and apprenticeships by making industry less flexible and resilient to economic downturns, and more susceptible to manipulation by policymakers and diminishing economic growth. A commenter asserted that IRAPs are not apprenticeships at all and, therefore, do not belong in 29 CFR part 29.

The Department appreciates the comments recognizing the benefits of IRAPs to the U.S. economy and workforce. The Department shares the view of commenters who believe that there is room in the workforce for both registered apprenticeship programs and IRAPs. The Department acknowledges the concerns articulated by commenters doubting the success of IRAPs and questioning the ability of the IRAP model to adequately train and safeguard the welfare of apprentices. The Department has responded to these concerns, as discussed in detail below in the section-by-section analysis. In the final rule, the Department has strengthened the standards of high-quality IRAPs to provide more detailed training requirements and protections for apprentices, enhanced Departmental oversight of SREs and—by extension—IRAPs, and included additional requirements on SREs to develop processes that support IRAPs, hold IRAPs accountable, and provide greater protection to apprentices.

The Department disagrees with commenters who have suggested that IRAPs will have a negative effect on the economy and the workforce and would be less flexible during economic downturns. On the contrary, the purpose of IRAPs is to increase high-quality apprenticeships in a manner that ensures industry-relevant training and skills, appropriate safeguards for apprentices, and a skilled, adaptable workforce. IRAPs could provide additional opportunities for workers during economic downturns and assist workers to achieve mobility and transferrable skills through industry-relevant training and credentials.

Support for Registered Apprenticeship Programs

Many commenters expressed general concerns about IRAPs as an alternative path to registered apprenticeship programs. Numerous commenters urged the Department to withdraw the proposed IRAP model and focus on supporting and improving registered apprenticeship programs in order to achieve the goal of retaining skilled and qualified tradespeople for long-term success. A commenter expressed the view that IRAPs would divert resources from DOL that could be used to promote registered apprenticeships and would reduce the capacity of DOL to ensure high-quality standards in apprenticeship programs. Some commenters stated that instead of developing a new program, the Department should focus efforts on additional funding of registered apprenticeship programs through Federal grants or tax credits. Multiple commenters remarked on the significant growth of registered apprenticeship and the number of active registered apprentices today as compared to the 20-year national average. Other commenters remarked on the success of registered apprenticeships in ''apprenticeable occupations.'' Some commenters urged DOL to promote joint labor-management apprenticeship programs rather than creating a system of IRAPs. Many commenters asserted that robust, privately-funded registered apprenticeship programs have helped millions of workers obtain upward mobility and learn nationally-recognized skills and that they have benefited employers by supplying a qualified and highly-trained workforce, improving safety, and allowing greater productivity. Many commenters also provided personal stories and examples of professional success gained by completing a registered apprenticeship that cultivates safety-oriented, high-performance apprentices in middle-class careers. A commenter remarked that high-quality apprenticeship programs boost the economy, while another commenter stated that existing programs have one of the highest rates of return on investment for employers.

A commenter asserted that, while the registered apprenticeship system is in need of some improvements—such as streamlining the program approval process, achieving greater diversity, and clarifying misperceptions about how apprenticeship operates—the proposed rule does not address issues to improve the registered apprenticeship system. Some commenters disagreed with the notion that the current registered

apprenticeship system is rigid, inflexible, cumbersome, or burdensome, noting instead that their experience was to the contrary and that registered apprenticeships are fully adaptable to business needs. Other commenters included resolutions from their State apprenticeship advisory bodies listing the important attributes of registered apprenticeship programs and affirming their support for such programs. The resolutions included statements of opposition to the proposed IRAP model because of concerns that the new approach would undermine the existing registered apprenticeship model.

The Department appreciates commenters' concerns about IRAPs' effect on the registered apprenticeship program. The Department emphasizes, however, that IRAPs are not intended to disrupt, supplant, or otherwise negatively affect registered apprenticeship programs. The Department views IRAPs and registered apprenticeship programs as operating in parallel. It further views the market-driven approach with IRAPs as designed to encourage growth in use of the apprenticeship model such that quality IRAPs would succeed alongside registered apprenticeship programs. Moreover, the need to rapidly increase apprenticeships in the United States through a new apprenticeship model is evident when one considers that the proportion of apprentices in the labor force in other countries is considerably greater than in the United States. While apprentices account for approximately 0.2 percent of the American labor force, they constitute 2.2 percent of the labor force in Canada, 2.7 percent in the United Kingdom, and 3.7 percent in Germany and Australia.[11]

As discussed in more detail below in the Department's explanation of § 29.30, the Department has determined that programs that seek to train apprentices to perform construction activities, as described in § 29.30, will not be recognized as IRAPs. The Department's goal in this rulemaking is to expand apprenticeships to *new* industry sectors and occupations. Registered apprenticeship programs are more widespread and well-established in the construction sector than in any other sector. Further, commenters raised concerns about allowing IRAPs in the construction sector in particular. In light of the purpose of this rulemaking, there is no need to take the risk, whatever the magnitude, of disrupting or displacing registered construction programs.

The Department intends to continue to promote, improve, and increase the availability of registered apprenticeship programs. The Department appreciates commenters' support of registered apprenticeship programs and, particularly, their view that registered apprenticeship programs contain sufficient rigor without creating burdensome requirements. The Department also appreciates the numerous success stories shared by commenters, and the Department agrees that the earn-and-learn model of apprenticeship provides numerous benefits to workers and employers. Furthermore, the Department is well aware of the high rates of return that employers receive from the investment in apprenticeship programs. As for the comment that this rule does not address improvements to the registered apprenticeship system, this rule is not intended to make changes to the registered apprenticeship program but rather to establish a separate system of apprenticeship. This alternative pathway for apprenticeship is to provide additional avenues for addressing the skills gap and creating apprenticeship opportunities. The Department will continue to promote and improve the registered apprenticeship model through streamlined processes and development of electronic tools, among other things. Nevertheless, with this rule, the Department is also acknowledging that an industry-led alternative model may be better suited to some industries and has determined that IRAPs are a valid, parallel option to increase apprenticeship opportunities in the United States.

The Department intends to utilize funds appropriated for registered apprenticeship to continue to improve and support registered apprenticeship programs. The Department also notes that any available grant funding for registered apprenticeships will be announced through future funding opportunity announcements. Comments concerning tax credits to support apprenticeship are outside the scope of this final rule.

The Role of States in IRAPs

Commenters recommended that the Federal Government should empower and appropriately fund all States to operate their own, federally-approved registered apprenticeship programs. Another commenter encouraged the Department to consider a role for States in engaging with IRAPs within their State, in addition to the SREs recognizing those IRAPs, and to support state-agency capacity for this engagement. Multiple commenters expressed concern that IRAPs would bypass the SAA system and States would not have oversight of the apprenticeship programs operating within their borders. A commenter expressed concern about creating a parallel system with no role for SAAs. Another commenter stated that SAAs have been at the forefront of increasing opportunities for apprenticeship in new industries, occupations, and populations. A commenter asserted that the proposed rule could jeopardize its State's history of success in maintaining superior buildings, worksite safety, and family wage jobs in the construction sector. Multiple commenters suggested that IRAPs would undermine their States' longstanding registered apprenticeships in the building trades. One commenter questioned the proposed funding scheme for IRAPs and asked whether there would be any fiscal impact on State labor departments.

The Department appreciates the role of SAAs in the registered apprenticeship program and will continue to support and promote such engagement. The Department also notes that this rule allows States and local government agencies or entities to participate as SREs; therefore, States may serve such a role if they so choose and fulfill the regulatory requirements. The Department appreciates the concern that a State may not have oversight of IRAPs within its borders. The Department notes, however, that various parts of the rule require IRAPs to abide by State and local laws, and State enforcement mechanisms would apply to employers offering IRAPs as to other employers operating within the State. The Department encourages SAA States to continue supporting and promoting registered apprenticeships, and the Department intends to continue to support and promote registered apprenticeships in both SAA and non-SAA States. Concerning the comments about the construction sector's superior buildings, worksite safety, family wage jobs, and State registered apprenticeships in the building trades, the Department has included in the final rule at § 29.30 an exclusion from this subpart for programs that seek to train apprentices to perform construction activities. This means that SREs may not recognize as IRAPs programs that seek to train apprentices to perform construction activities as defined in § 29.30. The Department does not anticipate that this rule generally will have a fiscal impact on State labor

[11] *See* Robert I. Lerman, ''Proposal 7: Expanding Apprenticeship Opportunities in the United States,'' The Hamilton Project, Brookings Institution, 2014, *http://ow.ly/UlDmN.*

departments, but the Department also notes that State labor departments, or any other State agencies or entities, may choose to become recognized SREs as set forth in §§ 29.20 and 29.21.

Distinction Between Registered Apprenticeship Programs and IRAPs

Several commenters stated that the distinction between registered apprenticeships and IRAPs should be emphasized given that, according to the commenters, registered apprenticeships have rigorous standards and are not profit-driven. Multiple commenters asserted that IRAP and registered apprenticeship contractors would often be indistinguishable to the public, who might choose less qualified personnel without recognizing the difference. Multiple commenters recommended that the terms ''apprentice'' or ''apprenticeship'' not be used for IRAPs to prevent confusion with registered apprenticeships. A commenter expressed support for DOL's statement in the NPRM that recognition as an IRAP is different from registration as a Registered Apprenticeship Program. Numerous commenters argued that a ''bright line distinction'' is warranted, particularly in the construction industry, because, according to them, registered apprenticeship programs are rigorously reviewed and operate at a higher level of commitment to training than the proposed IRAPs would. Commenters also approved of a bright line distinction as applied to the ability to apply for Federal funding given that, in their view, IRAPs would not have the same requirements for standards and quality of instruction and protection of apprentices. Another commenter asserted that it is unrealistic to expect an IRAP to invest the capital and resources that a labor union already ''invests as part of its commitment to producing well and broadly trained'' employees ''with years of rigorous classroom, field, and on the job preparation.''

The Department acknowledges commenters' statements that there should be a bright-line distinction between registered apprenticeship programs and IRAPs. The Department has determined that the IRAP model sufficiently diverges from the registered apprenticeship model so that a bright line distinction exists without a need for a regulatory change. The Department disagrees with the premise that IRAPs are inherently less safe or rigorous, given the detailed requirements set forth below. Additionally, because construction activities are excluded from the subpart, as discussed further below in the Department's explanation of § 29.30, there is no need for any bright-line distinction for apprenticeships involving construction activities.

Regarding Federal funding for IRAPs, it is the Department's view that in cases where Federal programs confer categorical eligibility, exclusive funding, or special status to registered apprenticeship programs, such benefits do not extend to IRAPs. Such benefits were designed with the registered apprenticeship programs in mind, and it is therefore appropriate to maintain preferential status only for registered apprenticeships. In cases where high-quality apprenticeship programs are generally eligible for funding, such as in the Department's H–1B Job Training Grant Program, the Department maintains that IRAPs should be eligible for such funding. With respect to the comment that IRAPs may not invest in training to the same degree as labor unions, the Department anticipates that employers that chose to participate in IRAPs will have every reason to invest in job training. The Department anticipates that the establishment of a new apprenticeship pathway will incentivize employers to seek innovative and high-quality methods for training their employees. This is because an employer has every incentive to ensure that its apprenticing employees gain the skills necessary to do the tasks the employer needs. Presumably that is why an employer would offer an IRAP in the first place. Additionally, employers have a market incentive to offer an IRAP. It distinguishes these employers in the competition for talent from other employers who do not offer an IRAP.[12]

Decision Not To Pursue IRAP Pilot Program

Multiple commenters stated that the proposed rule did not follow the Task Force's Recommendation 14 to begin IRAP implementation with a pilot program in an industry without well-established registered apprenticeship programs. Several commenters said that there was no empirical evidence supporting the decision not to implement a pilot program. A commenter stated that a pilot program would have helped the Department assess the effectiveness of IRAPs before issuing a rule and requested that DOL explain the decision not to implement a pilot program as well as provide evidence that supports IRAPs' effectiveness.

Several commenters requested that the Department implement a pilot program in the final rule in order to test the program model narrowly at first and make adjustments as needed to ensure proper implementation and success before applying the program on a larger scale. Other commenters opined that determining which occupations should be included in a pilot project depends on which occupations are experiencing a skills gap, which is hard to identify in any given industry that does not already have a training program via registered apprenticeship. One of these commenters further stated that, because of insufficient reliable data to understand the scope of U.S. apprenticeships, the proposed rule should be withdrawn until adequate data are obtained.

After due consideration of these comments, the Department maintains that the large skills gap requires a more immediate response than a pilot project would permit. The Department believes that the problems posed by the current skills gap necessitate the comprehensive implementation of IRAPs, and that a pilot program would by its very nature be insufficient to address the current shortage of skilled American workers at the scale required. Further, nothing in the NAA requires that bringing together ''employers and labor for the formulation of programs of apprenticeship'' be done first as a pilot program. The Department has discretion under the broad language of the NAA to establish the IRAP program as it is done here.

Industry-Driven Apprenticeship Model Framework

Several commenters suggested that the IRAP framework should coordinate with State, local, and regional partners and stakeholders (local businesses, workforce and education systems, human services organizations, labor and labor-management partnerships, and other community-based organizations) to ensure IRAPs are aligned with the workforce, education, and human services programming in which Federal, State, and local governments and the private sector currently invest.

One commenter argued that the proposed rule leaves many issues unaddressed, such as challenges employers face in navigating the apprenticeship system, lack of attention to reciprocity, and uncertainty among apprentices about how to evaluate program quality. Multiple commenters suggested that each SRE applicant and each IRAP should be classified

[12] The Department also believes it is overly simplistic to state that registered apprenticeship programs are not profit-driven. Many for-profit companies participate in registered programs.

according to the North American Industry Classification System (NAICS) or Occupational Information Network (O*NET) codes, stating that to do otherwise might disrupt the current registered apprenticeship system.

The Department anticipates that the IRAP model will strike the appropriate balance between coordinating at the regional and national levels, as will be more practical for large employers, and coordinating with State and local governments, as may be more practical for many smaller employers. The Department stresses that the IRAP model provides flexibility for industries to set the training requirements, program structure, and teaching curricula that strikes the ideal balance between geographic and industry-wide concerns. This approach, which is intended to minimize administrative burdens on adopters of the IRAP model, should encourage a more rapid scaling of quality apprenticeships across multiple industries where apprenticeships are currently underutilized. With respect to NAICS and O*NET codes, the Department will be requesting such information from each prospective SRE about the IRAPs it will recognize and expects there to be a uniformity in classification between IRAPs and registered apprenticeships. The Department also acknowledges the concern that employers and prospective apprentices may face difficulty in navigating and comparing potential apprenticeship options. As discussed in more detail below, the Department addressed such concerns by incorporating the enhanced metrics listed in § 29.22(h) as well as the reporting required by § 29.24 of the final rule.

Requests To Extend the Comment Period

Ten commenters submitted requests to extend the comment period for the proposed rule. Seven commenters requested a 30-day extension of the comment period, and three commenters requested a 60-day extension. In general, commenters requesting an extension of the comment period cited their desire to provide meaningful and comprehensive comments.

While the Department acknowledges these concerns, the Department concluded that the 60-day comment period was reasonable and sufficient to provide the public a meaningful opportunity to comment. This conclusion is supported by the large volume of complex and thoughtful comments received, including detailed comments from all 10 commenters requesting an extension, which demonstrates that the public has had adequate time to meaningfully participate in the rulemaking. For these reasons, the Department declined to extend the 60-day public comment period on the NPRM.

Other Suggestions About Public Participation

A commenter expressed concern that the proposed rule had been developed with no consultation with, or input from, SAAs or the Advisory Committee on Apprenticeship. Another commenter suggested that the Department should work with previously-contracted intermediaries for registered apprenticeships that have an understanding of the issues within the current system to make changes needed to gain wider adoption by the technology sector. A commenter suggested that the Department offer the public an additional opportunity for public comment, because the proposed rule lacked a discussion of the validity of IRAP-issued credentials.

The Department believes that these concerns are overstated and insubstantial. The Department benefitted from input from the Task Force Report, which helped inform the development of the proposed rule. The Task Force consisted of a wide range of stakeholders, including State elected officials, major trade and industry groups, labor unions, and concerned citizens. In addition, the Department received several comments from SAAs subsequent to the publication of the proposed rule, which were taken into consideration during development of the final rule.

Administrative Procedure Act

A commenter raised concerns that the Department has already established both the fact that SREs exist and that SREs may be approved and awarded a favorable determination before the related regulation is finalized. The commenter also asserted that the Department has no intention of taking into serious consideration any critical comments that will be submitted in response to the NPRM, which it is required to do pursuant to the APA.

The Department notes that Training and Employment Notice (TEN) 3–18 and TEN 3–18, Change 1 (issued on July 27, 2018, and June 25, 2019, respectively) were rescinded on October 22, 2019. Accordingly, the Department withdrew the information collection request (ICR) package associated with the TEN on October 22, 2019. The TEN provided that a potential SRE could apply for a favorable determination from the Department as to whether its policies and procedures met the hallmarks outlined in the TEN. The favorable determination was not intended to provide any benefit or formal recognition to an entity, nor was it envisioned as a prerequisite to any activity. And regardless, the form from which such a determination would be made was only proposed and never went into effect. Conversely, this final rule establishes that a potential SRE must apply for recognition by the Department to become a recognized SRE. Moreover, the Department will not award a favorable determination to an SRE prior to the publication of this final rule. The Department takes seriously its obligation under the APA to review and respond to all germane comments received from the public concerning the NPRM, as amply demonstrated by this final rule release.

II. Section-by-Section Analysis

The analysis in this section provides the Department's responses to public comments received on the proposed rule. The Department received a number of comments on the proposed rule that were outside the scope of the proposed regulations, and the Department offers no response to such comments. The Department also has made some non-substantive changes to the regulatory text to correct grammatical and typographical errors, in order to improve the readability and conform the document stylistically that are not discussed below.

A. Subpart A—Registered Apprenticeship Programs

Revisions to part 29 account for its division into two subparts. Each subpart addresses a different type of apprenticeship program. Accordingly, revisions to current part 29—now proposed subpart A—made conforming edits to account for subpart B, and for how SREs and IRAPs establish a new, distinct pathway for the expansion of apprenticeships.

The first type of conforming edit in subpart A replaces prior references to part 29 with references to subpart A. Second, the final rule adds the phrase ''[f]or the purpose of this subpart'' before definitions provided in subpart A, § 29.2. This revision clarifies the distinction between the current registered apprenticeship system and what new subpart B establishes.

DOL received no comments on conforming edits to subpart A. Revised regulatory text will be implemented as proposed.

B. Subpart B—Standards Recognition Entities of Industry-Recognized Apprenticeship Programs

Section 29.20 Standards Recognition Entities, Industry-Recognized Apprenticeship Programs, Administrator, and Apprentices

Section 29.20 of the final rule explains that subpart B establishes a new apprenticeship pathway distinct from the registered program described in subpart A. This section also defines four key terms used in subpart B. These terms are standards recognition entity (SRE), Industry-Recognized Apprenticeship Program (IRAP), Administrator, and Apprentice. The Department received comments on the definitions of an SRE, IRAP, and Apprentice as well as recommendations to define other terms used in the proposed rule. A discussion of these comments is described in detail below. The Department received no comments on the definition of Administrator.

Definition of SRE

Paragraph (a) of § 29.20 in the final rule defines an SRE as an entity that is qualified to recognize apprenticeship programs as IRAPs under § 29.21 and that the Department has recognized as an SRE. The Department received a few comments related to the proposed definition of an SRE in paragraph (a) of § 29.20. Multiple commenters requested that the Department propose a regulatory definition for an SRE. Another commenter stated that the proposed definition lacked defined qualifications to ensure SREs are recognizing programs that protect apprentices and provide proper, uniform supervision and instruction.

In response to the comments, the Department notes that it established a definition for an SRE in the proposed rule. As stated in the proposed rule, an SRE is defined as ''an entity that is qualified to recognize apprenticeship programs as [IRAPs] under § 29.21 and that has been recognized by [DOL].'' The Department also notes that in addition to establishing a definition for an SRE, the proposed rule also had provisions for the types of entities that can become a recognized SRE in § 29.20(a)(1), the process and criteria in which an entity becomes a recognized SRE in § 29.21, and the responsibilities and requirements of an SRE in § 29.22 as a means of providing the full scope of what being an SRE means.

The Department believes entities will have sufficient qualifications to ensure that they are recognizing high-quality programs, and more fully discusses the specific qualifications for SREs to recognize high-quality apprenticeship programs in § 29.21 of the final regulation. Accordingly, the Department declines to revise the definition of an SRE, and the final rule adopts the provision as proposed.

The Department inadvertently designated the types of entities that can become a recognized SRE in paragraphs (a)(1)(i) through (vii) under § 29.20 in the proposed rule. The Department has corrected this designation and proposed § 29.20(a)(1)(i) through (vii) has been redesignated as § 29.20(a)(1) through (9) in the final rule. Paragraph (a)(1) of § 29.20 in the proposed rule contained a nonexhaustive list of the types of entities that can become recognized SREs. These entities include but are not limited to: (1) Trade, industry, and employer groups or associations; (2) educational institutions, such as universities or community colleges; (3) State and local government agencies or entities; (4) non-profit organizations; (5) unions; (6) joint labor-management organizations; or (7) a consortium or partnership of entities such as those above. In the final rule, the Department has added two types of entities that can become a recognized SRE in § 29.20(a): (1) Corporations and other organized entities; and (2) certification and accreditation bodies or entities for a profession or industry, to align with the types of eligible entities listed in the Industry-Recognized Apprenticeship Program Standards Recognition Entity Application (Form ETA–9183). The final rule now establishes that the types of entities that can become recognized SREs under § 29.20(a) include: (1) Trade, industry, and employer groups or associations; (2) corporations and other organized entities; (3) educational institutions, such as universities or community colleges; (4) State and local government agencies or entities; (5) non-profit organizations; (6) unions; (7) joint labor-management organizations; (8) certification and accreditation bodies or entities for a profession or industry; or (9) a consortium or partnership of entities such as those above.

Although the application, as proposed in the NPRM, included ''companies'' and ''certification and accreditation bodies'' as a type of eligible entity that can become a recognized SRE, the Department has revised ''companies'' to be ''corporations and other organized entities'' and ''certification and accreditation bodies'' to be ''certification and accreditation bodies or entities for a profession or industry'' in the final rule. By revising this text, the Department aims to provide greater specificity and additional clarity concerning the types of entities that can act as an SRE.

As noted above, paragraphs (a)(1) through (9) of § 29.20 in the final rule contain a nonexhaustive list of the types of entities that can serve as SREs. A consortium of these entities can also apply to become a recognized SRE. By not limiting the types of entities that may receive recognition, the Department aims to encourage the creation of SREs in a broad range of industries and occupational areas. Accordingly, the Department invited public comment on this approach in the proposed rule.

Several commenters expressed support for establishing a wide list of eligible entities that may become recognized SREs. One commenter proposed that the types of entities that may become recognized SREs should include both individuals and organizations in order to encourage innovation. Other commenters argued that the types of entities that can become a recognized SRE should be restricted to non-profit organizations or exclude individual employers in order to mitigate conflicts of interest.

The Department has considered the various comments received pertaining to this section and maintains that retaining a nonexhaustive list of the types of entities that can serve as an SRE will encourage the development and expansion of apprenticeships, particularly in high-growth and in-demand industries. A nonexhaustive list of eligible entities can also enable building on existing partnerships and cultivating new relationships within industries, which could be instrumental in ensuring the success of an apprenticeship. To alleviate the concerns expressed by commenters requesting that specific types of entities be restricted from becoming a recognized SRE, the Department has added a requirement in § 29.21(b)(6) of the final rule concerning mitigating conflicts. Under this provision, which is discussed at greater length below, potential SREs are required to demonstrate that they can effectively mitigate any potential or actual conflicts of interest as part of their application to becoming a recognized SRE. By adding this provision, the Department is taking the necessary steps to ensure that each SRE applicant addresses any inherent conflicts through specific policies, processes, procedures, organizational structures, or a combination thereof, which will be evaluated by the Department prior to its recognition as an SRE.

One commenter stated that the proposed rule does not explicitly address strategies to encourage

organizations to consider forming SREs and may not necessarily motivate entities that do not yet participate in apprenticeship partnerships to begin doing so in the proposed IRAP framework.

Although the Department did not explicitly address strategies to encourage organizations to consider establishing SREs in the proposed rule, the Department recognizes the importance of engaging with stakeholders and supports partnership development between employer and labor organizations, education and training providers, and others to promote and expand apprenticeship opportunities. The Department believes that the successful implementation of the IRAP initiative will require robust engagement and partnerships to foster the growth and innovation of these types of apprenticeships, particularly in industries lacking such opportunities.

Some commenters expressed concern that having multiple SREs within an industry may generate significant fragmentation and confusion among potential apprentices, employers, and sponsors. One commenter raised several questions about how SREs will operate across State lines. Specifically, the commenter asked how multiple SREs within a State or industry would handle competition over limited resources, and how SREs will count apprentices when they operate across States or regions. Another commenter opined that SAAs should not be allowed to apply to be an SRE, because SAAs are authorized by the Department to recognize registered apprenticeship programs, and it would lead to apprentices in the same industry receiving inconsistent training, affecting their skill level and marketability. In contrast, a different commenter provided specific language to amend the proposed regulations to allow SAAs to serve as an SRE. The commenter expressed its belief that SAAs should be at the forefront of those entities considered as potential SREs.

The Department does not share the concerns raised by commenters questioning how multiple SREs within an industry or State would function. If apprenticeships are to thrive in emerging industries and spread to new and innovative occupational areas, then having multiple SREs within any given industry or State would result in an increase in the number of apprenticeship programs that are able to effectively train individuals for industries and occupations most in need of skilled workers. In addition, the presence of multiple SREs will provide prospective IRAPs and employers with an opportunity to assess and determine which SRE is best suited to meet the needs of their program.

The Department disagrees with the commenter who opined that SAAs should not be allowed to apply to become a recognized SRE. The Department understands the importance of SAAs and believes that they are well positioned to be recognized as an SRE due to their level of expertise and experience with identifying quality apprenticeships, not only in the private sector but also in the public sector. The Department envisions that SAAs and other State and local government entities that are recognized by the Department as SREs may decide to develop and recognize IRAPs in the public administration sector. The Department believes this will result in the expansion of public administration apprenticeships, thereby building talent pipelines for employers, which will lead to the creation of career opportunities for apprentices in State and local government and to future economic growth in the United States. The Department also disagrees with another commenter's recommendation to amend the regulation so that SAAs are specifically added as an eligible entity, as SAAs already fall within the scope of ''State and local government agencies or entities.''

Definition of IRAP

The Department has replaced the term ''Industry Programs'' that was used in paragraph (b) of § 29.20 in the proposed rule with ''IRAPs'' in paragraph (b) of § 29.20 in the final rule. The Department made this change in § 29.20(b) (and throughout the final rule) to limit confusion among stakeholders since the term ''Industry Program'' is used widely in both the public and private sectors. For that reason, an employer could potentially establish an apprenticeship program on an independent basis and refer to it as an ''Industry Program.'' By making this change, the Department will make clear to stakeholders that ''IRAP'' is a Department-specific term for an apprenticeship model established in accordance with the NAA.

Paragraph (b) of § 29.20 in the final rule defines IRAPs as high-quality apprenticeship programs that are recognized by an SRE, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential. Under § 29.20(b), an IRAP is developed or delivered by entities such as those outlined in § 29.20(a).

Many commenters warned that the term ''IRAP'' is defined in a vague and overbroad manner and does not provide any meaningful guidance or protection for apprentices. One commenter suggested amending the definition of ''IRAP'' to add language stating that an apprentice's compensation cannot be less than the minimum wage, and that wages must increase as work and training benchmarks are achieved. The commenter also recommended that the term ''industry-recognized credential'' be defined in the final rule since it is referenced in the definition of ''IRAP.''

The Department did not make changes in response to the comments suggesting that the definition of ''IRAP'' is vague or broadly written. In the proposed rule, the Department required in § 29.22(a)(4) that a program seeking recognition as an IRAP adhere to standards of high quality in order to obtain and maintain recognition by an SRE. The standards of high-quality apprenticeships outlined in § 29.22(a)(4) served to supplement the definition of ''IRAP'' as proposed in § 29.20(b). The SRE, in accordance with the parameters established under this regulation, is charged with establishing the standards for training, structure, and curricula that an IRAP must conform to. The Department has determined that refining the definition of ''IRAP'' to include wage requirements, other requirements concerning the welfare of an apprentice, and the parameters of an industry-recognized credential is unnecessary, because these topics are addressed in this final rule at § 29.22. Accordingly, the final rule substantively adopts the definition as proposed, with nonsubstantive textual edits for clarity and to reflect an update to a regulatory citation in accordance with the provisions outlined in 29.22(a)(4).

Definition of Administrator

Paragraph (c) of § 29.20 in the final rule clarifies that the ''Administrator'' is the Administrator of OA, or any person specifically designated by the Administrator. The Department did not receive any comments related to the proposed definition of ''Administrator'' in paragraph (c) of § 29.20 in the proposed rule. Accordingly, the final rule adopts the provision as proposed.

Definition of Apprentice

Paragraph (d) of § 29.20 in the final rule defines an ''apprentice'' as an individual training in an IRAP under an apprenticeship agreement. The Department received some comments recommending the revision of the definition of ''apprentice'' in § 29.20(d) of the proposed rule. One commenter

stated that the proposed definition of ''apprentice'' should be revised by substituting the term ''training'' in place of the term ''participating.'' Other commenters stated that the definition of ''apprentice'' should be revised either to align with the definition of ''apprentice'' in subpart A or should be written in a manner that is as robust as the subpart A definition. These commenters asserted that aligning the definitions of ''apprentice'' would provide additional clarity on the rights and responsibilities of an apprentice and the protections that safeguard the welfare of an apprentice, thereby ensuring that underage workers are prohibited from participating in an IRAP.

The Department agrees with the commenter's suggestion to revise the definition of ''apprentice'' to clarify that an apprentice is an individual ''training'' in an IRAP, and accordingly, has revised the definition in the final rule. The use of the term ''training'' in place of the term ''participating'' in the definition could eliminate potential ambiguity, since mentors and related instruction providers may also be deemed participants in an IRAP.

The Department acknowledges the other commenters' recommendation to revise the definition of ''apprentice'' so that it aligns with the subpart A definition of ''apprentice,'' which references the standards of apprenticeship. Although the Department declines to adopt this recommendation, the Department has made additional refinements to the definition beyond replacing the term ''participating'' with the term ''training'' as noted above. As discussed below in § 29.22(a)(4)(x) of the final rule, IRAPs are now required to have an apprenticeship agreement with each apprentice. Accordingly, the Department has added the phrase ''under an apprenticeship agreement'' to the definition of ''apprentice'' in the final rule. Because an apprenticeship agreement establishes the conditions of employment between an IRAP and an apprentice, and this final rule establishes parameters to protect the welfare of all IRAP apprentices as described below in § 29.22, the Department does not think it is necessary to revise this definition further to create alignment with the subpart A definition. The definition comports with the broad discretion the Department possesses under the NAA. In addition, IRAPs must comply with all employment and age-related laws that apply to their employers, thereby conferring upon apprentices the same protections afforded other employees.

Recommendations for Additional Terminology Definitions

Several commenters recommended adding definitions for other terms. These terms include ''accessibility,'' ''accreditation,'' ''categorical eligibility,'' ''complex task,'' ''consensus-based process,'' ''construction,'' ''consultative services,'' ''employer engagement,'' ''high-quality,'' ''industry-essential skills,'' ''industry expertise/expert,'' ''industry-recognized credential/credential,'' ''paid work,'' ''recognition decision/recognize,'' ''sector,'' ''significant opportunities,'' ''structured mentorship,'' ''structured work experience,'' and ''Universal Design for Learning.'' A commenter specifically urged that the proposed rule's lack of definitions in proposed subpart B requires a ''re-proposal'' to provide the opportunity for comment.

Of the recommended terms that commenters requested definitions, five terms—''accessibility,'' ''categorical eligibility,'' ''employer engagement,'' ''industry expertise,'' and ''Universal Design for Learning''—were not used in the proposed regulatory text;[13] two terms—''consultative services'' and ''recognition decisions''—were used in § 29.22(f) of the proposed regulatory text, but were not carried over into the final regulatory text as discussed below in § 29.22 (under the ''Conflicts of Interest'' heading); and one term—''significant opportunities''—was used in § 29.31 of the proposed regulatory text, but was not carried over into the final regulatory text. The Department has determined that these terms do not require definitions, because they are not included in the final rule's regulatory text. Although the term ''construction'' was not used in the proposed regulatory text, the proposed rule incorporated a long-standing definition of the building and construction industry from case law as part of the Department's approach in determining which entities and programs are eligible to participate in the IRAP framework. However, after reviewing many comments concerning the need to define ''construction,'' the Department has revised its construction exclusion in § 29.30 of this final rule, as discussed in detail below.

With regards to the terms that were used in the proposed rule and are carried over into the final rule, the Department has determined that these terms are either discussed in the relevant section of the regulation below and can be understood in the context of the appropriate section or according to their plain and ordinary meaning. Accordingly, defining these terms in this section is not necessary. In addition, the Department disagrees with the commenter's assertion that the rule would require a reproposal due to a lack of definitions in subpart B. The Department has identified the key terms that warrant a definition and given sufficient notice and opportunity for comment with respect to these definitions, and believes these definitions are sufficient for public understanding.

Section 29.21 Becoming a Standards Recognition Entity

Section 29.21 outlines the process by which an entity may apply for Departmental recognition as an SRE, as well as the criteria against which the Department will assess applications. The Department will recognize entities that show they have the expertise to set standards for high-quality apprenticeship programs that result in industry-recognized credentials and equip apprentices with competencies needed for proficiency in specified industries or occupational areas, as would be demonstrated through components of the entity's application (described in more detail below).

Several commenters provided suggestions relating to the Department's proposed process for reviewing an entity's application to serve as an SRE contained in the preamble of the proposed rule. One commenter suggested that the proposed panel of reviewers either be broadened to include industry training experts from companies and schools, or that it be narrowed to include only Department personnel who possess the experience in apprenticeship programs necessary to adjudicate the application. Another commenter stated that the Department should not delegate its decision-making to Federal contractors, especially considering that the specific expertise and performance standards for the contractors are not defined. A commenter expressed concern that the Department's use of contractors to review an entity's application could present conflicts of interest. Another commenter proposed that DOL instead establish a national advisory committee to review and make recommendations regarding SRE applications and to serve as a forum for discussion about issues related to the recognition of SREs.

Commenters also suggested that DOL's proposed review of entities' applications appeared to be too limited. The commenter noted that concerns

[13] Three terms did not appear in the preamble discussion of the proposed rule either: ''accessibility,'' ''employer engagement,'' and ''Universal Design for Learning.''

regarding the initial review would also apply to resubmitted applications. One commenter expressed concern about the proposed panel's limited review of SRE applications in light of the estimate of over 200 SREs approved in the first year. Several commenters expressed concern that the Department lacks the staffing and funding to review the expected number of SRE applications, with one commenter adding that the Department struggles to oversee the registered apprenticeship system.

The Department determined that, for at least the first year of its evaluating SRE applications, a panel of two contractors and one full-time federal employee will conduct these evaluations. After reviewing the comments received, the Department concluded that limiting SRE application review panels to only industry experts or only Department staff could lead to a lack of capacity that could be critical in translating the needs of industry into this new apprenticeship recognition process under the NAA. The Department has concluded that this mix of federal, industry, and credentialing experts would be essential to implementing this rulemaking as quickly and effectively as possible. The Department may adjust the ratio of federal staff, industry experts, and credentialing experts as it continues to implement and refine the review process.

As with all of its programs, the Department will continuously review this process to find the best, most-efficient way of implementing these rules. Additionally, the Department may alter the composition of the panel depending on the nature and breadth of sectors and occupations covered by a particular application, although it expects that three will be the minimum number of reviewers for the initial stages of the evaluation to include Departmental expertise, industry expertise, and credentialing expertise. The Department agrees that the panel of reviewers should include industry experts, rather than consistently relying on two contractors from the credentialing community as proposed. The Department otherwise anticipates following the process outlined in the proposed rule to review entity's applications.

The Department will take all steps necessary to prevent contractors from reviewing applications for which they have a stake in the outcome; furthermore, regardless of the composition of the panel, the Administrator or the Administrator's designee will make the final decision on recognition. In response to comments calling for a national advisory committee review of SRE applications, the Department determined that assembling such a committee and coordinating its review would be difficult and could impose unnecessary burdens on entities applying to be SREs. Accordingly, it will not take this approach for reviewing applications. The Department made no change to the regulatory text in response to these comments, and it has not included regulatory text addressing the composition of an evaluation panel to maintain flexibility to find the best, most efficient way to handle SRE applications.

Regarding the concern that application review appears limited, the Department notes that its proposed process provides for multiple layers of review. The Department also notes that it has made every effort to reduce the burden of applying to be an SRE without sacrificing quality. The Department notes that review of an initial application and an application for re-recognition are based on the same criteria and thus will necessarily follow similar review processes. The Department acknowledges that its staffing and resources are limited, but it anticipates being able to utilize available appropriated funds to review SRE applications.

Application Process—§ 29.21(a)

Paragraph (a) of § 29.21 states that an entity must submit an application to the Administrator to become a recognized SRE. The Department will review the application to determine whether the entity is qualified to be an SRE. This determination will depend in large part on the scope and nature of the IRAPs the SRE seeks to recognize. Accordingly, the application would give the Department information about the industry(ies) and occupational area(s) for which programs would train apprentices.

Numerous commenters suggested that applications should be required to go through notice and comment before receiving approval. Commenters stated that requiring notice and comment on entities' applications may provide for transparency and ensure that the needs of apprentices and industry are met. Commenters also suggested that notice-and-comment review of applications would increase the efficacy, credibility, and appropriateness of the standards that SREs recognize. One commenter suggested that public comment from a wide range of sources would ensure that SREs have the expertise necessary to ensure the creation of high-quality IRAPs and to ensure that apprentices receive sought-after competencies and industry-recognized credentials. The commenter suggested that confidential business information not be shared, but that other portions of an entity's application be made available for public comment. Another commenter suggested that an SRE's standards should be required to go through a notice-and-comment process.

Other commenters proposed that applications be shared with industry groups so that these groups may raise concerns or provide input to the Department as part of the application process. Many commenters expressed concern that allowing multiple SREs with differing standards to operate in the same occupations and the same geographic area would lead to confusion. A commenter characterized such potential for confusion as ''massive'' and representative of a major change to apprenticeship. One commenter proposed that the rule should incorporate a standard of reasonable consistency to ensure that training results in transferable skills. The commenter suggested that reasonable consistency could be achieved by allowing industry groups to object to an SRE's training and structures if they are not reasonably consistent with the training and requirements of programs in the same occupation and same area. Another commenter stated that SREs should be required to coordinate with any registered apprenticeship programs in their industry or occupations in which they are certifying programs in order to ensure the programs and standards are complementary and do not undercut each other.

The Department determined that requiring SRE applications to undergo a notice-and-comment period would be a large and unnecessary burden and would not be the best use of Department resources. Such a process would require additional Departmental staff resources to post applications for public comment; review, reconcile, and consider comments; and compare comments concerning an entity's application. The Department further believes that the time required to perform such a process for each entity's application would produce a backlog of applications. In response to the comment proposing that an entity's standards should go through notice and comment, the Department determined that such a requirement would be likely to produce a similar strain on Departmental resources, and a similar potential for delays and backlogs. The Department is confident its expertise combined with the expertise of the panelists will enable the

Administrator or the Administrator's designee to assess an entity's application to determine whether the entity will be able to serve as an effective SRE. Notably, many of the application requirements, such as possessing sufficient financial resources and not being debarred from conducting business with the Federal Government, are criteria that turn on data not readily available to members of the public.

Similarly, the Department determined that sharing applications with industry groups would present unnecessary burdens and potential delays similar to those described above. To become recognized SREs, entities must demonstrate that they have the expertise to set standards through a consensus-based process involving industry experts, and the Department thus expects that entities will demonstrate broad-based support from industry. This places the burden on applicants to demonstrate that they have consensus on how to train apprentices in a way appropriate to the industry. It does not mean, however, that SREs must demonstrate that they have adopted the only approach for training apprentices in an industry. Accordingly, the Department has determined it unnecessary for it to identify and consult industry experts on an applicant's qualifications, as the application must demonstrate, in the Department's evaluation, that an applicant has built consensus and garnered expertise to set training standards in an industry. A successful SRE application will contain all the information necessary for the Department to independently determine whether a prospective SRE developed its curricula and requirements through a consensus-based approach. Requiring that entities share their applications with other industry groups that may include potential competitors could also raise issues of privacy and confidentiality. To the extent that the Department requires outside expertise to assess an entity's application, the Department may rely on the expertise of credentialing experts and industry experts as explained above. The Department's review will be limited to only the application, and the Department will not approve applications that are ambiguous.

The Department does not anticipate that multiple SREs operating in the same industry or occupational area will lead to confusion. The Department notes that standards and training plans associated with IRAPs in the same industry or occupational area may understandably vary depending on the industry-recognized credentials obtained by apprentices. The Department determined that requiring reasonable consistency between IRAPs operating in the same occupation and area would be unworkable and would unnecessarily restrict employer choice Such a standard could stifle apprenticeship expansion by requiring SREs to achieve ''reasonable consistency'' in areas or occupations where such consistency does not exist. Similarly, while SREs are welcome to coordinate with registered apprenticeship programs in the same occupation, the Department determined that it would be most appropriate to allow SREs the flexibility to choose with whom to consult.

Several commenters stated that the attestation-based model of certification is neither rigorous nor transparent. According to one commenter, the H–2B Temporary Worker Visa program demonstrated that an attestation-based process invites fraud. The commenter suggested that the rule be amended to require on-site review in-line with the Nationally Recognized Testing Laboratory program. A different commenter proposed that the application process mirror that of the American National Standards Institute (ANSI), which the commenter characterized as the ''gold standard'' for private industry. This process involves a detailed application, opportunity for public comment, and a multi-layered review that involves both Department of Education staff and an advisory committee of industry professionals. Another commenter noted that the rule incorporates no method by which the Department will independently verify the information and supporting documentation contained in an entity's application. Even if an application is rejected, the commenter noted that the entity could seemingly correct its application, reapply, and be approved in two business days.

A few commenters suggested that, in addition to the Administrator, SAAs also should be permitted to assess entities' applications. One commenter noted that under a newly-passed state law, SREs must be certified to operate in-state, and the commenter requested that the rule be amended to allow the Administrator to delegate to SAAs the authority to approve SRE applications. One commenter noted that the lack of a role for States makes this subpart unique among education and workforce development programs and could lead to significant confusion for both training providers and businesses if training is not aligned with State priorities under other workforce and education plans. A commenter recommended that the Department coordinate with other Federal agencies including the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, the Fish and Wildlife Service, and the U.S. Forest Service to encourage unique public-private partnership. A commenter proposed that third-party accreditors such as ANSI should review and assess entities' applications rather than the Department.

The Department notes that the application process provided for is not solely attestation-based, because paragraph (b) of § 29.21 requires that the applicant demonstrate its qualifications by submitting various required documents that include processes and procedures. Paragraph (a) of § 29.21 was also amended to require a prospective SRE to provide a written attestation that all information and documentation provided is true and accurate. Notably, many or all of the attestations in the proposed rule were contained in the proposed form, which was eliminated from the final rule, as explained below. The Department determined that conducting on-site assessments of SREs would offer few insights into an SRE's application while requiring significant time and resources from the Department. The process for reviewing entities' applications involves multiple layers, including processing by program analysts, panel review, a panel meeting, and review by the Administrator or the Administrator's designee. Though this process does not involve the same layers as the ANSI process, the Department is confident that it will result in effective assessment given the rigorous review.

The Department does not anticipate independently verifying all information submitted in conjunction with entities' applications, as proposed by one commenter. However, the Department will be able to identify errors in applications through careful review. The Department will request clarifying information from entities if portions of an entity's application seem to contain potential errors because of unclear or inconsistent information included in the application. In addition, willfully making materially false statements or representations to the Federal Government in an application may constitute a crime under 18 U.S.C. 1001. If an entity were to correct an error and resubmit its application, the Department sees it as a potential benefit that the application may be timely reviewed and approved. Indeed, the Department expressly encourages such resubmission in § 29.21(d)(2). The Department notes, of course, that not every deficiency in an application may be readily corrected. The Department will exercise particular

care in evaluating applications that contradict previously-provided financial information or descriptions of an entity's subsidiaries, as one example.

The final rule does not permit the Administrator to delegate the approval of SREs to States or SAAs. Given the nature of the applications and the possibility that SREs operate on a regional or national scale, the Department is in the best position to assess applications from entities given its national reach and expertise. For this same reason, the Department declined to provide for the assessment of applications by third parties. The Department notes that State and local government agencies or entities are eligible under § 29.21(a)(1) to apply to become recognized SREs. No change to the rule was made in response to these comments.

Several commenters requested that the Department work to minimize the burdens in the application approval process. Multiple commenters suggested that the process to be recognized as an SRE appeared more burdensome than the registration process under subpart A. A commenter suggested that the application process imposes unnecessary and unjustified requirements, including the requirements to establish a consensus-based process, demonstrate capacity and quality assurance processes, and the requirement to apply for re-recognition. The commenter described such burdens as disincentives to apprenticeship expansion.

In response to comments, the Department has made every effort to minimize burdens while still ensuring that the Department collects the information necessary to recognize high-quality IRAPs. The Department determined that the information required to be provided to the Department by § 29.21 is needed to accurately assess SREs. As part of this effort, the Department revised the proposed form to better align the information collected with the information required. The Department determined that the form had the potential to cause confusion, because some parts of the proposed form contained language that varied slightly from the substantive requirements in proposed § 29.21. The Department, therefore, deleted the form from the regulatory text. The Department also revised paragraph (a) of § 29.21 to clarify that the application must be in a form prescribed by the Administrator.

Required Qualifications To Become a Recognized SRE—§ 29.21(b)

Paragraph (b) of § 29.21 describes the criteria against which an SRE application will be assessed. The Department received no comments relating directly to the first sentence in paragraph (b) that as proposed read, ''[a]n entity is qualified to be a[n] [SRE] if it demonstrates in its application that . . .'' The Department edited § 29.21(b) to remove the words ''in its application that'' to align paragraph (b) of this section with the clarification in paragraph (a) of § 29.21 that the application is in a form prescribed by the Administrator.

The proposed rule set forth the requirements to become a recognized SRE in three paragraphs that were numbered § 29.21(b)(1) through (3). In response to the comment received, this final rule has been revised so that there are eight paragraphs numbered § 29.21(b)(1) through (8), integrating some requirements that were previously in the form included in the proposed rule.

Paragraph (b)(1) of § 29.21 of the proposed rule provided that an entity must demonstrate that it has the expertise to set standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which the entity seeks to be an SRE. An SRE should demonstrate sufficient support and input from industry authorities to give confidence in the SRE's expertise, given where its IRAPs will operate. This standards-setting process will, in turn, inform and guide the IRAPs the SRE recognizes, so that those programs impart the competencies and skills apprentices need to operate successfully in their respective industries or occupational areas.

A number of commenters responded to the Department's request for comments on whether SREs should set competency-based standards for training, structure, and curricula, rather than focus on potentially superficial requirements such as seat time. Many commenters expressed support for empowering SREs to set competency-based standards. Commenters noted benefits of competency-based standards, including those focusing on competency-based standards will allow IRAPs to train apprentices in the most efficient manner possible, and that some apprentices receive proficiency on an accelerated timeline using competency-based standards. A commenter also warned that apprenticeships need flexibility to maximize positive results for both apprentices and employers, meaning that apprentices should not be bound to a certain number of hours, but instead progress through the program to gain a specific skill set and then perform these skills in a real industry setting. Other commenters expressed concern that traditional time-based programs are well established and that SREs are likely to use time-based standards. Also, some credentials may be tied to a minimum amount of seat time. One commenter proposed that the Department impose a minimum competency baseline, while another requested that the Department impose transparency requirements with respect to the competencies that will be attained.

The Department agrees with numerous commenters who noted the various benefits of competency-based programs, and paragraph (b)(1) of § 29.21 is accordingly revised to expressly require that entities have the expertise to set competency-based standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which it seeks to be an SRE. The Department has concluded that requiring SREs to develop competency-based standards that measure an apprentice's skill acquisition through the apprentice's successful demonstration of acquired skills and knowledge is consistent with ensuring that IRAPs offer innovative and high-quality training.

Though the Department is requiring competency-based standards, the Department does not intend to restrict SREs in using their expertise in designing those standards, and SREs are not precluded from including time-based requirements as a function of or in addition to competency-based standards. For example, an SRE might determine that time-based requirements are necessary for apprentices to achieve competency. Accordingly, SREs will retain the flexibility to decide how competency is achieved, which may include the utilization of time-based measures.

Requiring SREs to set competency-based standards will ensure that IRAPs and apprentices benefit as much as possible from the knowledge of each SRE's industry experts. Requiring that standards be competency based will further ensure that apprentices gain a specific skill set and perform such skills in a real industry setting, as proposed by one commenter. In addition, requiring SREs to develop competency-based standards is consistent with

Recommendations 1 and 5 of the Task Force on Apprenticeship Expansion Final Report to the President of the United States. Included in Recommendation 5 was the suggestion that technical instruction be competency-based, not seat-time based, and that technical instruction be directly aligned with the knowledge, skills, and abilities needed on the job. The Department does not intend for the requirement that standards be competency-based to preclude SREs from tracking time towards any minimum requirements that must be met to receive a particular industry-recognized credential. The Department agrees that transparency regarding competencies is important and notes that language was added in § 29.22(a) that requires IRAPs to provide apprentices with a written training plan.

The Department determined not to set a minimum time requirement for IRAPs, because the standards developed by SREs are required to be competency-based and may include any time-based requirements the SREs deem necessary for apprentices to achieve competency.

A commenter requested clarification regarding how the Department will review standards. One commenter proposed that if competency-based standards are developed using Federal funding, then SREs should be required to release such competency-based standards to the public so that they become part of the public domain. The commenter suggested that spending taxpayer money on multiple competing competency-based standards would be an example of wasteful spending.

The Department will use the combined expertise of Department staff and outside contractors to review entities' applications to assess the expertise and the sufficiency of the process by which the entities would develop standards. The Department declines to require that standards be made part of the public domain. In the event that the Department enters into grants, contracts, or cooperative agreements to use Federal funding for the creation of standards, the ownership of such standards will be addressed in such agreements. No changes were made to the regulatory text in response to these comments.

Several commenters responded to DOL's question in the preamble to the proposed rule regarding whether additional requirements are needed in paragraph (b)(1) to guarantee that the standards-setting processes of SREs will align the skills that apprentices receive to the needs of employers in a given region. One commenter proposed that DOL should weigh an applicant's history of developing and operating under the workforce development model using data collected under the Workforce Innovation and Opportunity Act (WIOA). Conversely, the commenter suggested that when considering SRE applications from entities with existing standards-setting processes, the Department should consider how the processes may increase employment outcomes for those with barriers to employment. Another commenter proposed that SREs be required to consult with both industry experts and State Workforce Development Boards, which the commenter suggested are well-suited to identify the industry-recognized credentials needed to meet labor-market demand. Several commenters suggested that allowing multiple entities to act as SREs, each with their own unique standards, would create confusion. A commenter proposed that SREs must demonstrate significant industry engagement at national and local levels and evaluate whether industry programs align with activities of industries.

A commenter recommended focusing on the continuity of standards. Without continuity, the commenter suggested, there would be significant risk for apprentices in finding employment outside of the first sponsoring employer.

Other commenters requested that no geographic approach be incorporated into the final rule. One commenter noted that a small hotel chain might operate in multiple States but still require one comprehensive solution to the hotel chain's workforce needs. Several commenters suggested that this subpart might be interpreted at a local level with no consistency from state to state or even city to city, creating varying levels of IRAP program quality.

Some commenters also suggested that ''expertise'' and ''experts,'' as used in this paragraph, was vague and should be more specific or should be defined. A proposed clarification was that expertise could be demonstrated by having the support, commitment, and buy-in from multiple employers. Other commenters proposed that the Department specify the qualifications necessary to demonstrate such expertise. A different commenter proposed that the Department attempt to ensure that industry experts are truly representative of their industries, rather than leaving the selection of experts up to the SRE. A commenter suggested that unless the term ''expert'' were defined, the Department's review panel would have little basis by which to make a consistent assessment, thereby leading to the inclusion of experts of any stripe. Another commenter requested that the Department provide additional clarification regarding how SRE applicants will be expected to show their expertise in setting standards, impartiality, and credentialing in establishing IRAPs.

Other commenters proposed alternatives to demonstrating expertise. One commenter proposed that the paragraph be amended to allow for an SRE to have the expertise to set standards through a consensus-based process involving industry experts, or that it ''possesses the ability to convene a body of industry experts.'' Several commenters suggested that an applicant's history with workforce development programs should be a possible alternative to demonstrating input from industry experts. A group of commenters noted that ''consensus-based process'' is vague and undefined. One commenter proposed that the Department define the concept of consensus standards and also questioned whether consensus standards for a given industry are any different from a work process schedule required in § 29.5 of subpart A.

A commenter requested that quantitative and qualitative measures carry equal weight in an entity's application.

The Department agrees that weighing an entity's experience operating under the workforce development system would be relevant information that should be provided in an entity's application if the entity possesses such experience. However, the Department has determined that requiring all applicants provide metrics measured under WIOA may exclude potentially qualified entities from applying. As discussed below, the Department declines to establish minimum experience requirements for entities to apply to become recognized SREs. The Department agrees that a proven track record of positive outcomes for those with barriers to employment would be a relevant and persuasive point of discussion in an entity's application for entities that have such experience. However, the Department declines to require that entities demonstrate the likelihood of expanding opportunities for those with barriers to employment in their applications as it would create a different application standard for applicants experienced in handling such issues. Additionally, the final rule maintains flexibility to allow entities to design programs most responsive to their workforce and economic needs. Additionally, while WIOA is directed in large part toward those with barriers to employment as defined by that statute, the NAA is directed toward apprentices

broadly and generally; consistent with the NAA, the industry-led apprenticeship model envisioned by this rule is intended to serve apprentices in a variety of industries and with a variety of backgrounds, not just those who are currently experiencing barriers to employment as that term is used in WIOA. While input from one or more State Workforce Development Boards could demonstrate valuable knowledge and expertise on the part of an applicant, the Department declines to require that every applicant consult with every relevant State Workforce Development Board.

As discussed above, the Department does not share the concern that a variety of SREs will lead to confusion and inconsistent IRAP program quality. To the contrary, the Department expects that any SREs complying with the requirements of this subpart will only recognize IRAPs that provide high-quality training. The Department views slight variations in approach that will occur between SREs as a net benefit that will provide apprentices and employers with increased options to meet the training needs of their workforce. Furthermore, the Department anticipates that many entities that may be interested in becoming recognized SREs already have standards-setting processes that reflect well-established and high-quality training, and the Department does not anticipate that expanding access to such programs will lead to confusion.

In response to the comment that SREs must be able to demonstrate significant industry engagement at national and local levels, the Department notes that coordination with industry experts is an existing requirement in paragraph (b)(1) of § 29.21. The Department also notes that it would be difficult and burdensome for SREs to list in their applications every local area in which it anticipates recognizing IRAPs.

The Department appreciates the concern with focusing on the continuity of standards to ensure the employability of completing apprentices. Notably, as discussed above, apprentices will train according to competency-based standards that reflect the consensus of experts and thereby convey consistency and employability. In addition, as discussed below, SREs will report on credential attainment and employment outcomes of their IRAPs, thereby demonstrating continuity of training and employability.

The Department disagrees with the concern that allowing SREs to adjust their practices for each State and city in which they certify programs could lead to varying levels of certification quality, and therefore, has declined to prohibit such an approach. To the contrary, the Department envisions that SREs will make these adjustments as a matter of necessity to successfully operate in a State or region. For example, an apprentice working in automotive body repair in the southwestern United States may not need to achieve competency in repairing damage caused by road salt that may be common in other regions of the country. The Department notes, however, SREs must ensure that IRAPs lead to apprentices receiving industry-recognized credentials, and some State by State credentialing and licensing requirements are inevitable and will need to be considered by SREs.

The Department intends for the term ''expert'' as used in § 29.21(b)(1) to mean a person who has comprehensive knowledge of a particular area. The Department declines to set minimum experience or qualification requirements as such qualifications may necessarily vary across industries. A worker with in-depth knowledge of his or her occupation or related occupations and an instructor with extensive knowledge in credentialing may both bring valuable expertise to an SRE and could conceivably be included among the SRE's experts. The selection of experts must necessarily be left up to the SRE as the Department would not be in a position to require consultation with specific industry experts. The Department declines to adopt suggested alternative approaches to demonstrating expertise, such as possessing experience with workforce development, as that would impinge on the flexibility the Department believes SREs should be given.

The ability to set competency-based standards through a consensus-based process involving industry experts is essential to ensuring that the SRE recognizes only high-quality IRAPs. The requirement that standards be the result of a consensus-based process is intended to ensure that an SRE's experts agree that the standards will result in high-quality IRAPs that convey industry-recognized credentials consistent with the requirements in this subpart. Entities are required to identify in their applications the industry expertise on which they will rely and the processes by which the entity will develop standards. Once recognized, the SRE must rely on the opinion of experts as described in the entity's application, but need not rely on any particular expert(s) identified on the application. The Department anticipates that the ability to convene a body of industry experts could serve as part, though not all, of an entity's consensus-based process. The Department therefore declines to make the ability to convene a body of experts an alternative to establishing a consensus-based process. Although a history of working with the workforce development system could potentially demonstrate an entity's expertise, the Department does not consider such experience as an alternative to establishing a consensus-based process.

The Department intends for the term ''consensus-based process'' to require that the competency-based standards developed are the product of agreement by experts in the fields. Regarding the comment questioning whether consensus standards are the same as a ''work process schedule'' as those terms are used in subpart A, the Department agrees that the two concepts are comparable. The Department expects that SREs will organize their competency-based standards such that IRAPs and apprentices will clearly understand the skills and knowledge that must be demonstrated in order to complete the program. Although the idea of a work process schedule is a common method of describing knowledge and skill attainment under subpart A, the Department is not requiring the establishment of work process schedules under this subpart.

The Department anticipates that qualitative measures of demonstrating qualifications may be more common in entities' applications as the applications must demonstrate expertise and describe competencies. Quantitative measures will be relevant for entities with extensive experience in training apprentices and such measures will also be assessed in the re-recognition process as described in § 29.21(c)(1)(ii). No change was made in the regulatory text in response to these comments.

Paragraph (b)(1)(i) of § 29.21 clarifies that the requirements in § 29.21(b)(1) may be met by an entity's past or current standard-setting activities, and need only engender new activity if necessary to comply with this rule. This paragraph accounts for how some prospective SREs already have standards-setting processes that reflect well-established, industry-, occupation-, and employer-specific needs and skills. Rather than requiring those prospective SREs to alter their approach to setting standards, the Department seeks to clarify its expectation that such entities' processes for setting standards likely meet the requirements of this proposed rule, and need only change if necessary to comply with it.

One commenter suggested that this paragraph as drafted would properly

account for an entity's past efforts in standard setting. A different commenter questioned whether DOL anticipated grandfathering in existing standards-setting entities and suggested such a practice would be inappropriate. The Department agrees that the paragraph as proposed appropriately accounts for entities already setting standards based on the consensus of industry experts; the text is adopted as proposed. The Department does not intend to grandfather in existing standards-setting entities—such entities still must apply to become recognized SREs and will need to alter their processes and procedures as necessary to comply with this subpart.

Although paragraph (b)(1)(ii) of § 29.21 is reserved, one commenter proposed that text be added at this paragraph to clarify that SAAs in good standing receive automatic recognition as SREs. While State entities are eligible to apply to become recognized SREs, the SAA evaluation process is significantly different than the process the Department has designed for evaluating SREs. Accordingly, the Department has determined it necessary that any SAA that seeks SRE recognition to goes through the application process prescribed in this subpart to ensure it has the processes and procedures in place to recognize high-quality IRAPs. This paragraph remains reserved as proposed.

Paragraph (b)(2) of § 29.21 states that the entity must demonstrate that it has the capacity and quality assurance processes and procedures sufficient to comply with paragraph § 29.22(a)(4), given the scope of the IRAPs to be recognized. That paragraph authorizes SREs to recognize and maintain recognition of only high-quality apprenticeship programs.

Paragraph (b)(3) of § 29.21, as proposed, noted that prospective SREs must demonstrate they meet the other requirements of the subpart, in particular those outlined in § 29.22. The Department received no comments on this proposed paragraph. However, the paragraph was renumbered as (b)(8) to account for the additional application requirements as follows. The final text was changed from ''[i]t meets the other requirements of this subpart'' to ''[i]t meets any other applicable requirements of this subpart.'' The change was made to clarify that not every requirement of this subpart would be an eligibility requirement at the time of application.

The new paragraph (b)(3) of § 29.21 in the final rule incorporates a requirement that an entity indicate that it has the resources to operate as an SRE for a 5-year period, and to report any bankruptcies during the previous five years. This requirement is taken from the proposed form that required an entity to demonstrate its ability to operate for the next five years and provide a financial statement. The form is not included in the final rule for the reasons discussed above. The text of the final rule is intended to ensure the future financial stability of an SRE to the greatest extent possible. The Department's recognition signals to prospective IRAP sponsors about the operational health of an SRE and thus a sense of security in the sustainability of the SRE. Additionally, this approach minimizes the burden on applicants as requested by several commenters.

A commenter noted that, in its view, a financially unstable training program will not safeguard the welfare of apprentices. Multiple commenters noted, in their view, the importance of verifying that the credential provider remains financially viable. One such commenter added that apprentices may not receive the benefit of industry-recognized credentials if the credential issuer later becomes defunct. Another commenter suggested that measures to ensure the financial viability of SREs be strengthened to ensure that SREs have sufficient financial contributions from IRAPs to operate successfully. One commenter noted that the proposed form seemed to indicate that the Department lacks confidence in prospective SREs, because it asked prospective SREs to address their financial stability over the next five years.

Several commenters pointed to the potential for financial conflicts. Multiple commenters suggested that SREs will have a financial incentive to recognize as many IRAPs as possible. One such commenter suggested that SREs provide a plan for how they will sustain losses from reduced fees if the SRE must derecognize IRAPs. The commenter suggested that such a financial tension has been a central challenge for the higher education accreditation system.

The Department agrees that an SRE's financial viability is crucial to ensuring safety and ensuring the long-term value of industry-recognized credentials, and the Department has included the new paragraph (b)(3) of § 29.21 in the final rule in response to these comments. The bankruptcy or dissolution of an SRE could also disrupt apprentices' training, as the SRE's IRAPs would have to apply for recognition from a different SRE. The Department has determined that an entity should demonstrate its financial viability for five years, which is intended to capture at least one full recognition cycle for the SRE. SREs are in the best position to determine whether to charge fees, and if so, to set the fees necessary to support their operations. As explained in more detail below, the Department has not set minimum or maximum levels of fees that SREs may charge.

The Department also agrees that demonstrating financial stability at the application stage will ensure that SREs' financial viability is not based on recognizing as many IRAPs as possible without heeding to program quality, and that SREs will be able to absorb lost fees if some IRAPs must be derecognized.

New paragraph (b)(4) of § 29.21 requires that an entity disclose relationships with subsidiaries or other related entities that could reasonably impact its impartiality. The requirement is taken from the proposed form, which requested lists of related bodies, such as parent or subordinate organizations, as well as a list of confirmed or potential partners. The Department received one comment related to this paragraph, which was that conflict of interest provisions related to an SRE offering consultative services should be extended to related entities or subsidiaries.

The Department agrees that potential conflicts of interest involving subsidiaries or related entities could be imputed to the SRE, and paragraph (b)(4) of § 29.21 has been added in part to address such concerns. Proposed 29.22(e) and (f) have also been amended in response to this and other comments, as explained below. Paragraph (b)(4) also requires that the entity describe the roles of confirmed or potential partners. In addition, such information may provide context related to an entity's ability to perform the required functions of an SRE.

Paragraph (b)(5) of § 29.21 has been added to the final rule and requires entities to demonstrate that they are not currently suspended or debarred from conducting business with the U.S. Federal Government. The debarment restriction is intended to exclude entities that have carried out bad acts that would call into serious doubt their ability to effectively function as an SRE. The debarment restriction is taken from the proposed form, which requested that entities affirm they have no relevant injunctions, debarments, or other restrictions that would prevent them from doing business with the Federal Government or members of their industry sector. The final text has been changed from the language in the proposed form to clarify that relevant debarments are those that would prevent the entity from conducting

business with the U.S. Federal Government, as the term ''debarment'' is commonly understood. The Department received no comments related to the debarment question in the proposed form that is carried forward in this paragraph.

Paragraph (b)(6) of § 29.21 has been added to the final rule and requires entities to mitigate any actual or potential conflicts of interest, including, but not limited to, conflicts that may arise from the entity recognizing its own apprenticeship programs and conflicts relating to providing services to actual or prospective IRAPs. Such actual or potential conflicts must be addressed through specific policies, processes, procedures, structures, or a combination thereof. The requirements in this paragraph are replacing those proposed in paragraphs (e) and (f) of § 29.22 in the proposed rule. As discussed in greater detail in the § 29.22 discussion below, this revision is meant to strengthen the conflict of interest provisions by moving the requirement from § 29.22 of the proposed rule to § 29.21 of the final rule. By moving the requirements to § 29.21(b)(6), every entity is required to address potential conflicts of interest through specific policies, procedures, organizational structures, or a combination thereof that will be assessed by the Department before the entity may be recognized as an SRE. This change was made in response to numerous commenters who suggested the proposed rule insufficiently addressed conflicts of interest. The Department also has broadened the requirement to include recognizing an SRE's own IRAPs or offering services to actual or prospective IRAPs as non-exhaustive examples of the types of actual or potential conflicts that must be addressed. This change was made in response to several commenters who noted that other conflicts may exist. The comments on conflicts of interest are addressed in the § 29.22 discussion below, because that is the provision in which those requirements were initially proposed (as § 29.22(e) and (f)). Relatedly, as discussed in further detail below, proposed § 29.22 also requires that an SRE's recognition procedures assure that IRAPs receive equitable treatment and are evaluated based on their merits, and this requirement was carried forward in § 29.22(d) of the final rule.

Paragraph (b)(7) of § 29.21 was added to the final rule and requires that an entity demonstrate that it has the appropriate knowledge and resources to recognize IRAPs in the sectors and occupations in the intended geographic area, which may be nationwide or limited to a region, State, or local area. This requirement was taken from the proposed form that in Section I asked entities where they planned to recognize IRAPs. Obtaining such information is necessary to ensure that the Department can refer prospective apprentices or IRAPs to nearby SREs or IRAPs in the relevant sector or occupation. As noted in the final regulatory text, the knowledge and expertise that an entity would need to demonstrate would necessarily vary if the entity is interested in recognizing IRAPs in a single State versus nationwide.

Consideration of Commenters' Suggestions for Additional SRE Eligibility Requirements

A few commenters proposed additional eligibility requirements for entities to become recognized SREs. One commenter proposed that the Department limit SRE eligibility to well-established, industry-recognized associations or non-profit organizations. Another commenter suggested that entities should have experience in the area in which they are seeking recognition in order to set standards. The commenter suggested that a community college, for-profit institution, or non-profit organization should not be able to set standards for a trade in which the entities do not perform such work. A commenter proposed that the Department consider requiring that agencies have a minimum of two years of experience to demonstrate that the entity is effective in assessing the quality of workforce programs. Alternatively, the commenter suggested that the Department limit the scope of operations of SREs that lack such experience. One commenter suggested that applicants with accreditation experience should receive priority processing, because such experience would help to maintain consistency across IRAPs.

The Department declines to set minimum experience requirements for entities to apply to become recognized SREs. Notably, § 29.20 addresses the eligibility of a partnership or consortia of entities applying to become recognized SREs in light of the diverse expertise required of SREs. The Department declined to limit eligibility to well-established entities, as a start-up SRE or a new partnership or consortium of entities may be equally well-positioned to serve as effective SREs. Furthermore, it would disadvantage cutting-edge industries and stifle the expansion of apprenticeship to require that all SREs be well established. The Department similarly declined to require that SREs perform the work of an industry or occupation. The Department notes that SREs must possess a variety of abilities beyond establishing training plans and recognizing standards. SREs must also perform quality-control functions, receive and address complaints, and collect and report data. Moreover, universities and community colleges may possess expertise in classroom instruction and credentialing and licensing that is also required by the subpart. Although an entity possessing actual experience ensuring the quality of workforce programs would be well-positioned to meet the requirements of this paragraph, the Department also anticipates that many entities may not possess such experience but may, nevertheless, be able to demonstrate that they possess the required capacity. For example, an entity without such experience may be able to demonstrate its capacity and quality assurance processes by hiring quality assurance personnel or by implementing industry best-practices. The Department decided not to make SRE approval conditional or limited at the outset. Notably, SREs are expected to comply with the requirements of this subpart immediately upon recognition. The Department made no changes in response to the comments.

Applications for Re-Recognition—§ 29.21(c)(1)

Paragraph (c) of § 29.21 indicates that the Administrator will recognize an entity as an SRE if the applicant is qualified, and also provides additional details about recognition. This paragraph ensures that the Administrator undertakes adequate review of SREs, both over time and following any significant changes that would affect the SRE's qualification or ability to recognize IRAPs.

Section 29.21(c)(1) indicates that SREs will be recognized for 5 years. An SRE must reapply if it seeks continued recognition. The Department proposed a 5-year time period to be consistent with best practices in the credentialing industry and to ensure that already-recognized SREs continue to account for the development and evolution in competencies needed within their industries. Changes were also made in response to comments to clarify that an SRE must reapply at least 6 months before its recognition is set to expire.

Numerous commenters stated that, in their view, a 5-year recognition period is too long. Several commenters suggested that SREs should be recognized for a 1-year probationary period and then be reassessed as part of a process that would be similar to

§ 29.3(g) in subpart A. A commenter argued that it would be unfair for SREs to receive 5-year approval whereas a registered apprenticeship program could only be registered provisionally for 1 year. One commenter suggested that the criteria for approval are not stringent enough to result in recognition for 5 years. Another commenter questioned why an entity with no proven track record of high-quality training would be recognized for 5 years. One commenter urged that approval for a shorter period would allow SREs to better keep pace with rapid changes in industry. Conversely, multiple commenters agreed that approval for 5 years is consistent with the practices in the credentialing industry.

A commenter suggested that SREs should be recognized for 5 years, but that they should be required to apply for re-recognition before the 5-year period ends in order to ensure that IRAPs not be approved and monitored by SREs with expired recognition. A different commenter proposed that an SRE should be recognized for 5 years, unless the SRE is an SAA, in which case the recognition should last indefinitely.

Another commenter proposed that re-recognition should take into consideration a measure of employer uptake. The commenter explained that employer uptake would measure the extent to which employers in a given sector emulate or adopt the standards recognized by an SRE.

As discussed above, the Department strengthened the recognition requirements by adding five new paragraphs to paragraph (b) of § 29.21. During the approval period, the Department has broad discretion to conduct both compliance assistance reviews under § 29.23 as well as reviews under § 29.26 that may lead to suspension or derecognition. Such reviews may be conducted at any time, including before the 1-year mark after initial recognition. This oversight ability will allow the Department to monitor SREs for compliance with its regulations. Further, SREs will be able to adapt to rapid changes in industry by amending their recognition process and notifying the Administrator as required under paragraph (c)(2) of § 29.21, discussed below. These measures are more than sufficient to meet the broad and general directives of the NAA, which do not require the Department to adopt precisely the same procedures used in the Registered Apprenticeship program for other programs, nor establish specific time periods of any sort. Rather, the Department is only directed to ''bring together employers and labor for the formulation of programs of apprenticeship'' and to ''formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices,'' which this regulation does.

The Department agrees that allowing SREs to apply for re-recognition on the date of expiration could lead to confusion during the time in which the Department is adjudicating the SRE's application. In response to this comment, the Department amended § 29.21(c)(1) to require an SRE to apply for re-recognition at least 6 months before its current recognition is set to expire. In response to the comment suggesting that SAAs should receive indefinite recognition if they are recognized as SREs, the Department declines to establish different recognition periods for different types of entities because of the potential for confusion.

Paragraph (c)(1)(i) of § 29.21 was added to clarify that an SRE must apply for re-recognition by submitting an updated application to the Administrator in a form prescribed by the Administrator. This paragraph was added to mirror the changes made to paragraph § 29.21(a) that explain the initial application process.

Paragraph (c)(1)(ii) of § 29.21 was added to establish the standard against which an application for re-recognition is assessed. It provides that the information contained in the application will be evaluated for compliance with § 29.21(b)(1) through (8) in much the same manner as an initial application. In addition, the paragraph recognizes that the SRE will have reported data pursuant to § 29.22(h) that will reflect the outcomes of the IRAPs the SRE has recognized.

An SRE applying for re-recognition must submit its quality assurance processes and procedures that will ensure compliance with § 29.22(a)(4), as required by § 29.21(b)(2). The Department will also review data provided by the SRE to ensure that the quantifiable requirements of this subpart were and are being achieved. The Department does not intend for § 29.21(c)(1)(ii) to establish minimum benchmarks that SREs must meet to receive re-recognition. Rather, the Department intends to use all available relevant data to enhance quality assurance and ensure that the processes and procedures submitted as required by § 29.21 are resulting in the recognition of high-quality IRAPs that meet the requirements of § 29.22(a)(4). Thus, for example, the SRE's application for re-recognition must demonstrate policies and procedures that will ensure its IRAPs will provide apprentices with a safe working environment and industry-recognized credential(s) during participation or upon completion of the program, among other requirements. If, however, the same SRE's data submitted pursuant to § 29.22(h) indicated that apprentices are completing the SRE's requirements and are not earning industry-recognized credentials, such data may well reveal that an SRE's quality assurance processes and procedures are and were inadequate.

Obligation To Notify the Administrator of Substantive Change—§ 29.21(c)(2)

Paragraph (c)(2) of § 29.21 requires that an SRE notify the Administrator and provide all related material information about any major change that could affect the operations of the recognition program. The requirement that an SRE notify the Administrator if the SRE makes a substantive change to its recognition processes was not carried forward in the final rule in light of the requirement added to § 29.22(p), discussed below, that requires an SRE to notify the Administrator when an SRE makes a significant change to its policies or procedures. Changes under § 29.21(c)(2) would include involvement in lawsuits that materially affect the SRE; changes in legal status; or any other change that materially affects the SRE's ability to function in its recognition capacity. Likewise, the SRE must notify the Administrator and provide all related material information if it seeks to recognize apprenticeship programs in new sectors or occupations. Paragraph (c)(3) of § 29.21 further states an SRE must notify the Administrator of major changes that could affect its recognition program, prior to their implementation. Such changes include seeking to recognize IRAPs in new sectors or geographical areas. In light of the information received, the Administrator will evaluate whether the SRE remains qualified for recognition under § 29.21(b).

The Department received one comment on this paragraph. The commenter suggested that language be added stating that conflicts of interest arising after recognition should be considered substantive changes that must be submitted to the Administrator. In addition, the commenter suggested that major expansions of programs, major changes to the type of program offered, or changes to the type of credential offered should be considered substantive changes.

The Department appreciates the concern that a conflict of interest could constitute a material change. The Department addressed this concern by

moving the conflict of interest requirement to § 29.21(b)(6) and thus requiring all SREs to submit processes, procedures, organizational structures, or a combination thereof that mitigate actual or potential conflicts of interest. Once recognized by the Department, SREs must comply with their own policies and procedures as stated in § 29.22(p), discussed below. Notably, as explained, § 29.22(p) contains a requirement that the Administrator be notified if the SRE makes significant changes to its processes or procedures, which would require the SRE to notify the Department about changes in procedures that address conflicts of interest.

The Department agrees that changes to the type of credential offered would constitute major changes that affect the operation of the SRE and thus require notification to the Administrator.

Because all SREs are required to develop competency-based standards, changes from one type of apprenticeship program to another, such as a change from a time-based program to a competency-based program, are no longer permissible. Thus, an SRE could revise its competency-based standards without notifying the Department if the SRE developed the standards using its existing processes and procedures. If, however, the SRE changed its processes and procedures for setting competency-based standards, § 29.22(p) would require that the Administrator be notified of the change in process.

The Department made no changes to this paragraph in response to the comment. The Department did, however, add the word ''calendar'' to § 29.21(c)(2)(iii) to clarify that days are calculated as calendar days. This change was made throughout the rule.

Denials of Recognition—§ 29.21(d)

Paragraph (d) of § 29.21 outlines the requirements associated with any denials of recognition after the Department receives a prospective SRE's application. The Administrator's denial must be in writing and must state the reason(s) for denial. The denial must also specify the remedies that must be undertaken prior to consideration of a resubmitted application and must state that a request for administrative review may be made within 30 calendar days of receipt of the notice. Under the final rule, the denial must also explain that a request for administrative review made by the applicant must comply with 29 CFR part 18's service requirements. Additionally, the final rule clarifies that the appeal procedures in § 29.29 apply to appeals under § 29.21(d).

The Department received no comments on this paragraph and added clarifying language to the first sentence stating that the requirements for denials of recognition ''are as follows.'' The Department also edited § 29.21(d)(2) to clarify that notice to the Office of Administrative Law Judges must comply with the service requirements contained in 29 CFR part 18. This change is intended to account for any future change to the regulations promulgated by the Office of Administrative Law Judges.

Section 29.22 Responsibilities and Requirements of Standards Recognition Entities

Section 29.22 describes the responsibilities of and requirements for SREs, including recognizing high-quality IRAPs, developing policies and procedures on a range of issues, reporting data to the Department and the public, and giving notice to the public of complaints and fees. The Department received many comments on this section, as described in detail below, and made several changes in response to those comments. In particular, the Department clarified some of the standards of high-quality apprenticeship programs in § 29.22(a)(4) and strengthened the SRE's requirement that an SRE validate and attest, in § 29.22(b), both at initial recognition and on an annual basis, that its IRAPs meet the standards of § 29.22(a)(4) and any other SRE requirements. The Department also included a requirement in § 29.22(d) that the SRE disclose to the Administrator its policies and procedures for ensuring consistent assessments of IRAPs for recognition and compliance with subpart B.

As explained in the earlier discussion of § 29.21, the Department moved paragraphs (e) and (f) concerning conflicts of interest from § 29.22 to § 29.21 and relettered the paragraphs in § 29.22 accordingly. Therefore, within § 29.22 of the final rule, paragraph (g) regarding 5-year recognition of IRAPs is now paragraph (e); paragraph (h) regarding the quality-control relationship between the SRE and its IRAPs is now paragraph (f); paragraph (i) regarding joint employer status is now paragraph (g); paragraph (j) regarding SRE reporting of IRAP data is now paragraph (h); and paragraph (k) regarding equal employment opportunity (EEO) policies and procedures is now paragraph (i).

The Department also added two additional requirements to the quality-control relationship between the SRE and the IRAP in § 29.22(f) (previously (h)) and included additional reporting requirements in § 29.22(h) (previously (j)), requiring information to be made publicly available and reported to the Department. The Department received comments to other sections of the rule concerning complaints against SREs and IRAPs and derecognition of SREs. These comments resulted in the Department's decision to add paragraphs (j) through (m) to § 29.22. Among other things, these paragraphs clarify the notice an SRE must give of the right to file a complaint against an SRE or an IRAP and of SRE derecognition. The Department also added § 29.22(n) to require that the SRE make publicly available any fees that it charges to IRAPs, § 29.22(o) to ensure that records relating to IRAP recognition and compliance are maintained, and § 29.22(p) to clarify that the SRE must follow its own policies and procedures and notify the Administrator when it makes significant changes to either.

SRE Requirements for Recognizing High-Quality IRAPs

Paragraph (a) of § 29.22 describes various obligations of SREs and identifies the characteristics of high-quality apprenticeship programs. The Department received numerous comments about this paragraph, particularly regarding the characteristics of high-quality apprenticeships set forth in § 29.22(a)(4). Many commenters contrasted the requirements of paragraph (a) of § 29.22 with the requirements for registered apprenticeship programs. Others detailed the successes of their registered apprenticeship programs and the importance of safeguarding the welfare of apprentices. Some commenters faulted the rule for providing the SREs with too much discretion, stating that the rule did not provide adequate protection against exploitation because IRAPs would admit ''apprentices'' yet provide limited or inadequate training and pay them less than the prevailing wage rates. Commenters expressed concern about industry providing inadequate training and substandard working conditions to create a low-skilled, low-wage labor pool.

Other commenters expressed support for the rule's flexibility and for allowing SREs to set industry-relevant requirements. They praised the rule's approach of ensuring high-quality apprenticeships and adequate protection for apprentices while at the same time providing flexibility to allow for increasing apprenticeships and promoting innovation in industries that may not yet have robust apprenticeship programs. Commenters favorably remarked that IRAPs would create

healthy competition with registered programs, would not be restricted by the presence of union-sponsored programs, and would encourage modernization of and investment in training by SREs, IRAPs, and registered apprenticeships.

These comments and the Department's responses and changes to the final rule are detailed in the paragraph-by-paragraph section below. Among other things, the Department's changes enhance its oversight of SREs by adding additional reporting requirements for SREs and quality assurance measures. The changes also strengthen the requirements for the quality-control relationship between an SRE and its IRAPs, the protections for apprentices by enhancing the requirements for high-quality IRAPs, the SREs' oversight of IRAPs, and further adding measures concerning SRE responsibilities. The Department also received comments that it deemed not applicable or appropriate to address in this rule, such as a suggestion to require employers to use e-Verify for the employment eligibility of apprentices and a suggestion to specify whether SREs would be eligible for State-specific funding or benefits.

Timeliness of SRE Recognition

Paragraph (a)(1) of § 29.22 provides that SREs must recognize or reject apprenticeship programs seeking recognition in a timely manner. The Department received comments suggesting that IRAP applications be subject to a public comment period of 60 days before an SRE's recognition of the IRAP. Commenters noted that this would ensure transparency and the quality of the IRAPs by allowing industry participation before IRAP recognition. Commenters also stated that a notice-and-comment period would allow the public to verify that the IRAP is not for an occupation in the construction industry. Other commenters suggested that the Department require a firm deadline by which IRAPs would be notified of their recognition status, noting that the Department imposes such a deadline on SRE recognition. A commenter also recommended requiring SREs to provide a clear reason for rejecting an IRAP.

The Department acknowledges the comments about ensuring transparency and high quality. The Department has determined, however, that public notice and an opportunity to comment on the recognition of IRAPs is not necessary. SREs are best positioned to determine whether an IRAP meets the standards of a high-quality apprenticeship program, in accordance with the parameters of this rule. The Department has prescribed the standards of a high-quality apprenticeship program in § 29.22(a)(4) and has taken steps elsewhere in the rule to strengthen existing oversight measures. SREs are responsible for ensuring that IRAPs meet the standards of a high-quality apprenticeship program established by the Department, and both SREs and IRAPs are subject to the quality-control requirements established in this rule. The SRE is responsible for ensuring that its IRAPs continue to meet the requirements of this rule, and this SRE responsibility, coupled with the Department's oversight of SREs, provides the apprentices with protection against low-quality or exploitative IRAPs. The SRE may derecognize IRAPs that fail to meet the requirements of a high-quality apprenticeship program set forth in § 29.22(a)(4), and the Department may derecognize SREs for failure to comply with the requirements of this subpart.

Further, the Department determined that a notice-and-comment period for the recognition of each IRAP is not necessary as the SRE itself must conduct a thorough vetting process to ensure that potential IRAPs meet the requirements of § 29.22(a)(4). As discussed in § 29.21 above, SREs must demonstrate that they have the expertise to set standards for apprenticeship programs in the industries or occupational areas for which they seek recognition, and SREs must also demonstrate that they have the capacity and quality assurance processes and procedures to comply with the requirements of § 29.22(a)(4). SREs' responsibilities as contemplated by this rule require due diligence and thorough vetting of prospective IRAPs.

With respect to concerns about IRAPs in the construction sector, as discussed in greater detail below, the Department has revised proposed § 29.31 (finalized as § 29.30). The Department will not recognize SREs that recognize IRAPs engaged in any construction activities as described in § 29.30, and the Department prohibits SREs from recognizing as IRAPs programs that train apprentices in construction activities as described in § 29.30. The Department has determined the responsibilities of both the Department and the SRE are sufficient to prevent the recognition of IRAPs that would train apprentices in construction activities as defined in § 29.30, obviating the need for a public notice-and-comment period for IRAP recognition.

The Department notes the requirement in § 29.22(d) that the SRE must disclose to the Administrator its policies and procedures for ensuring consistent assessment of IRAPs for recognition. The Department anticipates such policies and procedures will include the timeframe for IRAP recognition and how the SRE will notify prospective IRAPs of recognition or rejection. The Department declines to require a certain timeframe or requirement for SRE notice to prospective IRAPs given the different types and needs of SREs and IRAPs.

The Department has revised several other sections of § 29.22 to incorporate concerns about the quality and transparency of IRAPs. For example, as explained in detail below, the Department added language to strengthen some of the components of high-quality programs, such as a training plan, a mentorship program with experienced mentors, and an apprenticeship agreement. The Department also added sections concerning the quality-control relationship between SREs and IRAPs, the Department's oversight of SREs, and the Department's ability to collect and evaluate data concerning the performance of IRAPs and SREs. The Department added the phrase ''as an IRAP'' to clarify that the program is seeking recognition as an IRAP from the SRE. Otherwise, the final rule adopts paragraph (a)(1) of § 29.22 as proposed.

Informing the Administrator of IRAP Recognition

Paragraph (a)(2) of § 29.22 requires an SRE to inform the Administrator within 30 calendar days if it has recognized a new IRAP or suspended or derecognized an existing IRAP. The SRE must also inform the Administrator of the name and contact information of the IRAP. This information will assist the Administrator in fulfilling his or her obligations under § 29.24 (Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs).

The Department changed the phrase ''terminated the recognition of'' to ''derecognized'' for clarity and consistency. Finally, the Department added the term ''calendar'' to the requirement for the SRE to inform the Administrator within 30 calendar days to clarify the relevant timeframe.

Some commenters asked about transparency regarding SRE decisions to decline to recognize or terminate the recognition of an IRAP. One commenter suggested that an SRE be required to inform the Administrator when the SRE declines to recognize a new IRAP, in addition to giving notice to the Administrator of approval or termination of approval. The commenter also suggested that the SRE be required to inform the Administrator of the

reason for declining to recognize or terminating the recognition of an existing IRAP. The commenter stated that the Administrator would benefit from such information to determine the effect on the safety and welfare of apprentices and to ensure objective and impartial decision-making with respect to recognition of IRAPs. Commenters also raised concerns that the public would not be aware of IRAP recognition until months after recognition because the SRE is required to notify only the Administrator within 30 calendar days of the recognition. Otherwise, the SRE is only required to inform the public about the IRAPs it recognizes on an annual basis under paragraph (h) of § 29.22.

The Department acknowledges commenters' concerns about SRE transparency in its decisions concerning IRAP recognition. However, as explained below in the discussion of § 29.22(d), the Department decided to require each SRE to submit to the Department its policies and procedures for assessing IRAPs in a consistent manner. The Department will have the opportunity to review these policies and procedures during the SRE recognition process. The Department declines to require additional information concerning an SRE's decision not to recognize an IRAP or the reasons for an SRE's derecognition of an IRAP. Rather, the Administrator can rely on § 29.23 to request such information if needed. If, for example, the Department receives complaints about an SRE's conduct with respect to recognition of IRAPs or if a compliance assistance review reveals irregularities in the SRE's processes or procedures, the Department may request further information as necessary. Further, the Department may initiate suspension or derecognition proceedings, if warranted.

Regarding the concern that the public would not be aware of the existence of IRAPs in a timely manner, the Department notes that, as discussed in further detail in § 29.24, it plans to regularly update its publicly available list of SREs and IRAPs. Thus, the public will have access to timely information on the Department's website. The Department also expects that SREs and IRAPs will themselves publicize the existence of new IRAPs in order to inform the public and recruit prospective apprentices.

SRE Requirement To Provide Information to Administrator

Paragraph (a)(3) of § 29.22 requires SREs to provide to the Administrator any data or information the Administrator is expressly authorized to collect under this subpart. This rule identifies the specific circumstances under which the Administrator is authorized to collect from SREs any information related to the requirements of this subpart, including the documentation identified in this subpart or required to be maintained under this subpart. This provision will enable the Administrator to request information, as needed, to ascertain SREs' conformity to the subpart under § 29.23 (Quality Assurance). The Department did not receive any substantive comments on this section. The final rule adopts the provision as proposed.

Standards for High-Quality IRAPs

Paragraph (a)(4) of § 29.22 states that SREs may only recognize and maintain the recognition of IRAPs that meet certain requirements, which the Department determined are standards of high-quality apprenticeship programs. These standards of high quality include paid work; work-based learning; mentorship; education and instruction; obtaining industry-recognized credentials; a written training plan and apprenticeship agreement; safety and supervision; and adherence to EEO obligations. In addition to the requirements that IRAPs must meet, SREs, in consultation with their industry experts, must set competency-based standards for the training, structure, and curricula of the industries or occupational areas in which they are recognized.

General Discussion About High-Quality IRAPs

The Department received a number of comments asking for additional clarity as to what constitutes a ''high-quality'' IRAP generally. Commenters suggested specific changes to the rule, such as further defining certain terms as addressed above in the discussion of § 29.20; including a progressive wage structure; enhancing safety and welfare protections; and requiring evaluation and enhanced quality control. Some commenters disagreed with the Department's proposal that SREs be responsible for recognizing IRAPs, suggesting that the Department is abdicating its responsibility to safeguard apprentices under the NAA. Other commenters expressed concern about the possibility that multiple, diverse training standards would exist within a single industry, which would lead to a ''balkanization'' of credentials that would confuse the markets. Some commenters remarked that the lack of clarity and specificity of requirements would discourage the development of IRAPs and worker participation in them. Commenters also expressed concern that IRAPs seem similar to internships that already exist in industries such as the technology industries.

Other commenters expressed support for greater flexibility for industry participation and an industry-driven apprenticeship model that can both expand apprenticeship in new industries while also tailoring apprenticeship programs to best serve industries' needs for a skilled workforce. A commenter suggested that the Department set standards for IRAPs that parallel the registered apprenticeship system and include: (1) Written classroom and on-the-job training requirements; (2) established wage progressions; (3) journeyworker to apprentice ratios; (4) mandatory safety training for apprentices; (5) instructors who are subject matter experts trained in educational methods; and (6) nondiscrimination in the operation of the program.

The Department made changes to certain paragraphs in § 29.22(a)(4), as described in further detail below, to clarify some of the high-quality requirements for IRAPs that satisfy the NAA's direction that the Department formulate and promote labor standards that safeguard the welfare of apprentices. The Department also made changes to other sections of § 29.22 to address comments about the quality-control relationship between SREs and the IRAPs they recognize, data collection by the Department and the SREs, and assessment of performance. As for the industry-driven model envisioned by this rule, the Department has determined that empowering SREs to recognize IRAPs allows the flexibility necessary to encourage more apprenticeships in new industry sectors while also ensuring that apprenticeships meet the standards of high quality determined by the Department. Further, this rule intentionally diverges from the registered apprenticeship program requirements. The Department considers IRAPs separate and distinct from registered apprenticeship programs because of the industry-driven characteristics of the programs, as determined by SREs rather than the Department. Although the Department has drawn from some of the characteristics of the registered apprenticeship model, it declines commenters' suggestions to model IRAPs after registered apprenticeship programs. Rather, as reflected in the discussion of specific sections below, the Department has established a rigorous framework for SRE and IRAP recognition while at the same time providing the needed flexibility to allow industry-driven innovation. The

Department acknowledges commenters' concerns about the possibility of varying standards within industries, but views SREs and their industry experts as best-positioned to set standards consistent with the requirements in this rule in accordance with market conditions. The Department views variances in standards and programs to be a benefit in increasing the competitiveness and utility of IRAPs.

The Department has addressed several of the commenters' concerns in various parts of the final rule. As discussed below, the Department added language to proposed § 29.22(a)(4)(ii), (v), (vi), and (vii) to clarify the standards of a high-quality apprenticeship program and strengthen requirements to better safeguard the welfare of apprentices. The Department has also added § 29.22(a)(4)(x), which requires IRAPs to have an apprenticeship agreement with each apprentice that establishes the employment relationship and sets forth the terms and conditions of the apprentice's employment and training. The Department has also added measures concerning quality assurance (§§ 29.22(f), 29.23), data collection (§ 29.22(h)), and performance assessment (§§ 29.22(h), 29.23). The changes are discussed in further detail in each paragraph below. It bears repeating that the NAA is written in general and discretionary terms, and directs that the Department only formulate and promote labor standards that safeguard the welfare of apprentices. The Department has used its expertise and policy judgment in making these particular changes, which it believes well-exceed the NAA's standard.

A commenter suggested that the Department make IRAP recognition contingent upon a process for the IRAP to use data to identify program strengths and necessary improvements.

The Department has declined to affirmatively require that IRAP recognition by an SRE be contingent upon a process for the IRAP to use data to identify program strengths and necessary improvements. However, this could be required by an SRE, as the Department anticipates that the SRE would make a decision about any such requirements through its own processes and procedures and its quality-control relationship with its IRAPs, as provided in § 29.22(f). The Department notes that there is no such requirement on registered apprenticeship programs. Further, the Department's data and reporting requirements set forth in § 29.22(h) include program-level data and performance outcomes for IRAPs, which allows the Department, the SREs, the IRAPs, and the public to review and assess IRAP performance.

Commenters suggested that Universal Design for Learning (UDL) [14] be included as a core component of high-quality industry-recognized apprenticeships. A commenter observed that UDL could ensure that more people successfully transition to well-paying and meaningful occupations through apprenticeship training because of UDL's focus on designing training and employment opportunities for a broader range of learners. Two commenters suggested adding to § 29.22(a)(4) a requirement that an IRAP ''ensure[ ] digital material and technology accessibility in work experiences and classroom or related instruction, including information and communication technology (ICT) and websites.'' The commenters noted that the Department has already adopted UDL as a requirement for Trade Adjustment Assistance Community College and Career Training grant funds. They also noted that the Department selected a pilot site focused on universally designing apprenticeship pathways in advanced manufacturing as part of the Apprenticeship Inclusion Models grant and provided funding for YouthBuild, which uses UDL to increase young people's engagement in STEM careers.

Under this rule, SREs and IRAPs would be free to include UDL in their apprenticeship programs, and the Department expects some may choose to do so to the extent UDL is useful and allows them to reach a broader pool of potential apprentices. The Department also notes that IRAPs are required to adhere to Federal, State, and local EEO laws and that SREs are required to have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations. However, the Department declines to make UDL a requirement for IRAPs. The Department views the SREs as better positioned to determine the appropriate training models and approaches for their programs and to provide the necessary support to their IRAPs in implementation.

[14] UDL is defined in 20 U.S.C. 1003 as:

[A] Scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

Other comments submitted on this section are discussed in the paragraph-by-paragraph discussion below. The Department changed § 29.22(a)(4) to clarify that SREs must only recognize ''as IRAPs'' and maintain ''such'' recognition of ''apprenticeship programs'' that meet the requirements set forth in (i)–(x). The Department made a change throughout § 29.22(a)(4) to use the term ''program'' rather than ''Industry Program'' or ''IRAP'' to refer to an apprenticeship program that is seeking recognition as an IRAP from an SRE.

1. IRAP Training Requirements—§ 29.22(a)(4)(i)

Paragraph (a)(4)(i) of § 29.22 states that a program must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks. The Department sought comments on these requirements and on whether it should set a minimum skill level or competency baseline for IRAPs similar to the registered apprenticeship program's requirement that apprentices gain ''manual, mechanical, or technical'' skills.

Several commenters saw the need for the Department to include defined apprenticeship durations in IRAP training requirements to ensure the necessary time and support to gain mastery of key competencies. Commenters also stated a need for a minimum skill level or competency baseline for training requirements akin to the registered apprenticeship program requirements. Some commenters argued that the lack of uniform standards for competencies by the Department could result in exploitation of apprentices, a lack of meaningful and substantive work experiences, and confusion about industry standards. In contrast, other commenters recommended that there be no minimum-skill or competency levels set for IRAPs because of the varying needs of diverse and growing industries.

The Department has determined that the proposed text struck a permissible balance, containing sufficient detailed requirements while allowing flexibility for the needs of specific industries. The Department has considered and determined to not set minimum-skill or baseline-competency standards because they would not be uniformly applicable within or across industries. The requirement that IRAPs ''must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks'' sets a functional yet sufficiently rigorous standard by which IRAPs gain recognition.

Though there are no prescriptive requirements to provide a certain baseline of skills or competency, the rule sets the overall framework within which IRAPs may structure their apprenticeship programs. This is to ensure that IRAPs do not simply provide training for roles that require only general knowledge and minimal or no skill. In other words, an IRAP should provide apprentices with training beyond general skills and knowledge that most or all potential workers would already have (*e.g.,* rudimentary computer literacy or basic job etiquette such as promptness). Rather, the purpose is to equip the apprentice with marketable skills that are sought by employers. Though there is freedom within this framework to create innovative IRAPs, the requirement remains that these apprenticeship programs be designed to impart specialized skills that are industry-essential and meet the high-quality requirements set forth in this subpart.

The requirements of specialized knowledge and the performance of complex tasks are reinforced by § 29.22(a)(4)(ii). That provision requires IRAPs to be high quality and to provide apprentices with progressively advancing and industry-essential skills. For example, an IRAP that trains an apprentice to become a water treatment technician would not only impart the basic scientific knowledge but also train the apprentice on the methods for water treatment, safe working practices, water testing, data analysis, and other specialized skills necessary to perform such testing in various settings and for various purposes.

The Department views the SRE as best positioned to decide any minimum-skill and baseline-competency requirements for each particular industry or occupational area in which it is recognized, in a manner that best suits the needs and characteristics of the industry or occupational area. Similarly, and as discussed in the preamble, the Department has determined that the SRE is best suited to set the requisite standards for its industry(ies) or occupational area(s). Thus, the final rule adopts the provision as proposed.

2. IRAP Training Plan—§ 29.22(a)(4)(ii)

Paragraph (a)(4)(ii) of § 29.22 states that a program must have a written training plan, consistent with its SRE's requirements and standards as developed pursuant to the process set forth in § 29.21(b)(1). The written training plan must detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.

The final rule departs from the proposed rule's original language that the apprenticeship program has ''structured work experiences, and appropriate classroom or related instruction adequate to help apprentices achieve proficiency and earn credential(s); involves an employment relationship; and provides apprentices progressively advancing industry-essential skills.'' As discussed below, the Department has changed this paragraph to address suggestions by commenters for further clarity for both IRAPs and apprentices. The training plan must be provided to an apprentice prior to beginning an IRAP. While the proposed language was more than sufficient under the NAA, this change better protects the welfare of the apprentice by making it clear to the apprentice exactly what the apprenticeship program entails, what skills the apprentice should be mastering through the program, and the ultimate outcome of the apprenticeship program.

Several commenters suggested that this section include a requirement for a written training plan describing each program's in-class and on-the-job training requirements. A number of commenters requested that an apprenticeship agreement be required to ensure that IRAPs and apprentices are in an ''employment relationship'' with clear and specific terms, and some commenters argued that an apprenticeship agreement would allow SREs to monitor IRAPs more effectively.

The Department agrees with the comments that it would be beneficial to require apprenticeship agreements and to provide additional specificity regarding training opportunities for apprentices. The Department has revised the text to include a requirement for the program to have a written training plan, consistent with the requirements set by the SRE and with the standards developed or adopted by the SRE. The written training plan must also ''detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.'' Because the program's training plan must be consistent with its SRE's requirements and standards set for the industry or occupational area, the Department anticipates that the requirement for a training plan will create industry consistency while providing apprentices valuable information about the training and work components of the apprenticeship program. Further, the finalized regulatory text clarifies that the training plan must be designed so that the apprentice both demonstrates competency and earns one or more credentials. As discussed above, the Department has determined that SREs should set competency-based standards for their IRAPs; therefore, the Department has included the requirement that the training plan be designed so that apprentices demonstrate competency.

The Department has revised this section by striking the language ''classroom or'' from the phrase ''classroom or related instruction.'' The Department does not intend to create a separate classroom instruction requirement apart from ''related instruction'' and views the inclusion of this term as unnecessary, because classroom instruction is a type of related instruction. The exact form of the related instruction will depend on the nature of the industry or occupation and will be dictated by how the program uses related instruction to complement structured work experiences and develop an apprentice's progressively advancing skills.

The Department also removed the phrase ''involves an employment relationship'' and instead added a new requirement, in § 29.22(a)(4)(x), that IRAPs have an apprenticeship agreement with each apprentice, consistent with the requirements of this subpart. The apprenticeship agreement sets forth the terms and conditions of the employment and training of the apprentice. The Department expects that apprenticeship agreements will include the duration of the apprenticeship, wages and any wage progression, any costs or expenses charged to apprentices, and the competencies and industry-recognized credential(s) to be attained during the program or by completion. The Department has concluded that having a separate requirement regarding the apprenticeship agreement will provide greater clarity about the ''employment relationship'' requirement previously included in this paragraph.

A commenter suggested that apprenticeships should include structured, supervised training in addition to work-based training. Commenters remarked that the absence of required standards related to minimum related instruction hours, minimum on-the-job training hours, test validations, and progressive wage steps would cause a ''race to the bottom'' for

employers and industries without meaningful and helpful training for the trainees. Similarly, other commenters requested that the Department establish minimum on-the-job learning and related technical instruction requirements. Some commenters proposed that training content should include interpersonal and soft skills in addition to technical skills. A commenter cautioned against training apprentices in occupations that may become obsolete in the near future due to technology and automation. Others questioned the meaning of certain phrases, such as ''progressively advancing'' and ''industry-essential'' skills, as vague and needing definition. A commenter expressed concern that, in the commenter's view, the rule does not ensure that apprentices gain proficiency in all aspects of their trade, rather than training on a specific task within their trade. A commenter questioned how ''related instruction'' would be monitored and evaluated. Another commenter noted that there was no requirement for the ''structured work experience'' to be full-time employment. Commenters also expressed concern that there were no requirements regarding the qualifications of IRAP instructors or trainers. One commenter suggested that the Department emulate a State model of using ''training agents'' to provide training and supervision to apprentices and subject such agents to sanctions, such as an inability to train apprentices or bid on public construction projects, if they fail to meet certain requirements. Other commenters faulted the rule for not containing apprentice-to-journeyworker ratios and suggested a one-to-one or two-to-one ratio for on-the-job training.

Other commenters cautioned against adding further requirements on IRAPs in order to allow flexibility to make industry- and occupation-specific decisions. Commenters suggested that any progressively advancing skills requirement should be consistent with industry determinations, rather than set by the Department, because of evolving workplaces and the differing skills needed across industries. A commenter stated that including Department-set standards requirements would be duplicative, because SREs must already engage in a process to ensure that the programs they recognize impart the skills and competencies apprentices need to succeed in their industry. Some commenters expressed support for the proposed language's balance of ensuring high-quality programs while also providing flexibility for SREs and employers to develop apprenticeship programs for a wide variety of jobs and occupational areas. Some commenters also supported the Department's proposal to have industry-set standards for IRAPs, because such standards would be tailored to the specific occupations and industries.

The Department has prescribed the standards for high-quality apprenticeship programs that IRAPs must meet in order to obtain and maintain recognition. The standards are specific and rigorous, and SREs are responsible for ensuring that their IRAPs meet each of the standards at initial recognition and on an ongoing basis. In addition to the Department's standards for IRAP recognition, SREs are required to set standards, in consultation with industry experts, for the requisite training, structure, and curricula for apprenticeship programs as set forth in § 29.21(b)(1). The Department has determined that SREs are in the best position to set industry-specific skills-attainment levels or competency standards within the parameters of this rule. Within the framework prescribed by the Department, SREs may establish standards for their IRAPs.

The Department similarly declines to set minimum requirements for ''progressively advancing'' and ''industry-essential'' skills, because of the flexibility needed to determine what is appropriate for each industry and occupational area. The Department is concerned that definitions in regulatory text—which would need to be both fixed and short—could lack flexibility, fail to accommodate particular industries, and become outdated. Accordingly, the Department intends the common meaning of the words found in ''progressively advancing industry-essential skills'': That the skills taught build upon one another such that they lead to an advanced level of skills that are relevant in the particular industry of the IRAP and for which the credential(s) will be granted. Consistent with that common meaning, the rule gives SREs the latitude to set standards for ''progressively advancing'' and ''industry-essential'' skills. The Department expects that SREs' standards will further develop these terms in a manner that is relevant to the particular industry or occupational area. Similarly, the Department anticipates that SREs will apply the concept of ''progressively advancing'' skills based on the characteristics of the industry and occupation, such that apprentices build skills throughout the program that will result in the competencies necessary for them to operate as independent workers in their fields. As discussed above, the Department anticipates that adding the requirement of a training plan consistent with the SRE's requirements and standards will address many of the concerns about the lack of certain standards of apprenticeship in the rule. In this regard, the Department notes that subpart A, pertaining to registered apprenticeships, similarly does not contain occupation- and industry-specific standards or require such highly specific standards regarding the training content, test validation, or full-time structured work experience that some commenters requested. The training plan required by this paragraph, in conjunction with the other requirements set forth in § 29.22(a)(4), strikes an appropriate balance. It sets forth parameters of IRAPs to make sure that apprentices are receiving valuable education and skills training in a safe environment without overly prescribing programmatic requirements.

Regarding the concerns about adequate training and supervision and apprentice-to-journeyworker ratios, the Department has strengthened the mentorship requirement at § 29.22(a)(4)(vi) to require ''ongoing, focused supervision and training by experienced instructors and employees.'' The Department declines to prescribe further requirements concerning trainers or instructors, with the expectation that IRAPs will provide the necessary training and supervision needed to meet the standards of high-quality apprenticeship in § 29.22(a)(4). The Department further emphasizes that the quality-control relationship between the SRE and the IRAP, as well as the quality-control relationship between the SRE and DOL, as set forth in this subpart, will provide an appropriate check on the quality of the instruction and training. The SRE must ensure that its IRAPs continue to meet the requirements of § 29.22(a)(4), which provides oversight to protect against low-quality programming or actions that may harm apprentices. The Department also notes that § 29.22(a)(4)(v) requires the IRAPs provide a work environment consistent with Federal, State, and local safety laws and with any additional safety requirements of the SREs, which may include measures concerning ratios. The Department decided not to prescribe ratios for mentors or trainers, because ratios would not be uniformly applicable across industries. SREs have the ability to set ratios for supervision, training, mentorship, or safety purposes if they deem such ratios appropriate, and the Department expects SREs to determine whether ratios would serve a

useful function in the industries or occupational areas in which they recognize IRAPs.

Two commenters suggested adding to § 29.22(a)(4)(ii) a requirement that classroom or related instruction incorporate UDL. The commenters described the policy considerations for UDL and suggested these changes to encourage the participation and retention of individuals with disabilities in apprenticeship programs.

As discussed below, IRAPs are required to abide by applicable EEO laws and SREs must have policies and procedures that reflect comprehensive outreach strategies in order to reach diverse populations. The Department anticipates that some SREs and IRAPs may adopt additional measures regarding the inclusion and retention of individuals with different learning abilities, and would welcome such efforts, but the Department declines to impose UDL requirements in the final rule for the same reasons it has elsewhere declined to incorporate UDL.

Commenters inquired about the absence of any requirements concerning probationary periods for apprentices and faulted the proposed rule for not including parameters or limitations on any probationary period. Commenters specifically pointed to the registered apprenticeship requirements at § 29.5(b)(8) that a probationary period not exceed 25 percent of the program or one year, whichever is shorter. A commenter expressed concern that IRAPs would have lengthy probationary periods in order to ''skew'' completion rates and program outcomes. Commenters also suggested that the rule should prohibit IRAPs from terminating apprentices without cause after the end of their probationary periods and instead only allow termination ''for good cause,'' after notice to the apprentice and a reasonable opportunity for corrective action. Some commenters also noted that the rule did not include any disciplinary standards to ensure a fair work environment. Other commenters faulted the rule for lacking protections for apprentices against arbitrary termination or suspension.

The Department acknowledges comments calling for specific requirements for probationary periods as in the registered apprenticeship program. The Department has decided, however, not to prescribe a requirement for a probationary period or the length of probationary periods in the requirements of § 29.22(a)(4), nor to impose specific requirements regarding disciplinary standards. The Department has determined that probationary periods would not be suitable for all IRAPs because IRAPs will vary in duration and content. For example, a shorter IRAP program that results in a certificate of completion should not be required to have a probationary period that a multi-year IRAP with multiple credentials may choose to include as a part of its program. The Department anticipates that some IRAPs will choose to have probationary periods for apprentices while others will not include probationary periods as a part of their programs. IRAPs must comply with any specific requirements their SREs may require concerning probationary periods, termination for cause, or allowing for notice and a period of corrective action. The same is true for any SRE requirements regarding disciplinary standards and requirements for suspensions and termination of apprentices. Given the varying needs of IRAPs, the size and nature of the employers offering IRAPs, and the possibility that IRAPs will vary greatly by duration, content, and other qualities, the Department has determined to allow SREs the flexibility of deciding whether additional requirements are industry appropriate, what requirements to impose (if any), and how to apply any such requirements to their IRAPs.

3. Credit for Prior Knowledge and Experience—§ 29.22(a)(4)(iii)

Paragraph (a)(4)(iii) of § 29.22 requires programs to ensure that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program. Such credit should be reflected in progress through the program itself, or in any coursework, as appropriate.

Some commenters recommended that credits be granted through written tests, practical exams, or demonstrations of competency levels. A commenter cautioned about the risk for fraud, and another commenter recommended that any prior knowledge should be verified before an individual is granted credit. A commenter faulted the rule for failing to provide requirements to assess baseline skill level or previously learned skills the worker may have gained to reduce instructional redundancy. A commenter stated that allowing each SRE to determine how to award credit for prior learning could lead to inconsistencies within an industry.

The Department acknowledges the comments asking for greater specificity regarding credit for prior knowledge or experience. Nevertheless, the Department declines to add specificity because SREs and their IRAPs are best positioned to decide how to assess prior knowledge and experience and what type of credit to grant each individual. Because of the individualized assessment necessary, and the varying needs of IRAPs, the Department has concluded that the rule as written contains sufficient parameters without overly prescribing requirements that would not be generally applicable. The Department also notes that subpart A similarly does not impose a more prescriptive requirement. Thus, the final rule adopts the provision as proposed.

4. Industry-Recognized Credentials—§ 29.22(a)(4)(iv)

Paragraph (a)(4)(iv) of § 29.22 requires programs to provide apprentices with one or more credentials that are industry-recognized during participation in or upon completion of the program. The Department received comments in support of this paragraph. A commenter agreed with the Department's assessment that IRAP credentials will have ''demonstrable consumer and labor-market value.'' One commenter commended the Department's efforts and recommended integration of higher education into IRAPs to create for-credit transferable credentials and dual enrollment opportunities for high school students through the apprenticeship model. A commenter expressed support for digital badges in online learning courses as ''portable, verifiable and secure.'' Some commenters commended the rule for setting appropriate standards for IRAPs without overly prescribing other requirements that could inhibit their development or expansion. A commenter also expressed that training would be simpler and less time-consuming because of the concentration on relevant job skills.

On the other hand, the Department received several comments suggesting that some credentials might be relevant only on a local or regional level and could hinder ''journey-level'' status and career mobility. Some expressed further concern that certain credentials could be of limited utility, because they would be specific to the employer only and not recognized by other employers within the industry. A commenter recommended that the Department require credentials to be ''competency-based, industry-recognized, and portable,'' contending that industry recognition and portability requirements are both essential for industries to attract and retain talent. Another commenter suggested that the Department require IRAPs to consult with labor-market information entities and State or Local Workforce Development Boards, as applicable, in

developing credentials. Another commenter faulted the proposed rule for, in the commenter's view, allowing multiple SREs to set their own criteria without regard for the level of respect of the credential or a timely, accurate way to measure its value.

The Department appreciates comments in support of its proposed approach to credentials. The Department also acknowledges the comments calling for nationally recognized credentials and anticipates that some IRAP credentials will achieve clear national recognition. The Department does anticipate that IRAPs will provide credentials that are portable. For example, an IRAP may require apprentices to pass a nationally recognized exam that measures competencies necessary for the apprentice's occupation. By requiring that credentials reflect the specific competencies needed for any given industry or occupational area the Department believes that IRAPs will enhance apprentices' mobility. In other words, even if the credential itself includes the licensing requirements of a specific area or reflects training specific to certain geographic conditions or even the requirements of a specific employer, the mastery of the competencies upon which the credential is based would result in industry-specific skills that likely could be transferred to a new workplace.

The Department notes that the SRE's role is important with respect to credentials, both in recognizing IRAPs that provide credentials that are industry-recognized and in its oversight of IRAPs. The Department also has oversight of SREs, and by extension their IRAPs, and it will collect information from each SRE about each credential offered by its IRAPs. These measures address the commenters' concerns that IRAPs may simply offer employer-specific credentials that have no broader value to other employers. The Department does not share commenters' concerns about IRAPs providing credentials with limited value, particularly because of the requirements that competency-based standards be set by SREs and that credentials be industry-recognized. Additionally, the Department is responsible for evaluating each SRE's expertise to set competency-based standards, each SRE is responsible for overseeing its IRAPs' compliance with this subpart, and each IRAP is responsible for meeting the requirements of both the Department and its SRE to provide high-quality apprenticeship programs. As for the commenters' suggestion that the Department require credentials to be portable by modifying the text of the final rule, as discussed above, the Department believes that since the credentials are competency-based they will provide value regardless of an apprentice's geographic location. The Department agrees with the commenters who suggested that IRAPs would benefit from consultation with Workforce Development Boards and other entities in developing credentials. The Department anticipates that some IRAPs may engage in such consultation to ensure that the credentials offered are industry-recognized. The Department notes, however, that SREs will likely fulfill such a role through their own expertise and engagement with industry partners and experts. Thus, the Department declines to impose such a consultation requirement upon IRAPs.

Some commenters suggested specific characteristics as necessary for a successful credential program. A commenter remarked that a credential as contemplated by this rule does not nearly match the rigor of credentials that are certified by third-party organizations. This commenter identified, in its view, four characteristics, echoed by other commenters, of a successful credential program: (1) Oversight by an independent national accrediting body; (2) standards that ensure that the program curriculum is comprehensive enough to cover the broad range of tasks needed to perform at an entry-level in the field anywhere in the country; (3) national recognition to ensure credential portability; and (4) continuing education. Another commenter stated that a credential should be empirically based, derived from industry needs, and include a structured process to identify the knowledge, skills, and attributes for a specific job/function. The commenter also noted the importance of a valid assessment process that measures an individual's knowledge and skills necessary for practice. Another commenter contrasted its rigorous certification process, including independent third-party testing as an aspect of credentialing, with the lack of established processes or standards in the IRAP model. Several commenters questioned how the Department would assure the quality of credentials. A commenter cautioned that a skills gap does not equate to a credentials gap and that the market would dictate the value of the credential rather than the IRAP. Other commenters expressed concern that a ''certificate of completion'' would result in narrow, employer-specific training that would not result in a career pathway or economic security. One commenter suggested adding that the process for attaining credentials ''include front-end, diagnostic assessments for credentials that verify an individual's foundational knowledge and skills needed to succeed in the industry program.'' A commenter stated that the Department should explain that IRAP credentials are not equivalent to those issued by an independent body that administers a valid and reliable assessment that may include written and practical tests.

The Department appreciates the insight and efforts of employers regarding portable credentials in their industries and successful registered apprenticeship programs. The Department has determined that SREs should decide how to structure their programs for imparting industry-relevant credential(s), and put in place the requirements for IRAPs' apprentices achieving such credential(s). The Department's requirement that the credential must be industry-recognized is specifically designed to ensure that the credentials are relevant beyond any individual employer. The Department further disagrees that national recognition is required for a credential to be portable. An employer in one corner of the country might place value on a credential issued by an SRE serving only another portion of the country. The Department appreciates suggestions about accrediting or certification bodies that would provide a third-party evaluation and assessment of credentials and assessment tools that would measure an apprentice's knowledge and skills necessary for practice. The Department agrees that this may be a useful model for some SREs and IRAPs and envisions that SREs may rely upon or provide such structures for their IRAPs. The Department declines to mandate such requirements, however, because the Department does not view them as broadly applicable to all potential IRAPs. The Department also agrees with the comment that some IRAPs may have a process for attaining credentials that would include front-end, diagnostic assessments to ascertain baseline skills and knowledge but does not perceive a need to revise the rule to account for such assessments. The Department disagrees with the comment that IRAP credentials would not be equivalent to those issued by an independent body. As stated above, some SREs may provide for such a credentialing process for the IRAPs they recognize.

Regarding the concerns about the value of credentials, whether it be a certificate or any other credential, this

rule provides SREs with an important role in evaluating credentials in order to determine initial and continued recognition for IRAPs. The Department notes that certain data and performance metrics elsewhere in the rule, including credential attainment and post-apprenticeship employment rates, enhance oversight of various aspects of IRAPs as it relates to the credentials they provide. Additionally, the Department has strengthened the quality-control relationship between the SRE and the IRAP, as discussed in § 29.22(f), and the quality-assurance mechanisms of the Department, as discussed in § 29.23. Therefore, the Department has concluded that the flexibility provided for in this paragraph, combined with the enhanced oversight and performance assessment in other parts of the rule, would lead to meaningful assessment of such programs and the credentials they offer and would result in industry adjustments of the IRAP model, and credentials in particular, to better suit both industries and apprentices.

A commenter recommended that the Department offer the public an additional opportunity to comment on any subsequent Department standards to ensure credential validity. The Department is not issuing standards regarding credentials other than what is in the existing requirements of this rule.

Commenters suggested that the absence of a recording requirement with a registration agency that would track individuals' credentials would mean that the credential would lose its value if the SRE ceased to exist. Similarly, a commenter noted that apprentices in registered programs receive formal written recognition of their credentials by the Federal or State apprenticeship agency, in contrast to the current rule.

The Department understands the concerns expressed by commenters but disagrees that a credential would lose its value if an SRE ceases to exist. First, the credential is not the only measure of attainment that an IRAP will provide, as the IRAP must use competency-based standards to equip the apprentice with industry-essential skills. As a result, simply completing an IRAP could demonstrate an apprentice's competency in the relevant industry or occupation. Second, credentials are not tied solely to an SRE. An SRE may provide the credential, but so could an IRAP or a third-party certification provider. The credential is required to reflect specific competencies needed for any given occupation and would continue to be a relevant measure of attainment. The Department acknowledges that there is not a State- or Department-based recognition of the credential, but that is neither the purpose of the rule nor a desired outcome, because of this rule's focus on industry-driven, not government-driven, measures. Third, as stated throughout this preamble, the NAA does not obligate the Department to mirror all standards used in the registered program, but only to follow the NAA's broad and general direction to formulate and promote apprenticeship standards and bring together employers and labor for the formulation of programs of apprenticeship. The credentialing provision of this rule is within the Department's discretion in implementing the NAA.

A commenter recommended that the Department create a public national database of IRAPs, their associated credentials, and the portability of those credentials in order to monitor credential value on a national level.

The Department declines to adopt such a specific requirement in the rule. The Department notes that it is already required to publish a list of SREs and IRAPs under § 29.24. The Department also notes that it included a requirement in § 29.22(h) that the SRE make publicly available certain data about IRAPs and performance outcomes, which it must also submit to the Department. Among the required data are the industry-recognized credentials attained by apprentices for each IRAP. The Department may decide to centralize and make publicly available this information but has determined that it is not necessary to revise the language of this rule to do so. Finally, the Department notes that portability is not a concept that likely could be identified in the manner the commenter suggested, because even credentials facially associated with a specific geographic region could be relevant to and valued by an employer outside of that region.

For these reasons, the final rule adopts the provision as proposed.

5. Working Environment Adherence to Safety Laws—29.22(a)(4)(v)

Paragraph (a)(4)(v) of § 29.22 requires that programs provide a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations. The final rule adds a requirement that programs must also comply with any additional safety requirements of the SRE. The final rule deletes the word ''safe'' as a modifier for ''working environment'' because the Department intends this provision to require programs to provide a workplace that adheres to all applicable safety laws, and SRE requirements.

Several comments expressed concern about this paragraph and called for increased safety standards, such as a requirement for a journeyworker-to-apprentice ratio, regular safety trainings, and other safety measures. A commenter questioned how a ''safe working environment'' would be defined, who would enforce that standard, whether that standard would include a ratio of apprentices to journey-level workers, and what the methods of investigation and discipline for violations would be. Other commenters provided citations connecting increased workplace accidents to higher apprentice-to-journeyworker ratios. Several commenters expressed concern that SREs and IRAPs would be motivated more by profit than safety, in contrast to the registered apprenticeship programs. Commenters expressed concerns about increased injury to apprentices and lower quality work that would thereby increase risk and injuries to the public. One such example was a comment about individuals providing energy or water to the public without proper certified training requirements. There were several comments from the construction industry concerning the need for rigorous safety standards, including curriculum, hands-on training, and safety courses. Some commenters stated that, in their view, the Department was not carrying out what they characterized as a statutory duty to safeguard the welfare of apprentices. A commenter also suggested that worksites be warranted for safety and that worksites be required to adhere to environmental standards. Another commenter noted that certain Occupational Safety and Health Administration (OSHA) trainings are not mandatory; thus, IRAPs may decide not to offer apprentices certain introductory safety training before assignment to a job site, to the detriment of the apprentices, yet still be in compliance with Federal law.

The Department agrees that apprenticeships should have adequate safety requirements. For this reason, the Department's proposal included a requirement that IRAPs provide a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations. The Department notes that, in addition to any applicable general Federal OSHA standards, OSHA industry-specific standards as well as State and local standards may also apply. OSHA regulations contain detailed industry-specific standards for industries such as maritime (29 CFR parts 1915, 1917–19) and agriculture (29

CFR part 1928), in addition to its general industry standards (29 CFR part 1910). OSHA also has numerous compliance assistance manuals for industries that detail how OSHA standards apply to a particular industry. The Department's OSHA website contains information for employers about the standards that are applicable to them and how to obtain compliance assistance. It is incumbent on all employers, including employers offering IRAPs, to both know and comply with any legally required safety standards applicable to their industry.

In addition, the Department has changed the proposed text to add a requirement to the final rule that IRAPs comply ''with any additional safety requirements'' established by their SREs. This requirement permits SREs to determine whether additional safety requirements are warranted for each of their industries or occupational areas, what those requirements should be, and how to best implement them for each of their industries and occupational areas.

The Department has determined in its discretion that this additional requirement that IRAPs adhere to any additional safety requirements of their SREs is an effective and appropriate way of ensuring safety standards that are industry-specific and enforceable without imposing requirements across all industries that may not be universally applicable, relevant, or necessary. The Department expects that SREs will create additional safety measures for industries or occupations for which such measures are reasonable to help ensure the safety of apprentices and to ensure that IRAPs are aware of any industry-specific safety standards that go beyond those imposed by law. SREs may develop policies and procedures that include safety requirements similar to those found in registered apprenticeships, such as journeyworker-to-apprentice ratios, regular safety training, and required safety skills-building in the training plan or curriculum. Requiring SREs and IRAPs to maintain a working environment that adheres to safety laws while giving SREs the option of requiring additional safety measures allows SREs to make individualized assessments of the characteristics and needs of the IRAPs they recognize without imposing requirements that are not relevant or reasonable for the industry. The Department expects that SREs associated with new industries and occupations, for example, may consider imposing safety requirements beyond those required by existing law.

SREs are best positioned to create additional relevant and industry-specific safety requirements, as warranted, which they can monitor through their quality-control relationship with their IRAPs. Additionally, the Department's quality assurance role allows the Department to evaluate the SRE's ability to fulfill its responsibilities to ensure that their IRAPs continue to satisfy the standards of high-quality apprenticeships, including ensuring a work environment for apprentices that adheres to safety laws.

6. Structured Mentorship Opportunities—§ 29.22(a)(4)(vi)

Paragraph (a)(4)(vi) of § 29.22 requires that the program provide structured mentorship opportunities so that apprentices have guidance on the progress of their training and their employability. Mentors support apprentices during their work-based learning experience, and can provide guidance on company culture, specific position functions, and workplace policies and procedures. Mentors can also help develop learning objectives for apprentices, and assist in measuring apprentices' progress and proficiency.

Several commenters suggested that additional language be included regarding the characteristics of mentorships. A commenter questioned whether mentors would be required to have any direct experience or training in adult education. Other commenters compared this paragraph to the requirements for registered apprenticeships, noting that it lacked similar instructor qualification requirements or periodic reviews of apprentices' performance. One commenter suggested that mentorship include ''on-going, focused supervision and training by experienced instructors and employees.''

The Department agrees generally with the commenters' suggestions to add more specific guidelines for mentorships. The Department has included language in this provision describing structured mentorship opportunities as ''involving ongoing, focused supervision and training by experienced instructors and employees.'' The Department envisions that mentors will also play a role in measuring an apprentice's progress and providing relevant, timely feedback about an apprentice's work. The Department has added this language to ensure that apprentices receive quality supervision and feedback by individuals experienced in the relevant industry and occupation, such as those who have attained a mastery of industry-essential skills and competencies. The level of experience may vary widely—for example, a mentor in an emerging industry or occupation may have a different level or type of experience than a mentor in a well-established industry or occupation. The Department also expects that the mentorship opportunities may vary by industry but intends for ''ongoing'' mentorship to mean that IRAPs will have to establish and maintain mentorship opportunities throughout the duration of the apprenticeship program that provide consistent and meaningful mentorship for apprentices by individuals who are experienced in their industries. The Department added clarifying regulatory text to confirm this intent.

7. Apprentice Wages—§ 29.22(a)(4)(vii)

Paragraph (a)(4)(vii) of § 29.22 requires that programs ensure apprentices are paid at least the applicable Federal, State, or local minimum wage. The program must also provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices' wages will increase. The final rule added the requirement that the program's charging of costs or expenses to apprentices ''must comply with all applicable Federal, State, or local wage laws and regulations, including but not limited to the Fair Labor Standards Act [(FLSA)] and its regulations.'' It also added the following language: ''This rule does not purport to alter or supersede an employer's obligations under any such laws and regulations.''

Some commenters expressed concern with the IRAP's ability to charge costs to apprentices, as suggested in paragraph (a)(4)(ix), and thereby either saddle apprentices earning minimum wage with debt or reduce wages to below minimum wage, or both. A commenter noted that there is nothing in the rule preventing an IRAP from charging apprentices costs or expenses and then closing their operations before the apprentices have the opportunity to earn the sought-after credential(s). One commenter urged the Department to prohibit ''that any membership, periodic dues or other fees be payable to any private organization such as a [sic] labor unions or trade associations as a condition of continuing training in the IRAP or securing a post-program job.''

The Department added language to the final rule to make clear that any ''costs or expenses,'' such as the ''costs related to tools or educational materials'' referenced in paragraph (a)(4)(ix) of § 29.22, that are charged to apprentices must comply ''with all applicable Federal, State, or local wage laws and regulations, including but not

limited to [FLSA] and its regulations.'' The revised language further provides, ''This rule does not purport to alter or supersede an employer's obligations under any such laws and regulations.'' When applicable, the FLSA restricts costs that employers may pass along to their employees. In general, if a cost is primarily for the benefit or convenience of the employer, the employer may not charge the employee for such costs if doing so would decrease the employee's wages below minimum wage or allow the employer to avoid overtime obligations. Because of the fact-specific nature of this inquiry, the Department expects SREs and IRAPs to scrutinize any costs or expenses charged to apprentices for compliance with the FLSA, where applicable. For example, FLSA regulations state that ''tools of the trade'' are primarily for the benefit of the employer. Therefore, the costs of purchasing or renting tools used in the employee's work may not reduce an employee's wage below the minimum wage for all hours worked in a workweek. *See* 29 CFR 531.3(d) and 531.32(c). Whether ''educational materials'' would primarily benefit the employer or employee would be a fact-based inquiry depending on the nature of the education and the materials. In addition to the FLSA, State and local minimum wage laws may have their own additional restrictions. Accordingly, the language added to the final rule clarifies that employers charging costs or expenses to apprentices must comply with applicable Federal, State, and local wage laws. And notably, workplaces that employ apprentices, including those under IRAPs, are subject to government and private enforcement for violations of wage-and-hour laws. This rule does not affect those generally applicable and enforceable obligations. The Department declines to add any other requirements regarding dues, memberships, or other fees, as they may vary by industry or unnecessarily limit potential apprentices' choice of IRAPs.

In addition to the legal considerations, the Department also anticipates that SREs and IRAPs will consider market forces and the competitiveness of their program offerings, which will serve as checks against unnecessarily passing along costs to apprentices. The Department expects SREs to conduct appropriate quality control with regard to any costs or expenses charged to apprentices. Further, both the quality-control relationship between the SRE and the IRAP and the apprenticeship agreement between the IRAP and the apprentice provide protection to the apprentice against an IRAP charging costs or expenses and then failing to deliver on its program.

Several commenters suggested the rule should require apprentices be paid prevailing wage rather than minimum wage. Many commenters expressed concern about the lack of a progressive wage requirement and, in their words, potential exploitation of apprentices. A commenter described the benefits of a progressive wage structure in attracting higher quality craftworkers to the field, giving apprentices an incentive to improve their skills, and ensuring that contractors are paying what they termed a fair wage commensurate with the increasing skills of more advanced apprentices. Another commenter expressed concern that requiring adherence only to the minimum wage would drive down area wage rates and weaken the middle class. The same commenter remarked that the lack of a progressive wage structure would result in cheap and fast training and industries flooded with low-wage workers moonlighting as ''apprentices.'' A commenter similarly remarked that substandard wages without a guarantee of benefits could create a spiraling effect and eventual ''race to the bottom'' across industry. Another commenter urged the Department to require wage increases commensurate with skill attainment. A commenter noted the importance of appropriately incentivizing continued participation in the program with a predictable wage and increasing wages on pace with actual or anticipated skill development. The commenter expressed concern that the absence of a progressive wage could leave apprentices financially unable to complete their programs and therefore at a disadvantage in the labor market. Another commenter noted that substandard contractors would avoid paying apprentices prevailing wages in order to be more competitive in their bids on construction projects.

Other commenters expressed support for the Department's proposal. A commenter stated that other factors might outweigh wage progression in certain industries. The commenter offered the examples of retention, career advancement, and access to increased benefits programs, such as tuition subsidies. The commenter also noted that the wages of apprentices may vary based on geographic location and the size of the employer. Another commenter also expressed support for empowering IRAPs to determine ''what wages apprentices will receive and under what circumstances apprentices' wages will increase.'' The commenter noted that having the IRAPs be in control of wages is important to scaling the apprenticeship model. The commenter also noted that various factors, including geography, would make a standardized wage progression model difficult to adopt and would serve as a barrier to apprenticeship expansion.

The Department acknowledges commenters' concerns about the lack of a wage progression as a hallmark of a high-quality IRAP. As clearly articulated in the rule, IRAPs must ensure that apprentices are paid at least the applicable Federal, State, or local minimum wage and must notify apprentices of circumstances under which wages will increase. Thus, apprentices will have the information necessary to make informed decisions about IRAPs and compare wage offerings of different IRAPs. The Department anticipates that some IRAPs will choose to implement a progressive wage structure for their apprentices—for example, in a multi-year apprenticeship program. As commenters noted, there could be benefits to the IRAP and the apprentice in clearly delineating a wage structure that would allow apprentices to earn more as they advance in skill. The Department has determined, however, that SREs and IRAPs are more closely attuned to market conditions in their industries and geographic areas and therefore better positioned to make decisions about how to structure their wages. Further, in order for IRAPs to be competitive and attract talent to their programs, they will want to incentivize apprentice participation by distinguishing their programs from others and offering wages and the possibility for wage increases that are both competitive in the relevant market and attractive to apprentices.

The Department declines to require a progressive wage structure, primarily because of the expectation that IRAPs will vary in duration and will represent a broad spectrum of industries with different market wage trends. Further, a progressive wage structure could limit employer participation in IRAPs, particularly for employers that would offer IRAPs that are limited in duration. This, by extension, could reduce or eliminate choices for individuals seeking apprenticeship opportunities. The Department expects SREs will be able to determine the contours of a progressive wage structure, if any, as it specifically relates to the industries in which it will be recognizing IRAPs. The Department anticipates that any consideration of a progressive wage structure will take into account local market industry wages, employer size,

and other benefits offered by IRAPs. The Department emphasizes that there is a requirement in § 29.22(a)(4)(ix) that the IRAP disclose to the apprentices any costs or expenses prior to the apprentice's agreement to participate in the program. This information will allow apprentices to make informed choices about which IRAPs to consider and to consider market wages as compared to what the IRAP is offering in their decision-making. Also, as discussed further below, the Department has added § 29.22(a)(4)(x) to require apprenticeship agreements that will set forth the terms and conditions of employment, to include wages and any wage progression and any costs or expenses charged to apprentices. Finally, with respect to concerns about the potential for unfair competition in the construction sector due to lower apprentice wages, such concerns are moot given that the Department has decided for other reasons to exclude construction activities from this subpart, as explained in detail in this preamble's discussion of § 29.30.

Some commenters suggested that the Department clarify that IRAP participants are not ''apprentices'' for purposes of meeting the Davis-Bacon Act's wage requirements. Commenters cited 29 CFR 5.5(a)(4)(i), which refers to a narrow exception to the prevailing wage requirement for apprentices, whereby apprentices working on a Federal construction contract may be paid less than the Davis-Bacon prevailing wage if they are in a registered apprenticeship program, and only if the program's apprentice-to-journeyworker ratios are maintained. The commenters urged the Department to exclude IRAPs from the Davis-Bacon apprentice exception. Commenters also questioned how State prevailing wage laws would apply to apprentices. Commenters also expressed concerns about the different requirements for IRAP wages, EEO, and safety as compared to the registered apprenticeship programs. Another commenter further expressed concern about unfair competition for those contractors that have already invested heavily in creating first-rate registered apprenticeship programs. The commenter requested that the final rule clearly specify that IRAP apprentices are not eligible for the exception from Davis-Bacon and State prevailing wages as recommended by Task Force Recommendation 17. The commenter further stated that ineligibility should also extend to any IRAP that applies for and is subsequently granted official status as a registered apprenticeship program under the expedited process set forth in proposed § 29.25.

The Department acknowledges the concerns raised by commenters with respect to the Davis-Bacon exception. The Department is confident, however, that the text of the regulation at issue, 29 CFR 5.5(a)(4)(i), is sufficiently clear that it only applies to registered apprenticeship programs registered by OA or by an SAA recognized to register programs for Federal purposes (and not state agencies acting as SREs). *See* 29 CFR 5.5(a)(4)(i) (restricting the exception to apprentices who are employed ''in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office''). IRAPs are, by definition, not registered apprenticeship programs. The regulation further states that ''[t]he allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program,'' which also helps clarify that 29 CFR 5.5(a)(4)(i) is not applicable to IRAPs. Given that 29 CFR. § 5.5(a)(4)(i) clearly only applies to registered apprenticeship programs, the Department sees no need to insert language in this rule that the Davis-Bacon exception does not apply to IRAPs.[15]

Additionally, the Department declines to opine on the applicability of State prevailing wage laws to IRAP apprentices because whether an IRAP apprentice would qualify as an apprentice under a State prevailing wage law depends on the specific State law at issue and the extent to which such laws track the Federal Davis-Bacon Act varies. Finally, as discussed below, the Department has removed from the final rule proposed § 29.25, which allowed for expedited registration for IRAPs to become registered apprenticeship programs. However, any IRAP that subsequently registers its program under subpart A would qualify as a registered program for purposes of the Davis-Bacon Act.

Thus, other than clarification regarding compliance with the FLSA and all other applicable Federal, State, or local wage laws and regulations with respect to any costs or expenses charged to apprentices, the final rule adopts the provision as proposed.

8. EEO Requirements—§ 29.22(a)(4)(viii)

Paragraph (a)(4)(viii) of § 29.22 requires that programs affirm their adherence to all applicable Federal, State, and local laws and regulations pertaining to EEO. Many commenters expressed concern that the Department did not propose a similar requirement for IRAPs as for registered apprenticeships, as set forth in 29 CFR part 30. These commenters stated that, in their view, the proposed rule would create two vastly different sets of EEO standards for apprenticeships and suggested that the Department require IRAPs to comply with 29 CFR part 30. Others argued that certain parts of 29 CFR part 30, such as the requirement for Uniform Guidelines on Employee Selection Procedures in 29 CFR 30.10, should apply to IRAPs. Many commenters stated that the Department's proposal would lead to fewer apprenticing women, veterans, and minorities, because of inherent gaps in EEO laws and the failure to include robust affirmative action requirements. Some commenters suggested that the adherence to EEO laws would not protect apprentices against discrimination on the bases of age, disability, sexual orientation, and genetic information. Other commenters expressed concern that Title VII of the Civil Rights Act of 1964 would only apply to apprentices/training programs controlled by joint labor-management committees. Several commenters pointed out specific differences between the proposed rule for IRAPs and the requirements of 29 CFR part 30, such as an EEO pledge, anti-harassment training, and affirmative action plans. Commenters also expressed concern that not holding IRAPs to the same 29 CFR part 30 requirements would hurt women, minorities, veterans, and people with disabilities.

On the other hand, a commenter agreed with the Department's general approach to EEO requirements. The commenter suggested that IRAPs should be held responsible for their noncompliance with EEO requirements, rather than the SREs, because SREs should not be expected to enforce human resources policies and Federal laws. Another commenter cautioned

[15] Likewise, apprentices in IRAPs do not fit within the ''trainee'' exception to the Davis-Bacon prevailing wage requirement. 29 CFR 5.5(a)(4)(ii). A trainee must be ''registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by [ETA] as meeting its standards for on-the-job training programs and which has been so certified by that Administration.'' 29 CFR 5.2(n)(2). Although the Administrator will recognize SREs under this final rule, IRAPs themselves will not be recognized or approved by the Administrator and apprentices under such programs therefore do not qualify for the ''trainee'' exception. No regulatory changes are necessary to clarify this point.

against the ''mission creep'' of subjecting SREs and IRAPs to a regime similar to EEO oversight performed by the Department's Office of Federal Contract Compliance Programs (OFCCP). The commenter supported the Department's decision to give SREs the responsibility of ensuring that EEO requirements are met to allow small business to focus on serving program participants while at the same time protecting apprentices from discrimination.

The Department has determined that requiring compliance with Federal, State, and local EEO laws is a reasonable means of formulating and promoting standards to safeguard the welfare of apprentices. And by referencing legal requirements generally, rather than codifying particular steps and requirements, this regulation seamlessly accommodates future developments in EEO laws while providing clear guidelines in the present. This approach is a policy choice that accords with the final rule's aim to encourage a flexible yet rigorous apprenticeship model.

As discussed in the preamble, apprentices are employees that benefit from the same protections during the employment relationship as any other employees of the employer offering the IRAP. The Department notes that Federal EEO laws are not limited to title VII and include all Federal anti-discrimination laws enforced by the Equal Employment Opportunity Commission (EEOC), including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Genetic Information Nondiscrimination Act. Many States and local jurisdictions have additional EEO requirements, with enforcement mechanisms similar to the EEOC. SREs, IRAPs, employers, and educational institutions are also free to implement EEO policies that go beyond legal requirements. Further, EEO protections are not limited to apprentices in programs controlled by joint labor-management committees; any ''covered'' employer, as defined by applicable Federal, State, and local EEO laws, would be required to adhere to those laws during the employment relationship with the apprentice. Additionally, if an IRAP is a Federal contractor or subcontractor covered by Executive Order 11246, section 503 of the Rehabilitation Act, or the Vietnam Era Veterans' Readjustment Assistance Act, then it is also subject to the nondiscrimination and affirmative action provisions enforced by OFCCP. Requiring IRAPs to adhere to well-established anti-discrimination laws also provides apprentices statutory remedies for EEO violations.

Additionally, as discussed in the preamble, the Department has clarified its oversight responsibilities for SREs and strengthened the requirements for the quality-control relationship between the SRE and its IRAPs. This means that the Department has a mechanism to derecognize an SRE, and an SRE has a mechanism to derecognize an IRAP, for violations of this subpart, including EEO violations. The statutory remedies provided by existing EEO laws, in conjunction with oversight of SREs and IRAPs, thus provide the necessary framework for both individual remedies and institutional accountability.

The Department's approach to affirmative action is set forth in § 29.22(i), which creates the requirement for SREs to ensure a comprehensive outreach strategy to prospective apprentices. The Department has concluded that this is a useful approach, permitted but not mandated by the NAA, because smaller IRAPs would benefit from the SRE's capacity for such outreach. An SRE can structure its policies and procedures to ensure comprehensive outreach strategies that are consistent with and tailored to its nature, size, network, and geographic reach, as well as the nature and size of the recognized IRAPs and the scope of the SRE's relationships with those IRAPs. The Department recognizes the comments requesting additional affirmative action provision akin to those in 29 CFR part 30. The Department also recognizes comments cautioning against additional requirements similar to those in 29 CFR part 30. The Department declines to add any additional requirements beyond what is in § 29.22(i) as discussed further below. The Department views the requirements to adhere to Federal, State, and local EEO laws and regulations to be both sufficient and clear. Thus, the final rule adopts this provision as proposed.

9. IRAP Disclosure of Costs and Expenses to Apprentices—§ 29.22(a)(4)(ix)

Paragraph (a)(4)(ix) of § 29.22 requires that the programs disclose to apprentices, before they agree to participate in the program, any costs or expenses that will be charged to them (such as costs related to tools or educational materials). Disclosure of such costs is necessary before apprentices agree to begin a program so that apprentices can accurately calculate their anticipated earnings. The final rule clarified that such disclosure must be ''to apprentices'' and ''before they agree to participate in the program.''

Several commenters opposed charging costs and expenses to apprentices. A commenter asserted that passing on such costs to apprentices defeated the purpose of the NAA and urged the Department to require that any expenses be limited such that they would not effectively reduce apprentices' hourly pay below the minimum wage. Another commenter argued that the prospect of unregulated costs is contrary to apprenticeships' basic nature as ''earn and learn programs.'' A commenter asked whether there would be a cap on costs and requested clarification about when in the process IRAPs would be required to disclose them to apprentices. Commenters also suggested that IRAPs be required to disclose all costs and expenses to apprentices rather than only ''ancillary'' costs and expenses.

The Department agrees with the commenters' suggestions to require disclosure of all costs and expenses, rather than only ''ancillary'' costs and expenses. The Department has struck the term ''ancillary'' from the final rule.

Regarding the concerns about charging any costs or expenses to apprentices, as discussed in § 29.22(a)(4)(vii) above, the Department has explicitly stated that any costs and expenses must comply with all applicable Federal, State, or local wage laws and regulations. The Department also has clarified the language of § 29.22(a)(4)(ix) to require that an IRAP must disclose the costs and expenses ''to apprentices, before they agree to participate in the program,'' thereby protecting the apprentice from being subjected to onerous fees without his or her prior knowledge. The Department anticipates that the additional requirement for an apprenticeship agreement, discussed below, will result in further disclosure of costs and expenses charged to apprentices, if any, throughout the course of the apprenticeship program. The Department neither requires nor prohibits IRAPs from charging costs or expenses to apprentices, except that, as noted, the final rule prohibits the charging of such costs or expenses if doing so would violate any applicable Federal, State, or local wage laws or regulations. The Department does, however, expect SREs and IRAPs would consider carefully whether to impose such costs, given the nature of the relevant industries and occupations. The Department also expects that market forces and competition for apprentices will keep costs down.

10. Apprenticeship Agreement—§ 29.22(a)(4)(x)

As discussed above, and in response to several comments on the topic, the Department has added a new paragraph in § 29.22(a)(4)(x), that requires programs to maintain a written apprenticeship agreement for each apprentice that outlines the terms and conditions of the apprentice's employment and training. The apprenticeship agreement must be consistent with its SRE's requirements.

In addition to many comments urging the Department to consider requiring apprenticeship agreements, commenters provided specific suggestions regarding the content of such agreements. The Department received comments requesting that an apprenticeship agreement incorporate the requirements for registered apprenticeships, such as the number of hours to be spent in related instruction in technical subjects related to the occupation; a statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process; a statement of the wages to be paid to the apprentice and whether the required related instruction is compensated; a statement regarding the duration of a probationary period; a statement concerning the circumstances under which an apprenticeship agreement may be canceled, to include termination for good cause, notice to the apprentice, and an opportunity for corrective action; an equal opportunity statement; ratios of apprentices-to-journey level workers; and information about dispute resolution concerning the apprenticeship agreement. A commenter also suggested adding a statement concerning safe equipment, facilities, and training, and adding a request for demographic data, to include the apprentice's race, sex, and ethnicity, in addition to disability status.

The Department agrees with the suggestion of many commenters that an apprenticeship agreement between the apprentice and the program will clearly set out expectations for both, consistent with the requirements of this subpart. Accordingly, an apprenticeship agreement must contain the terms and conditions of the apprentice's employment and training, which the Department expects will include topics such as the duration of the apprenticeship, wages and any wage progression, costs or expenses charged to the apprentice, and the competencies and industry-recognized credential(s) to be attained by completion. The Department expects this provision to take the place of the phrase ''involves an employment relationship'' that was previously in § 29.22(a)(4)(ii), because the apprenticeship agreement will contain the specific parameters of the employment relationship in a way that provides structure and clarity to the IRAP and the apprentice. Further, the Department anticipates that this provision will complement the requirement in § 29.22(a)(4)(ii) for a written training plan that describes structured work experience and related instruction, leads to competencies and credential(s), and provides progressively advancing industry-essential skills, and that some IRAPs may choose to incorporate the training plan into the apprenticeship agreement either explicitly or by reference.

The Department expects that specifics of the apprenticeship agreement will vary, based on the SRE's requirements and the particular circumstances of each IRAP. Therefore, the Department declines to specify the content of apprenticeship agreements. This provision is not intended to, nor is it required to, mirror the requirements for an apprenticeship agreement set forth in subpart A. Rather, the agreement required by this section is intended to be a written agreement defining the employment relationship and containing the terms and conditions of employment that would memorialize the understanding and expectations of both the IRAP and the apprentice, similar to how employers and other types of workers engage in written contracts. This will allow prospective apprentices to understand what they are signing up for before joining an IRAP.

The Department also declines to require that certain demographic data be a part of the apprenticeship agreement and notes that it has added an SRE reporting requirement on this point at § 29.22(h)(10). With respect to other comments about adding to apprenticeship agreements statements regarding a safe working environment and EEO protections, the Department notes that these are mandatory requirements for IRAPs under § 29.22(a)(4). IRAPs may choose to include such statements in their apprenticeship agreements, and the Department views such statements as beneficial to give apprentices notice of their rights in the workplace. Employers offering IRAPs, however, would be bound by these requirements regardless of whether they explicitly mention them in an apprenticeship agreement. The Department further notes that employers must comply with all mandatory workplace-notice requirements set forth in Federal, State, and local laws.

SRE Validation of High-Quality Programs

Paragraph (b) of § 29.22 states that an SRE must validate that IRAPs it recognizes comply with paragraph (a)(4). This means that the SRE must in fact validate IRAP compliance, and affirm to the Administrator that an IRAP it recognizes is a high-quality program, as reflected by its conformity to what (a)(4) and the SRE require. Validation under § 29.22(b) should be conducted at initial recognition and prior to the attestation provided to the Administrator under § 29.22(a)(2), when an SRE informs the Administrator that it has recognized an IRAP. Validation under § 29.22(b) should also be conducted on an annual basis after recognition, with an attestation provided to the Administrator annually.

Multiple commenters questioned the Department's use of the term ''validate'' in the context of this section. Although not specifically tied to this section, and as described in various other parts of the preamble, several commenters also questioned the Department's oversight of SREs and expressed that, in their view, the proposed rule did not containing sufficient requirements to safeguard the welfare of apprentices.

In the context of this paragraph, the requirement that the SRE must ''validate'' its IRAPs' compliance with paragraph (a)(4) of § 29.22 and the requirements of its SRE means that the SRE must affirm to the Administrator that an IRAP it recognizes is a high-quality program as reflected by its conformance to the requirements of § 29.22(a)(4)(i) through (x) and any other requirements of the SRE. In response to the concerns regarding the term ''validate'' and comments received generally about the need for ongoing oversight, the Department included a requirement that the SRE validate compliance and provide a written attestation of the IRAP's compliance with the requirements of § 29.22(a)(4), both at the time of recognition and on an annual basis thereafter. This enhances the requirement to ''validate,'' which some commenters remarked was insufficiently vague, and also adds an ongoing requirement to ensure continued compliance with § 29.22(a)(4) and the SRE's requirements. The Department anticipates that the quality-control relationship between the SRE and its IRAPs as required by § 29.22(f), will consist of an ongoing assessment of the IRAP's compliance with § 29.22(a)(4) that would facilitate an annual attestation to the Department.

The Department has determined that requiring an SRE to attest to IRAP compliance annually creates additional protection of apprentices and Departmental monitoring of SRE oversight of IRAPs. Finally, as with other provisions, if the Administrator determines that an SRE's IRAPs are not in compliance despite the SRE's attestation, the Administrator has the option to take appropriate action against the SRE under this subpart.

SRE Disclosure of Credential(s) To Be Attained

Paragraph (c) of § 29.22 requires SREs to publicly disclose the credentials that apprentices will earn during their participation in or upon completion of an IRAP, as is the norm in the private sector. An SRE could disclose these credentials on its website, for example. The Department received a comment suggesting that the credential be disclosed to the apprentice in an apprenticeship agreement. The Department acknowledges this comment and anticipates that an apprenticeship agreement, added to the final rule at § 29.22(a)(4)(x), could include the credential(s) attained during or at the completion of the program. The Department also notes that the training plan in § 29.22(a)(4)(ii) will likely include the credential(s) to be attained. The Department removed the word ''successful'' as a modifier for ''participation'' to make this paragraph consistent with § 29.22(a)(4)(iv). The Department has also added the word ''publicly'' to clarify that the SRE must disclose the credentials to the public so that the public has a way to assess what IRAPs are offering. Otherwise, the Department has adopted this provision as proposed.

SRE Policies and Procedures for Recognizing IRAPs

Proposed paragraph (d) of § 29.22 stated that SREs' ''policy and procedures for recognizing Industry Programs must be sufficiently detailed that programs will be assured of equitable treatment, and will be evaluated based on their merits. A Standards Recognition Entity must ensure that its decisions are based on objective criteria, and are impartial and confidential.'' The Department has revised this paragraph for clarity and included a requirement that SREs provide to the Administrator its policies and procedures at the time of application. The final rule provides: ''An SRE must establish policies and procedures for recognizing, and validating compliance of, programs that ensure that SRE decisions are impartial, consistent, and based on objective and merit-based criteria; ensure that SRE decisions are confidential except as required or permitted by this subpart, or otherwise required by law; and are written in sufficient detail to reasonably achieve the foregoing criteria. An SRE must submit these policies and procedures to the Administrator.'' The Department has clarified that SREs are required to have sufficiently detailed policies and procedures in place for recognition of IRAPs and validating their compliance with this subpart. This is to ensure that the decisions of SREs are based on the quality of entities' programs, not other factors. By requiring confidentiality, this provision also respects the privacy of entities seeking recognition, since seeking recognition could entail providing confidential business information.

A commenter questioned the confidential nature of the decisions, stating that the Department or the public could benefit from learning about the reasons for the SRE's decision-making without a disclosure of confidential business information. Another commenter faulted the rule for the lack of specificity in the SRE's recognition of IRAPs other than the requirement that policies and procedures are ''sufficiently detailed'' so IRAPs ''will be assured of equitable treatment'' and evaluated ''based on their merits.''

The Department acknowledges the commenters' concerns and has added the requirement that the SRE submit its policies and procedures to the Administrator at the time of application. This is intended to add transparency and accountability in crafting impartial merit-based policies and procedures. It allows the Department to evaluate, both at initial recognition and re-recognition, these policies and procedures for fair evaluation based on the merits. Though the NPRM's proposed regulatory text did not explicitly contain the requirement that these policies and procedures be submitted to the Administrator with the SRE's application, the form embedded in the NPRM specifically requested descriptions of policies and procedures related to IRAP recognition and assessment. The Department intends for such policies and procedures to be reviewed prior to recognition as an SRE because SREs must demonstrate that they are capable of recognizing IRAPs and fairly assessing IRAPs for compliance with this subpart. The Department also notes that the SRE must notify the Administrator of any significant changes to these policies or procedures, in accordance with § 29.22(p). For example, a change in the evaluation criteria would constitute a significant change, and an SRE would need to notify the Administrator when it makes these changes.

As for the concern about the confidentiality of the process, the Department does not intend for any statement about confidentiality to inhibit the Department from seeking or obtaining necessary information to discharge its own obligations under this subpart but rather to protect confidential business information from unnecessary disclosure. Thus, the Department has clarified the limitations on confidentiality to provide that that SRE decisions are confidential ''except as required or permitted by this subpart, or otherwise required by law.''

SRE Recognition of an IRAP

The Department has redesignated § 29.22(g) in the proposed rule as § 29.22(e) in the final rule. In addition, paragraphs (e) and (f) of § 29.22 in the proposed rule concerning conflicts of interest were not adopted as part of § 29.22 of the final rule. To streamline the final rule, the Department has determined that the provisions contained in paragraphs (e) and (f) of § 29.22 in the proposed rule should be revised and relocated to § 29.21 in the final rule. This realignment was adopted because § 29.21 of the final rule focuses on whether a potential SRE would be qualified to act in the capacity of an SRE as recognized by the Department, while § 29.22 of the final rule focuses on an SRE's oversight duties with respect to an IRAP once the SRE has been recognized. Paragraph (e) of § 29.22 of the final rule requires that SREs must not recognize IRAPs for longer than 5 years at a time, and prohibits SREs from automatically renewing recognition.

Some commenters argued that, in their view, the proposed rule did not require a formal, clear, rigorous process for recognition or monitoring of IRAPs. Two commenters expressed that the 5-year timeframe for an IRAP's recognition may be too long. One commenter stated that permitting ''hundreds of untested SREs and thousands of untried and unproven IRAPs to be created and operate for five years is an abrogation of the Department's responsibility to protect apprentices.'' But a different commenter agreed with the Department's assessment that a 5-year time period ''is appropriate for ensuring that already-recognized SREs continue to account for the development and evolution in competencies needed within the industries and occupations to which their standards relate.'' Some commenters suggested that IRAP

recognition be provisional, for a period of 1 year, after which the SRE would evaluate the IRAP for continued recognition.

A commenter stated that there were no pathways in the proposed rule to transfer an apprentice to another comparable program if the IRAP is not re-recognized or goes out of business before the apprentice completes and receives a credential. Two commenters argued that the proposed rule did not address how SREs would monitor their IRAPs or how SREs would be held accountable for programs that do not achieve positive results for apprentices. A commenter supported the flexibility granted to SREs in the design, policies, and procedures for monitoring IRAPs because SREs are knowledgeable about their industries.

The Department acknowledges the suggestions provided by the commenters concerning the oversight and monitoring of IRAPs but has opted not to include these in the final rule. The Department believes the rule strikes an appropriate balance between required SRE oversight and flexibility to choose how to operate. Under § 29.22(a)(4) of the final rule, the SRE is charged with only recognizing and maintaining the recognition of IRAPs that meet the specific requirements in § 29.22(a)(4)(i) through (x). Given these requirements, the Department maintains that 5 years is a reasonable amount of time for an IRAP's recognition. The 5-year time period provides the SRE with a comprehensive body of longitudinal data concerning the IRAP's consistency in maintaining minimum standards for each apprentice's safety and welfare. In addition, the 5-year timeframe seeks to balance factors such as the transactional costs of IRAP re-recognition, the rapidly changing nature of industries and occupations, the value of occupational credentials, and the need to monitor and assess IRAP operations on a regular basis.

In addition, the Department declines to mandate a provisional recognition period of 1 year for IRAPs. SREs are required to attest annually to an IRAP's compliance with the requirements set forth in this final rule, as discussed in § 29.22(b). SREs are also required to make publicly available and report to the Department certain IRAP-related data and outcomes on an annual basis, as discussed in § 29.22(h) of the final rule. These requirements, as well as the quality-control relationship between the SRE and its IRAP, provide SREs with the necessary information to determine whether to derecognize an IRAP or provide additional support and guidance in an effort to bring the IRAP into compliance. Although the Department does not require a provisional recognition period, the SRE may decide to provisionally recognize an IRAP, or provide additional monitoring or assistance during this period.

Accordingly, apart from the redesignation of this provision as § 29.22(e) in the final rule and the addition of nonsubstantive textual edits for clarity, the Department adopts this provision as proposed.

Quality Control Relationship Between the SRE and Its IRAPs

Paragraph (f) of § 29.22, which was proposed as § 29.22(h), requires that SREs and IRAPs be in an ongoing quality-control relationship and provides general guidelines for that requirement. The specific means and nature of the relationship between the SRE and an IRAP will be defined by the SRE, provided that the relationship: (1) Results in reasonable and effective quality control that includes as appropriate, consideration of apprentices' credential attainment, program completion, retention rates, and earnings; (2) does not prevent the IRAP from receiving recognition from another SRE; and (3) does not conflict with this subpart or violate any applicable law. The final rule added two more requirements to the quality-control relationship: That it involve periodic compliance reviews and include policies and procedures for suspension or derecognition of IRAPs.

Several commenters argued that the proposed rule should have included specific quality-control requirements for SREs to oversee IRAPs effectively. Some commenters requested that there be precise monitoring requirements, such as annual or biannual compliance reviews. A commenter questioned whether SREs are expected to conduct site visits, require documentation from their IRAPs, or provide technical assistance to their IRAPs and under what circumstances an SRE would place an IRAP on an improvement plan. Another commenter argued that the key to effective quality control is a program standard approved by the Department or a State. A commenter recommended that the Department delineate requirements for the quality-control relationship, such as using the SRE's assessment of apprentices' post-program earnings, job placement, test scores, or apprentice or employer satisfaction as useful data points for evaluating programs. The same commenter also encouraged the Department to explore enforcement and monitoring mechanisms for the SRE's quality-control relationship with the IRAPs it recognizes.

The Department appreciates the comments received on this topic and has further clarified the quality-control relationship between the SRE and the IRAPs it recognizes. The Department has added two requirements to the quality-control relationship between the SRE and the IRAP. The quality-control relationship must involve ''periodic compliance reviews by the SRE of its IRAP to ensure compliance with the requirements of [§ 29.22(a)(4)] and the SRE's requirements'' and must include ''policies and procedures for the suspension or derecognition of an IRAP that fails to comply with the requirements of [§ 29.22(a)(4)] and its SRE's requirements.'' Although the Department declines to prescribe the frequency with which an SRE must conduct compliance reviews, the Department anticipates that SRE compliance reviews will occur on at least an annual basis. SREs have an annual data reporting requirement under § 29.22(h) and are required to submit an annual attestation under § 29.22(b) that the IRAPs they recognize continue to meet the requirements of § 29.22(a)(4), and the Department anticipates that the SRE will take all steps necessary to accurately report this information to the Department given the consequences if it does not do so. The Department anticipates that SREs will engage in a combination of quality-control measures, such as requiring documentation and providing technical assistance. Although the Department has not prescribed the situations under which an IRAP would be suspended or derecognized, the Department instead requires that the SRE develop policies and procedures to take such actions. The SRE may also develop policies and procedures for performance improvement plans or corrective action plans if it deems appropriate. The Department views these additions to the quality-control relationship as enhancing IRAPs' accountability for providing high-quality training and safeguarding the welfare of apprentices.

One commenter suggested that many IRAPs may have a single individual in charge of quality assurance and the quality of the IRAP could potentially suffer if the individual leaves the program.

The Department recognizes that smaller IRAPs may be unable to maintain multiple individuals tasked with quality-assurance responsibilities, but the Department has determined that an IRAP is responsible for its personnel, including personnel turnover that may occur, and is responsible for continuing

to comply with the requirements of a high-quality apprenticeship program. The Department declines to attempt to regulate IRAPs' personnel matters and expects that IRAPs will continue to fulfill their obligations under this subpart regardless of personnel changes. The Department notes that an IRAP may seek assistance from its SRE and utilize the SRE's expertise to comply with its responsibilities under this subpart. If the IRAP does not continue to fulfill its obligations, the SRE will hold the IRAP accountable as appropriate under the framework established by the Department.

Joint Employment Relationship

The Department has redesignated § 29.22(i) in the proposed rule as § 29.22(g) in the final rule. In addition, paragraphs (e) and (f) of § 29.22 in the proposed rule concerning conflicts of interest were not adopted as part of § 29.22 of the final rule. As noted above, paragraphs (e) and (f) of § 29.22 in the proposed rule were revised and relocated to § 29.21 in the final rule to streamline the rule. Accordingly, the Department has redesignated § 29.22(g), § 29.22(h), and § 29.22(i) in the proposed rule as § 29.22(e), § 29.22(f), and § 29.22(g) in the final rule, respectively. Paragraph (g) of § 29.22 in the final rule makes clear that an entity's participation as an SRE of an IRAP does not make the SRE a joint employer with the entity(ies) that develop or deliver IRAPs.

The Department did not receive any comments related to paragraph (i) of § 29.22 in the proposed rule. Accordingly, the final rule retains the provision as proposed. However, as noted above, this provision has been redesignated as paragraph (g) of § 29.22 in the final rule.

SRE Data Publication and Reporting

§ 29.22(h)—General Overview

Proposed § 29.22(j) of the NPRM (now redesignated as § 29.22(h) in this final rule) stipulated that an SRE must make publicly available on an annual basis the following information on each IRAP it recognizes: (1) Up-to-date contact information for each program; (2) the total number of apprentices annually enrolled in each program; (3) the total number of apprentices who successfully completed the program annually; (4) the annual completion rate for apprentices; (5) the median length of time for program completion; and (6) the post-apprenticeship employment rate of apprentices at completion. The preamble of the NPRM explained that the publication of this information would provide employers and prospective apprentices the details necessary to make informed decisions about IRAPs. However, the preamble also invited public comment on which performance measures would be most helpful in assessing IRAP impact and quality assurance, and specifically stated that ''the Department is considering setting performance measures related to post-apprenticeship employment and wages and employer retention.'' The preamble also emphasized that ''[t]he Department has a keen interest in minimizing burden [sic] on SREs and [IRAPs], and therefore also solicits comment on the most efficient approach to data collection.''

In response to its request for public comments concerning the addition of performance measures to evaluate the success of IRAPs recognized by SREs, the Department received substantial input from a wide range of commenters. None of the comments received specifically advocated the deletion or modification of the information initially proposed by the Department in the NPRM at § 29.22(j)(1) (IRAP contact information), § 29.22(j)(2) (the total number of apprentices annually enrolled in each IRAP), § 29.22(j)(3) (annual total of apprentices who successfully completed an IRAP), or § 29.22(j)(5) (the median length of time for IRAP completion). While there was broad support for retaining the six initial provisions on IRAPs proposed in § 29.22(j) of the NPRM, a number of commenters expressed support for refining or expanding the number of data and outcomes metrics in order to better assess the size, scope, and effectiveness of IRAPs, while others expressed concern that the collection of additional data from SREs and IRAPs would impose unwarranted burdens on these parties.

In discussing the preamble text for § 29.22(h) of this final rule, the Department first describes the addition of a reporting requirement in the introductory clause of § 29.22(h); it then discusses (in order of appearance) those paragraphs of § 29.22(h) where changes were adopted based on comments received (§ 29.22(h)(6), (7), (8), (9) and (10)); it proceeds to discuss those sections of § 29.22(h) where changes were made to the text administratively (§ 29.22(h)(2) and (4)); and it then refers to the paragraphs of § 29.22(h) where no changes were made to the text as it appeared in the NPRM (§ 29.22(h)(1), (3), and (5)). The final paragraphs of the § 29.22(h) preamble discussion summarize those comments and suggestions that the Department has declined to adopt in this final rule.

The Department notes that both SREs and the IRAPs they recognize are free to collect and publish data relating to program outcomes beyond the specific metrics that are stipulated in § 29.22(h) of this final rule; indeed, such additional voluntary collection initiatives could provide the chief beneficiaries of these programs (*i.e.,* potential apprentices and employers) with valuable performance information that may encourage broader participation by these parties in IRAPs. The Department believes that employer participation in IRAPs will be a key indicator of success showing that the program is beneficial to both employers and apprentices. As participation in IRAPs increases, the Department may consider additional performance measures.

1. Adding an SRE Reporting Requirement to DOL on IRAP Outcomes at § 29.22(h)

Multiple commenters suggested that the Department require SREs to submit outcomes data on the IRAPs they recognize directly to the agency on a regular basis, in addition to making it publicly available. One of these commenters opined that the requirement in the NPRM that SREs ''make publicly available'' certain information about an IRAP was ''insufficient to rigorously assess the size, scope, and effectiveness'' of these programs, while another commenter maintained that the Department cannot hope to provide meaningful quality assurance without requiring SREs to collect information on the outcomes of the IRAPs they oversee. However, another commenter took the position that the Department should not require SREs to provide specific information as part of a reporting requirement, but rather should require SREs to simply submit a plan for such reporting in their applications for recognition by the Department. One commenter argued that the Department should consider the potential burdens and negative ramifications of a performance and reporting system for IRAPs, while another commenter expressed the view that the Department should refrain from requiring SREs to meet overly burdensome reporting and data requirements similar to those of the current registered apprenticeship system. A commenter reasoned that, in their view, because SREs may tailor their programming to distinct populations for industries with which they have a strong relationship, the Department should refrain from setting specific performance measures for IRAPs.

The Department agrees with those commenters who suggested that requiring SREs to report IRAP data and outcomes directly to the Department on a regular basis will help the Department monitor and evaluate these programs and entities. Accordingly, in addition to retaining the requirement that SREs make publicly available certain outcomes information concerning the IRAPs they recognize, the provision of the final rule that addresses program data and outcomes (which has been redesignated as § 29.22(h) in the final rule) has been modified to stipulate that SREs must also report this same information directly to the Department. The final rule also clarifies that SREs must both publish this IRAP data and report it to the Department on an annual basis. The format for SREs to publish and report industry program data will be prescribed by the Administrator in subsequent sub-regulatory guidance; the Department anticipates that the prescribed format will allow electronic publishing and reporting to reduce SREs' time and paperwork burdens. The Department also intends to work with SREs to explore the use of administrative data sources to collect required outcome information. Such sources offer the chance to collect information in a more valid, consistent manner and at a lower cost. In determining what types of IRAP data and outcomes are most appropriate for collection, reporting, and publication by SREs, this final rule balances the potential benefits to the public of gaining access to additional program-level data against the legitimate concerns raised by some commenters that requiring SREs and IRAPs to provide outcomes data beyond that specified in the NPRM could impose undue burdens.

Subsequent to the publication of this final rule, the Department intends to issue a **Federal Register** notice requesting public comment on the information collections required under § 29.22(h) and submit an ICR to the Office of Management and Budget (OMB) for review and approval in accordance with the PRA. This ICR will provide further details concerning the IRAP outcomes and metrics that are stipulated in § 29.22(h).

2. § 29.22(h)(6)—Post-Apprenticeship Employment and Retention Rates

As previously noted, § 29.22(j)(6) of the NPRM proposed that SREs should make publicly available ''[t]he post-apprenticeship employment rate of apprentices at completion.'' One commenter suggested that the Department expand the list of outcomes metrics in the final rule to include post-program employment rates at the second and fourth quarters following a former apprentice's completion of an IRAP; this commenter further suggested that the post-employment data be disaggregated by race, ethnicity, gender, disability status, and other characteristics to measure equitable impact across these populations. Two other commenters agreed that the Department should require SREs to collect information on the post-program employment status of former apprentices who completed IRAPs. One of these commenters recommended that the text of the NPRM's proposed § 29.22(j)(6) should be refined so that SREs would collect information on the post-apprenticeship employment rate of former apprentices at 6- and 12-month intervals after IRAP completion. This commenter further opined that the collection of this data would facilitate performance comparisons between IRAPs, registered apprenticeship programs, and other work-based learning models.

A number of commenters recommended that IRAPs should be assessed according to their retention rates. One of these commenters expressed its view that it would be reasonable for Department to require SREs to collect information from the IRAPs they recognize concerning ''the post-completion hire rate at the sponsoring company.'' A commenter also opined that the collection of both employment and retention data (measured up to 6 months after learners exit a training program) are two of the four core outcomes metrics for measuring the success of workforce programs under WIOA. However, another commenter stated that retention rates after defined periods of time post-completion are more likely to be subject to circumstances beyond the apprenticeship program's control and less likely to reflect on the quality and effectiveness of the program and, therefore, should be excluded.

As noted above, the Department expressed its willingness to consider post-apprenticeship retention rates as an additional performance metric in the preamble of the NPRM. After considering the comments proposing the addition of a new data point to assess an employer's retention of the apprentices they trained, the Department has concluded that the inclusion of such outcomes information in the final rule would be useful to potential apprentices in evaluating the quality of IRAPs. Accordingly, the Department is modifying the outcomes metric contained in this provision (now redesignated as § 29.22(h)(6) of the final rule) to require that SREs make publicly available—and also report to the Department on an annual basis—the post-apprenticeship employment retention rate, calculated at 6- and 12-month intervals after program completion.

3. Attainment of Industry-Recognized Credentials—§ 29.22(h)(7)

Several commenters suggested that the Department should expand the program outcome data in the final rule to include information on the attainment of industry-recognized credentials for each IRAP. One of these commenters noted that credential attainment is one of the four core outcomes metrics for measuring the success of workforce programs under WIOA. Another commenter opined that the Department should require SREs to make public the number of credentials attained per year by IRAP apprentices, and the success rates of apprentices on final examinations, including the overall success rate, first attempt success rate, and second attempt success rate. A commenter further suggested that SREs should require IRAPs to disclose data on credential status and the acceptance by employers of credentials received, along with information on the value of being credentialed as opposed to being un-credentialed.

After considering the relative value of these credential-related data points to potential apprentices in assessing the relative quality of IRAPs, the Department agrees with the inclusion of some, but not all, of the outcome metrics recommended by the commenters. Accordingly, the Department has revised the text of the final rule (at § 29.22(h)(7)) to require that SREs make publicly available—and also report to the Department on an annual basis—information about the attainment of industry-recognized credentials by apprentices in each of the IRAPs that they have recognized. The final rule also stipulates that SREs must, on an annual basis, make publicly available and report to the Department data on the number of industry-recognized credentials that are conferred by each of the IRAPs they have recognized. However, the Department declines to adopt the suggestions made by various commenters requesting the collection, reporting, and publication of data on apprentice success rates on IRAP examinations, on the acceptance by employers of credentials attained, or on the relative value of being credentialed or un-credentialed. The Department is concerned that the procurement of such

outcomes data by SREs and IRAPs would prove unduly burdensome, and may discourage such programs and entities from participating in this initiative while providing minimal benefit to the Department and prospective apprentices.

4. Post-Program Wages—§ 29.22(h)(8)

A wide range of commenters suggested that the Department should require the collection of the average wage rates of former apprentices upon program completion as an additional outcomes metric in the final rule. As noted above, the Department expressed its willingness to consider post-apprenticeship wages as an additional program performance metric in the preamble of the NPRM. One of the commenters observed that the collection of wage data (measured up to 6 months after learners exit a training program) is one of the four core outcomes metrics for measuring the success of workforce programs under WIOA. Another commenter further proposed that the Department collect wage rates paid to IRAP graduates upon completion, as well as the employment and wage rates of such individuals at 1- and 5-year intervals after program completion. However, a commenter expressed the view that the Department should not include post-completion wage rates as a performance measure, because wage rates do not include overtime hours and benefits, and because wage information is often embedded in the confidential terms of an employment contract.

After considering the relevancy and value of this post-program wage information to potential IRAP participants, the Department agrees substantially with those commenters who advocated for the collection of this key outcomes data point. Accordingly, the Department has included in the final rule (at § 29.22(h)(8)) a requirement that SREs make publicly available—and also report to the Department on an annual basis—information about the average wage rates of an IRAP's former apprentices, calculated 6 months after program completion. However, the Department takes the position that requiring the collection of wage data at 1- and 5-year intervals after IRAP completion—as one of the commenters suggested—does not align with WIOA data-collection requirements, and would also impose lengthy and burdensome collection, reporting, and publication duties upon SREs and the IRAPs that they recognize. The Department is also concerned that that the imposition of more protracted administrative requirements with respect to the collection of post-completion wage data could discourage the participation of potential SREs and IRAPs in this initiative.

5. Training Cost per Apprentice—§ 29.22(h)(9)

In recommending that the Department not set a program-wide average fee for SREs, a commenter opined that each industry, occupation, and SRE will have different costs. However, another commenter expressed concern that the NPRM did not contain cost estimates for the training component of IRAPs. This commenter expressed the view that with the substantial recent growth in registered apprenticeships, there is a large body of data available from such programs concerning yearly training costs.

After considering the comments received pertaining to IRAP training costs, the Department has determined to include an additional outcomes metric (at § 29.22(h)(9) of the final rule) for SREs to collect, report, and publish information about the training cost per apprentice for each of the IRAPs that the SRE recognizes. The Department believes that the availability of such data would be useful to the public in evaluating the efficiency and cost-effectiveness of private-sector IRAPs relative to other workforce training and development programs that are taxpayer-funded. Such information also may help employers considering the IRAP model decide to participate, given the efficiencies and expertise that SREs are expected to bring.

6. Basic Demographic Information on IRAP Participants—§ 29.22(h)(10)

Multiple commenters suggested that DOL should require the collection of demographic data on IRAP apprentices. After considering these comments, the Department has decided to include an additional reporting requirement (at § 29.22(h)(10) of the final rule) for SREs to collect, report, and publish basic demographic information about the apprentices participating in the IRAP that the SRE recognizes (which may include, for example, the voluntary provision of data on the sex, race, and ethnicity of apprentices). The Department believes that the availability of such demographic data—which SREs must publish on an aggregated basis to protect the privacy of apprentices—will be useful to the public in evaluating whether IRAPs have been successful in attracting populations that have historically been underrepresented in apprenticeship programs. In this regard, the Department has determined that the potential benefits to consumers of gaining access to such data outweigh the potential administrative burden associated with the collection of such data by SREs and IRAPs.

7. Technical Modifications to § 29.22(h)(2) and (4)

In addition to incorporating an IRAP program outcomes data reporting requirement for SREs and adding to (or modifying) the outcomes metrics originally listed in the NPRM, the Department has made minor technical adjustments to certain other program measures that are now contained in § 29.22(h) of the final rule. For example, § 29.22(j)(2) of the NPRM proposed that SREs make publicly available ''[t]he total number of apprentices annually enrolled in each program''; in the corresponding provision of the final rule at § 29.22(h)(2), the Department has added language clarifying that, in tallying the number of apprentices in an IRAP, both new and continuing apprentices should be counted. In addition, the word ''enrolled'' in § 29.22(j)(2) of the NPRM has been deleted in the corresponding provision of the final rule at § 29.22(h)(2) and replaced with the word ''training'' to more accurately reflect the nature of an apprentice's experience in an IRAP.

In addition, § 29.22(j)(4) of the NPRM proposed an SRE make publicly available ''[t]he annual completion rate for apprentices'' for each IRAP it recognizes; in the corresponding provision of the final rule at § 29.22(h)(4), the requirement for SREs to report and publish the annual completion rate for apprentices in the IRAPs that they recognize has been modified to include a mathematical formula for calculating this rate. While the Department did not receive any comments suggesting this particular textual modification, one commenter suggested that any future Federal funding for IRAPs should be made contingent on such programs meeting certain minimum standards, including a minimum completion rate. The Department was also concerned that the absence of a clear definition of the term ''completion rate'' could lead to the reporting and publication by SREs of IRAP completion rates that are not readily comparable, because they may have been computed differently across IRAPs (*e.g.,* apprentices that withdrew from an IRAP could be treated differently than apprentices that transferred between IRAPs). In addition, because the term ''completion rate'' is already defined with respect to its application to registered apprenticeship programs in subpart A of the final rule, providing a clear definition for that

same term in the context of IRAPs is warranted under the circumstances.

It should also be noted that the original proposed text contained in § 29.22(j)(1), (3), and (5) of the NPRM (which correspond to § 29.22(h)(1), (3), and (5) of the final rule) has not been amended in the final rule.

8. Other Comments Received Concerning § 29.22(h)

Several commenters also recommended a variety of additional outcomes metrics that the Department should adopt to evaluate the effectiveness of SREs and the IRAPs that they recognize. For example, a commenter recommended adding measures for the IRAP participation of members of special populations to bring the regulation into conformity with the Strengthening Career and Technical Education for the 21st Century Act, Public Law 115–224 (2018) (as codified at 20 U.S.C. 2301 *et seq.*). A commenter urged DOL to encourage SREs to make use of existing State longitudinal data systems and/or other such sources of labor-market information to make determinations on the IRAPs they recognize. Multiple commenters recommended that DOL promote integration at the State level of information about incomes with such State longitudinal data systems. Several other commenters suggested that DOL should consider aligning publicly reported information collections with core indicators of performance under WIOA.

After considering these comments, the Department takes the view that requiring SREs to utilize State labor-market information or longitudinal data systems in making determinations on IRAP recognitions, or adjusting the final rule to require SREs and IRAPs to align publicly reported information collections with core indicators of performance under WIOA, would impose unnecessary or unworkable administrative burdens on these parties, and may discourage them from pursuing the IRAP option for apprenticeship expansion. Accordingly, the Department declines to adopt these recommendations.

A commenter suggested that SREs and IRAPs should be required to collect and make publicly available the same program and apprentice information as the DOL Registered Apprenticeship Partners Information Data System (RAPIDS) database does, including the collection of individual and aggregated data on apprentice demographic information, education level, current apprenticeship program enrollment status (including information concerning participation in and duration of on-the-job learning and related instruction), the employer identification number (EIN) of the entity employing the apprentice, apprentice wage rates at enrollment and completion of the IRAP, apprenticeship completion rates, attainment of industry-recognized credentials, and complaints and grievances filed (*e.g.,* EEO complaints). Another commenter opined that RAPIDS or a similar system should be used to ensure that States know which programs are available to participants, which will help States oversee the SREs and programs operating within their borders. Other commenters urged DOL to align any data collection protocols established for IRAPs with the data collection and evaluation requirements of registered apprenticeship programs. Multiple commenters recommended that SREs and IRAPs should be required to publicly disclose, at a minimum, the information required of American Apprenticeship Initiative (AAI) grant recipients.

In response to these comments, the Department observes that many aspects of the new and more flexible IRAP model of apprenticeship are distinctive; these features do not align closely with the requirements of the existing registered apprenticeship framework, nor are they required to do so. As noted previously, requiring SREs to report IRAP data and outcomes directly to the Department on a regular basis will help the Department effectively monitor and evaluate these new programs and entities. Accordingly, the Department declines to adopt these suggestions with respect to data alignment.

Multiple commenters recommended that the Department maintain a public, online database with information about SREs and the IRAPs they recognize. One of these commenters recommended that this database include the complete application submitted by entities seeking to be recognized as SREs, all submissions to the Administrator by SREs regarding the recognition of IRAPs, and the complete performance data submitted to the Administrator regarding each IRAP recognized by the SRE. Another commenter advised that the database include information about the credentials offered by IRAPs, and the portability of these credentials. A commenter recommended that, in addition to disclosing performance metrics, IRAPs should be required to use these performance metrics to conduct self-evaluations, and that these self-evaluations should be made public. A commenter suggested that DOL should require SREs to assess apprentices' post-program earnings, along with pre-program earnings.

After considering these comments, the Department takes the view that the Department need not establish an online database of IRAP program information when the final rule (at § 29.24) already provides that SREs will make information on IRAPs publicly available. The Department also believes that it would be unnecessarily intrusive to require SREs to make public their applications for recognition, along with information concerning the SRE's recognition of IRAPs. Similarly, the Department believes that requiring IRAPs to utilize their performance data to conduct and publicize self-evaluations, or to collect information on an apprentice's pre-program earnings, would discourage many employers from establishing such programs. And as noted above, portability is not a concept that likely could be identified in the manner the commenter suggested, because even credentials facially associated with a specific geographic region could be relevant to and valued by an employer outside of that region.

A commenter encouraged the conduct of additional research about IRAP programs' returns on investment. Another commenter opined that the Department should allow room for variation in required performance measures among industries. A commenter suggested that multiple ways to report performance data, including an online form, should be instituted in order to minimize the data collection burden on SREs as well as IRAPs.

The Department is committed to reducing paperwork burdens on SREs and IRAPs by making available electronic methods for the reporting and transmittal of data concerning these programs. Accordingly, the Department intends to develop an online reporting form for use by SREs to facilitate the transmittal of the IRAP program information described in § 29.22(h) of the final rule. The Department also intends to work with SREs to explore the use of administrative data sources to collect required outcome information. Such sources offer the chance to collect information in a more valid, consistent manner and at a lower cost. The Department is also interested in conducting research studies after the publication of this final rule to assess the effectiveness and cost effectiveness of IRAPs, particularly when compared with publicly financed workforce training and development programs.

SRE Policies and Procedures for IRAPs' EEO Requirements

Paragraph (i) of § 29.22, which was proposed as § 29.22(k), generally requires SREs to have policies and procedures that would require IRAPs to protect apprentices from discrimination, as well as assist in recruiting for and maximizing participation in apprenticeships. The SRE must also assign responsibility to an individual to assist IRAPs with matters relating to this provision.

Commenters questioned whether apprentices and their mentors, trainers, and others working with them during the IRAP would be required to have anti-harassment training similar to the requirements of 29 CFR part 30. Many commenters urged the Department to apply the anti-harassment requirements of 29 CFR part 30 to IRAPs. Commenters noted that registered apprenticeship programs are required to implement procedures for addressing complaints of harassment and intimidation. Other commenters suggested that SREs and IRAPs be required to have policies and procedures, modeled by the Department, for: Anti-harassment training in compliance with 29 CFR part 30, HIPAA compliance, whistleblower protections, conflicts of interest, intellectual property, complaints, lobbying, expenses, investments, and gifts and entertainment. Another commenter attached sample policies and procedures regarding discrimination and harassment.

The Department has carefully considered these comments. The NAA does not expressly mandate any particular EEO or outreach requirements. Rather, the NAA's directions are broad, general, and purposely leave a great deal to the Department's discretion. The final rule's EEO provisions—both what they include and what the Department has declined to include—reflect the Department's policymaking judgment and expertise based on weighing numerous factors, detailed below, including already existing legal protections, additional measures that may be helpful to apprentices and employers, sensitivity to administrative burdens, the need to preserve SREs' and IRAPs' flexibility, and the recognition of differences in industries and geographic areas.

As discussed in relation to § 29.22(a)(4)(viii), above, the Department has determined that adopting the EEO protections codified in applicable Federal, State, and local laws are appropriate for IRAPs—which protect apprentices just as other types of workers—is a reasonable way to formulate and promote standards safeguarding the welfare of apprentices. The Department notes that the SRE is responsible for developing policies and procedures that both require IRAP adherence to applicable Federal, State, and local EEO laws and facilitate such adherence. Regarding the latter, the Department intends SREs to develop policies and procedures that take into account their IRAPs' needs for compliance assistance and complaints resolution. In the rule, the Department lists the requirement that SREs have policies and procedures regarding potential harassment, intimidation, and retaliation, such as the provision of anti-harassment training and a process for handling EEO and harassment complaints from apprentices. The Department has determined that this is an appropriate role for SREs and in line with both its compliance-assistance function and SREs' quality-control relationships with IRAPs. By explicitly identifying anti-harassment training in the rule, the Department requires SREs to ensure that such training is provided, whether the training is provided by the SRE, by an SRE partner, or by the employer offering the IRAP. Similarly, the Department requires the SRE or the employer to have a complaint mechanism for addressing discrimination and harassment complaints. For example, an SRE may assist a smaller employer offering an IRAP by providing centralized anti-harassment training and establishing a mechanism for receiving complaints from apprentices concerning discrimination. Larger employers with well-established EEO processes and procedures may not need such SRE assistance. By not prescribing specific processes, the Department seeks to maximize an SRE's ability to satisfy this provision in ways that best serve the IRAPs and employers that the SRE works with.

The Department declines commenters' suggestions for additional requirements on SREs and IRAPs for policies and procedures related to HIPAA, whistleblower protections, conflicts of interest, intellectual property, complaints, lobbying, expenses, investments, and gifts and entertainment. As an initial matter, conflicts of interest and complaints are already addressed in this rule. Additionally, IRAPs are required to comply with any Federal, State, or local laws applicable to them, including HIPAA and whistleblower protections, regardless of any specific requirement in this rule. The Department notes that subpart A does not include such provisions, and declines to include such provisions in subpart B.

Many commenters questioned the Department's departure from the affirmative action requirements of 29 CFR part 30. A commenter remarked that the Department is providing a weak requirement to recruit underserved groups and contrasted it with the robust requirements for registered apprenticeships. The commenter urged the Department to apply the same set of requirements to IRAPs as to registered apprenticeship programs. Many other commenters similarly argued that the Department should apply the affirmative action requirements of 29 CFR part 30 to IRAPs. Several commenters provided statistics about the numbers of women, veterans, and minorities in apprenticeship programs and highlighted their intentional and sustained efforts to increase diversity through affirmative action plans. Another commenter similarly noted it requires sustained and aggressive effort to recruit women, minorities, and individuals with disabilities to apprenticeships in some industries. One commenter observed that SREs are only required to have policies for outreach strategies, but IRAPs are under no obligation to implement such strategies. A commenter stated that the Department's NPRM did not require that the SRE approve an IRAP's selection procedure for apprentices or require that any selection procedure comply with the Uniform Guidelines on Employee Selection Procedures. The same commenter stated that, in its view, there was no required analysis by the SRE or the IRAP to determine if any part of the recruitment and selection process is creating a barrier to the entry of qualified women and minorities into the apprenticeship program.

A commenter argued that innovation is not necessary in Federal civil rights protections, urging the Department to provide more proactive education and assistance to IRAPs on outreach to diverse populations. Another commenter noted that there are no requirements for an SRE to report on the demographic characteristics of IRAP apprentices. A commenter encouraged the Department to task SREs with verifying that IRAP programs conduct outreach and recruitment activities to all potential workers in a program's region, consistent with 29 CFR 30.3(b)(3). The commenter stated that this would improve alignment between IRAPs and the workforce system by empowering local workforce stakeholders to leverage WIOA-funded referral services. The commenter also

argued that requiring SREs to ensure IRAPs engage in this same recruitment and outreach as in 29 CFR 30.3(b)(3) would ensure efficiency in workforce investments in a local area, bolstering access to work-based learning programs for a diverse set of workers and ensuring businesses have the broadest pipeline of potential candidates to fill open positions.

The Department acknowledges the comments asking for additional affirmative action requirements. Nevertheless, the Department has determined that the requirements in this section, in conjunction with the EEO requirements at § 29.22(a)(4)(viii), impose sufficient obligations on both IRAPs and SREs to ensure compliance with EEO laws and further impose an obligation on SREs to have policies and procedures that reflect comprehensive outreach strategies. The Department views SREs as better positioned than the Department to decide how to structure their policies and procedures to ensure comprehensive outreach strategies, which could depend on the nature and size of the SREs, their networks and geographic reach, the nature and size of the IRAPs they recognize, and the SREs' relationship with their IRAPs. The Department declines to incorporate the affirmative action provisions of 29 CFR part 30 into this subpart.

The Department disagrees with the commenter's concern about IRAPs not being required to implement SRE outreach strategies. The rule is drafted so as to place the responsibility on the SRE to have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations that may participate in IRAPs—this includes articulating what role, if any, the IRAPs will play in such outreach strategies. IRAPs would then be required to follow the policies and procedures of the SRE, should the SRE deem it appropriate to impose specific requirements on IRAPs. Paragraphs 29.22(f)(4) and (5) regarding the quality-control relationship between the SRE and the IRAP make clear that an SRE must ensure the IRAP's compliance with the SRE's requirements and must have policies and procedures for suspension or derecognition of an IRAP that fails to comply with the SRE's requirements.

The Department acknowledges that it is not requiring SREs to monitor IRAPs' apprentice selection processes or to apply the Uniform Guidelines on Employee Selection Procedures. The SRE may develop policies and procedures to address apprentice selection processes if it so chooses. The Department declines to impose specific requirements because IRAPs must follow Federal, State, and local EEO laws, which prohibit discrimination in hiring, and because SREs must have policies and procedures in place to ensure that IRAPs do so. Similarly, though the Department is not requiring SREs to conduct barrier analyses for women and minorities, an SRE may choose to do so. Further, as discussed in § 29.22(h), the Department is requiring SREs both to report to the Department and to make publicly available aggregate demographic information (such as sex, race, ethnicity) about participants. By collecting, reporting, and publishing such information, SREs will benefit from understanding the populations they are reaching through their outreach efforts and can adjust their efforts accordingly, including by providing additional support to IRAPs if they opt to do so. The Department may also request any information under § 29.23 that it deems necessary to determine whether the requirements of this paragraph are met. The Department has determined that these requirements, in conjunction with the quality-control and quality-assurance processes set forth in this rule, are sufficiently robust to ensure that IRAPs have additional support and assistance to understand and comply with their legal obligations—though regardless of participation as IRAPs these employers should already be complying with applicable laws. Simultaneously, IRAPs will benefit from an SRE's ability to conduct more extensive outreach efforts to diverse populations and to offer any needed support and assistance.

With respect to requiring SREs to verify that IRAPs conduct outreach and recruitment activities to all potential workers in a program's region, as mandated by 29 CFR 30.3(b)(3), the Department declines to impose such a requirement. As discussed above, the SRE is the entity primarily responsible for determining in what manner comprehensive outreach will be conducted and by whom. The SRE itself may decide to be responsible for outreach, rather than placing such responsibility on its IRAPs.

Additionally, the Department declines to apply the language of 29 CFR 30.3(b)(3) to SREs because the prescriptive nature of 29 CFR 30.3(b)(3)'s requirements for universal outreach and recruitment may not be universally applicable to or feasible for SREs given the potential diversity of SREs in terms of size, the industry(ies) in which they will be recognizing IRAPs, how many IRAPs they will be recognizing, and their geographic reach. The Department determined that the exact requirements for recruitment and outreach are best determined by the SRE within the framework and requirements set forth by the Department.

A State Agency commented that it is in a better position than SREs to provide training and outreach to promote IRAPs, noting that the responsibility placed on SREs could be burdensome and potentially pose a conflict of interest for an entity focused on approving IRAPs. Similarly, a commenter stated that Workforce Development Boards could serve a brokering role in helping SREs establish relationships and referral processes with existing community-based providers. The commenter supported the Department's position to require SREs to engage in recruitment, stating that SRE outreach would increase the chances that IRAPs result in apprenticeship programs that reflect the communities in which they are located. Another commenter also supported the Department's decision to make SREs responsible for ensuring that EEO requirements are met, noting the Department's approach allows small businesses to focus on serving apprentices while also ensuring that their apprentices are protected from discrimination. Other commenters urged outreach to community-based organizations and education providers.

The Department agrees with commenters' observations that SREs can partner with others, such as States, networks, community partners, and industry partners, to create and implement comprehensive outreach strategies to reach diverse populations that may participate in IRAPs. The rule allows for such flexibility, and the Department encourages SREs to draw upon their relationships to conduct broad outreach and thereby increase participation in apprenticeships, especially in light of the skills gap and the opportunity it presents to involve previously sidelined workers. The Department anticipates that SREs' policies and procedures would largely reflect the needs of the employers offering IRAPs. For example, an SRE that primarily works with large corporations may devolve requirements for outreach to the extent fulsome recruiting programs already exist at these corporations. An SRE that works with smaller employers may itself create promotional materials and circulate opportunities within its network, schools, community organizations, and other membership groups that have not historically considered apprenticeships. With respect to the concern that SREs are not as well-positioned to be tasked with outreach responsibilities, the Department anticipates that SREs will

structure their policies and procedures in a way that utilizes their existing partnerships and resources.

A commenter recommended that the Department not impose any outreach requirements on the SRE. Rather, the commenter recommended that the SRE impose such requirements on the IRAPs by requiring them to attest or provide written documentation that they are adhering to Federal, State, and local laws pertaining to EEO, are proactively seeking ''to reach diverse populations that may participate'' in the IRAP program, and have established policies against ''harassment, intimidation, and retaliation.'' The commenter urged the Department to place the responsibility for compliance with EEO requirements on the IRAP rather than the SRE because the SRE should serve a compliance and assistance role rather than function as an enforcer of human resources policies and EEO laws. The commenter expressed concern about SREs bearing liability for the conduct of their IRAPs. Another commenter also cautioned the Department against prescribing any additional EEO requirements in this rule.

The Department intentionally placed outreach obligations on the SRE, because it anticipates that the SRE may have a broader reach and more resources to provide outreach to diverse populations on behalf of all of its IRAPs, which would be especially beneficial for smaller employers. The Department emphasizes that SREs bear the responsibility for complying with this paragraph, including having policies and procedures that require IRAPs' adherence to applicable Federal, State, and local laws pertaining to EEO. The SRE must facilitate such adherence through its policies and procedures regarding potential harassment, intimidation, and retaliation. Regarding the concern that SREs will be held responsible for their IRAPs' actions, the Department notes that the employer offering the IRAP, not the SRE, has the employment relationship with the apprentice, as discussed in § 29.22(a)(4)(x) and (g). Depending on relevant law, the employer would incur liability for violations of any applicable EEO laws just as it might for other types of workers. The Department emphasizes, however, that it could take action to suspend or derecognize an SRE if it deems that the SRE has failed to substantially comply with its responsibilities under this subpart, as discussed in § 29.27, including any failure to comply with the requirements of § 29.22(i). The Department intends that an SRE tailor its assistance to IRAPs based on the reasonably known needs of the employers offering IRAPs recognized by the SRE.

Finally, the SRE is also required to assign responsibility to an individual to assist IRAPs with matters relating to this paragraph. For example, an SRE could designate a staff member in its human resources department to address questions from employers participating in its IRAPs. The Department did not receive any specific comments on this clause other than comments already discussed above. Thus, the Department has adopted § 29.22(i) as proposed.

SRE Policies and Procedures for Addressing Complaints Against IRAPs

Paragraph (j) of § 29.22 was added to the final rule. This paragraph requires that an SRE have policies and procedures for addressing complaints against IRAPs. Complaints may be filed by apprentices, prospective apprentices, an apprentice's authorized representative, a personnel certification body, or an employer. SREs must make publicly available a list of the aggregated number of complaints pertaining to each IRAP in a format and frequency prescribed by the Administrator.

Several commenters suggested that the rule be amended to allow complaints to be filed against IRAPs. One commenter noted that there is no reason that an apprentice would have a basis to file a complaint against the SRE, and that complaints are much more likely to concern IRAPs. Another commenter stated that an apprenticeship program requires an evolving environment, which is often driven by complaints from apprentices and training agents. Another commenter raised concerns that an apprentice would have no recourse to resolve a complaint against an IRAP if the SRE were improperly influenced by bribes or other inducements. The commenter suggested that procedures be implemented to allow apprentices to file complaints against an IRAP in a manner that parallels § 29.12(c) in subpart A. Several commenters proposed that a process similar to proposed § 29.26 (finalized as § 29.25) be implemented that would allow for apprentices to file complaints regarding an IRAP with the Department. A commenter proposed that the Department publish a description of all complaints filed against IRAPs and the result of the complaint.

The proposed form contained a requirement for SREs to have a complaint and appeals process, but the proposed form was removed from the final rule for the reasons described above. The Department agrees with commenters that the final rule should include a process to file complaints against an IRAP, and therefore has added § 29.22(j) to the final rule. The Department also agrees with the commenters who noted that apprentices are more likely to have complaints against IRAPs than SREs, and that apprenticeship programs may improve on the basis of complaints filed and feedback given. The Department weighed these concerns in adding paragraph (k) to the final rule. The Department determined, however, that SREs would be in the best position to resolve complaints involving IRAPs, because SREs recognize IRAPs and are responsible for remaining in a quality-control relationship with the IRAP consistent with the requirements of this rule. The Department has no reason to believe that bribes or inducements would be offered to SREs to impact the outcome of complaints against IRAPs. An allegation of improper conduct on the part of an SRE would be addressed through the complaint and review process against SREs in §§ 29.25 and 29.26.

The Department has determined that publishing a description of all complaints and their outcomes would be particularly difficult to administer. Many complaints may involve personal identifying information or sensitive details. However, the Department agrees that the existence of complaints against an IRAP is a useful measure that apprentices may weigh in electing to participate in a particular IRAP. For that reason, the Department has elected to require that SREs publish the aggregated number of complaints against each IRAP in a form and frequency prescribed by the Administrator.

Providing Notice of the Right To File Complaints

Paragraph (k) of § 29.22 has been added the final rule. It requires an SRE to notify the public about the right to file a complaint with the SRE according to the process provided for in § 29.22(j) above. This paragraph reincorporates the list of entities in paragraph (j) that may file a complaint, as well as the requirement that any complainant be associated with the IRAP against which the complaint is filed. This requirement has been added to increase transparency and to inform the public about who has the right to file a complaint.

One commenter proposed that SREs be required to proactively inform apprentices, employers, and others about their rights to file a complaint. The Department agrees with the comment and therefore added paragraphs (k) and (l) of § 29.22 to the

final rule. The Department decided to require notification to the public to emphasize that complaint procedures should be broadly disclosed. As with § 29.22(j) above, an SRE's actual complaint processes and procedures must only extend to apprentices, prospective apprentices, an apprentice's authorized representative, a personnel certification body, or employers that are associated with the IRAP for the reasons explained above.

Paragraph (l) of § 29.22 was added to the final rule. It requires that an SRE notify the public about the right to file a complaint against it with the Administrator as set forth in § 29.25. The requirement was added because SREs were determined to be in the best position to publicize the right to file such complaints.

SRE Notice of Derecognition

Paragraph (m) of § 29.22 is a new paragraph that was added to the final rule. This paragraph requires an SRE that has received notice of derecognition pursuant to § 29.27(c)(1)(ii) or (3) to inform IRAPs and the public of its derecognition status. As discussed below in § 29.28, Derecognition's Effect on Industry-Recognized Apprenticeship Programs, a few commenters expressed concern over lack of specific notification to IRAPs and impacted apprentices when the Department derecognizes an SRE. One commenter suggested that the Department should notify not just the SRE but also the IRAPs and associated apprentices under the SRE of this action.

The Department shares commenters' general concerns regarding notification to IRAPs and impacted apprentices when an SRE has been derecognized. As discussed below in § 29.28, Derecognition's Effect on Industry-Recognized Apprenticeship Programs, the final rule requires the Administrator to update the publicly available list of SRE status to include derecognition, and to notify impacted IRAPs. Additionally, to maximize opportunities for impacted IRAPs and the public to learn about an SRE's derecognition status, the Department has added requirements for SREs regarding notification about derecognition. Final § 29.28(m) requires SREs to notify impacted IRAPs and to inform the public of their derecognition status. The Department may issue instructions that provide operational details for an SRE's notification of IRAPs and the public. Any such instructions will be available on a Departmental website so that SREs, IRAPs, and the general public can easily access the information.

SRE Notice of Fees Charged to IRAPs

Paragraph (n) of § 29.22 was added to the final rule. This paragraph requires an SRE to publicly disclose any fees it charges to IRAPs. The fee information should be in an electronic format that is easily accessible to the public; for example, an SRE could provide this information on its website. This requirement was not in the proposed rule. In the proposed rule, the Department stated in the economic analysis that it anticipates that SREs may charge a fee to IRAPs to help offset their costs, and that such a fee is ''neither required nor prohibited.''

Multiple commenters expressed concern about the lack of transparency and oversight of SREs and urged the Department to include stronger transparency and oversight provisions in the final rule.

The Department took the recommendations for greater transparency under advisement, and under paragraph (n) is requiring SREs to publicly disclose their fee information because this information will increase transparency and help IRAPs make informed decisions. Information about SRE fees should help potential IRAPs decide whether to participate in the program, and if so, from which SRE to seek recognition.

One commenter expressed appreciation for the Department's introduction of a ''fee structure'' and recommended that the Department not set a program-wide average fee because each industry, occupation, and SRE will have different costs. Another commenter stated that the lack of a requirement for IRAPs to make a financial contribution to the operation of SREs ''raises serious concerns regarding the long-term viability of this system.'' In contrast, a commenter encouraged the Department to prohibit SREs from charging fees, arguing that such fees may lead to a ''pay to play'' apprenticeship system. Two commenters questioned why the Department proposed an apprenticeship system that will allow SREs to charge fees, thereby creating a significant burden for employers, when OA charges no fees for the same services. A commenter argued that SRE fees might block participation by employers in distressed areas with fewer resources. Several commenters expressed concern that, in their view, allowing SREs to charge fees would create a potential access barrier for small businesses. A commenter similarly expressed concern that some associations are unlikely to ask their members to pay an additional application fee that would fall outside other membership costs, thereby resulting in substantially higher costs for such entities should they choose to participate as SREs.

In light of the wide variety of entities that may become recognized SREs and the wide variation in costs SREs will incur, the Department has maintained its stance in the final rule of neither requiring nor prohibiting SRE fees and allowing each SRE to set its own fees. The IRAP is designed to be a market-driven program. In the credentialing industry, many credentialing entities charge an application fee, an annual fee, or both to recoup their expenses. Likewise, some SREs may find it necessary to charge fees to recoup their expenses. In contrast, some SREs may already charge a membership fee unrelated to this program, and therefore choose not to charge an additional fee directly tied to the recognition of IRAPs. Since participation in the IRAP is not compulsory, any costs incurred by SREs and IRAPs will be incurred voluntarily.

A commenter questioned ''the ethics'' of requiring local partners such as community colleges, high schools, and non-profit organizations, to pay fees to SREs for program approval.

Given that this is designed to be a market-driven program, the Department is neither requiring nor prohibiting SRE fees. Accordingly, an SRE may choose not to charge a fee to any IRAP or it may choose to waive its fees for educational institutions or non-profit organizations. And, based on the presence or absence of SRE fees, an educational institution or non-profit organization may seek recognition from a different SRE or may choose not to participate at all. The Department believes this level of flexibility is likely to result in higher quality apprenticeships, and in more entities participating in IRAP initiatives and seeking to address the skills gap.

Several commenters expressed concern about potential conflicts of interest related to fees and their effect on an SRE's decisions about which programs to recognize or derecognize.

To alleviate concerns about conflicts of interest, the Department has added a provision in § 29.21(b)(6) that requires prospective SREs to demonstrate in their application that they can effectively mitigate any potential or actual conflicts of interest. As explained above, the Department added this provision in an effort to ensure that each SRE applicant addresses any potential conflicts of interest through specific policies, processes, procedures, structures, or a combination thereof that will be assessed by the Department before the entity may be recognized as an SRE.

One commenter recommended that the Department require SREs to submit information on their business plans, including how they will finance the costs of conducting quality assurance activities.

As described above, paragraph (b)(3) of § 29.21 was amended to incorporate a requirement for an entity to indicate in its application that it has the financial resources to operate as an SRE. The Department anticipates that requiring a prospective SRE to address its financial resources at the application stage will help ensure the future financial stability of an SRE. In its application, a prospective SRE is welcome to mention whether it plans to rely on fees to recoup its expenses, and the Department expects that many SREs would rely on such fees.

SRE Records Retention Responsibilities

Paragraph (o) of § 29.22 has been added to the final rule. This paragraph requires SREs to ensure that records regarding each IRAP, including whether the IRAP has met all applicable requirements of this subpart, are maintained for a minimum of 5 years.

Many commenters argued that the Department lacks authority under the NAA to create the IRAP model. The basis for some of these concerns is the need for government oversight of apprenticeship. Several commenters expressed concern that the proposed rule does not provide adequate quality assurance of SREs and IRAPs. While commenters generally agree that it is necessary for information to be collected for the Department to effectively perform its functions with respect to IRAPs, some commenters expressed concerns about establishment of overly burdensome reporting or data collection requirements.

The Department has considered the various comments received and agrees that the final rule should clarify the Department's oversight of SREs and strengthen the regulatory requirements pertaining to SRE record retention. For this reason, the Department made changes to § 29.22 by adding this paragraph. In the proposed rule, the SRE record retention requirement was included in the Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form. This record maintenance requirement, in conjunction with the provision in § 29.23(c) specifying that the Administrator may use information described in § 29.22 to discharge recognition, review, suspension, and derecognition duties, clarifies and strengthens the Administrator's oversight role with respect to quality assurance. In addition, it helps demonstrate that the Department is promoting standards of apprenticeship, consistent with the directions in the NAA, by requiring additional accountability from SREs. Requiring SREs to retain records will significantly aid the Administrator in ensuring that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeships. Similarly, this record retention requirement complements and strengthens the reporting requirements described in § 29.22(h). As explained earlier in this preamble, the Department has broad discretion and authority under the NAA in formulating and encouraging apprenticeship standards and programs. The record retention requirement is not expressly mandated by the NAA. The Department views the record retention requirement, among many other requirements promulgated by this final rule, as complying with and exceeding the open-ended standards in the NAA.

SRE Requirement To Follow Policies and Procedures and Notify Administrator of Significant Changes

Paragraph (p) of § 29.22 was added to the final rule. This paragraph requires SREs to follow any policy or procedure submitted to the Administrator or otherwise required by this subpart, and to notify the Administrator when it makes significant changes to its policies or procedures.

Many commenters argued that the Department lacks authority under NAA to create the IRAP model. The basis for some of these concerns is the need for government oversight of apprenticeship. In addition, many commenters expressed concern that the proposed rule does not provide adequate quality assurance of SREs and IRAPs. Some commenters encouraged the Department to coordinate with other Federal agencies to align policies and procedures. Moreover, some commenters suggested that the Department identify specific policies and procedures. Other commenters expressed support for allowing SREs flexibility to customize their approach to changing industry needs.

The Department has considered the various comments received and agrees that the final rule should clarify the Department's oversight of SREs and strengthen the regulatory requirements pertaining to SRE policies and procedures. For this reason, the Department made changes to § 29.22 by adding this paragraph. In the proposed rule, the SRE policy and procedure requirements were included in the Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form. The Department agrees with commenter concerns about SREs maintaining flexibility to establish policies and procedures. Thus, specific requirements were not added to the final rule. Paragraph (p)'s policies and procedures requirement, in conjunction with the provision in § 29.23(c) specifying that the Administrator may use information described in § 29.22 to discharge recognition, review, suspension, and derecognition duties, clarifies and strengthens the Administrator's oversight role with respect to quality assurance. These measures are consistent with and an appropriate way for Department to follow the NAA's directive to promote standards of apprenticeship and bring together employers and labor for the formulation of programs of apprenticeship. By enhancing oversight and accountability of SREs, these measures help the Department ensure that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeship.

Conflicts of Interest

Proposed paragraph (e) of § 29.22 was not carried forward into the final rule. As proposed, it would have prohibited SREs from recognizing their own apprenticeship programs unless they provide for impartiality and mitigate conflicts of interest via specific policies, processes, procedures, structures, or a combination thereof. The proposed paragraph was revised and moved to § 29.21(b)(6) in response to comments, as explained below.

Numerous commenters suggested that SREs should not be allowed to recognize their own programs as IRAPs. One commenter argued that doing so would lead to fraud, waste, and abuse, and would compromise program integrity. Multiple commenters questioned whether an accreditation entity could ever accredit its own programs without introducing bias, with one commenter suggesting that the American Bar Association or Accreditation Council for Graduate Medical Education would never be allowed to own or consult for law or medical schools, respectively. A second entity suggested that accreditation bodies should never be in a position to regulate their own products. Other commenters argued that the proposed rule's suggestion that SREs establish firewalls would be insufficient to address conflicts. A commenter stated that an apprentice aggrieved by an IRAP may have no recourse other than to file a complaint with an SRE that, in some

cases, could effectively be the same entity.

Other commenters suggested that the prohibition on an SRE recognizing its own IRAPs needed to be strengthened. One commenter proposed that Section V.E. of the proposed form needed strengthening because it allowed entities to attest that no conflicts were present. A different commenter requested that the Department identify the ''bright lines'' in relation to the roles of SREs versus employers, institutions of higher education, and other partners that are necessary to develop high-quality apprenticeships. Several commenters proposed that officers, directors, and managers of SREs should be prohibited from owning or controlling any entities offering IRAPs. Still other commenters requested that the Department impose clear standards regarding impartiality and conflict minimization.

One commenter proposed that in light of proposed § 29.25, an SRE could recognize its own program to receive expedited registration and benefits under subpart A, including Davis-Bacon wage rates and funding under WIOA.

Several commenters expressed a concern that proposed paragraph (e) seemed to allow SREs to approve apprenticeship programs over other sponsors who may be competitors. One commenter suggested that allowing a self-interested entity to regulate a competitor violates due process.

Still other commenters suggested that the conflict of interest approach in the proposed rule was reasonable. One commenter suggested that the approach struck the appropriate balance between putting in place meaningful measures to mitigate conflicts while simultaneously minimizing burdens. One commenter noted that the Department's provisions for demonstrating impartiality appeared similar to those in ANSI 17024. Another commenter noted the importance of allowing SREs to offer consultative services in order to expand apprenticeship opportunities, and the commenter urged the Department to take a reasonable approach to meeting the SRE impartiality requirements.

The Department agrees that an SRE recognizing its own programs presents actual or potential conflicts of interest, so the Department has decided to require that all SREs demonstrate that they can effectively mitigate such conflicts of interest. To accomplish this, proposed § 29.22(e) was moved to § 29.21(b)(6) where other application requirements to become a recognized SRE are addressed. The Department has decided not to prohibit SREs from recognizing their own IRAPs, because the Department has found such a prohibition unnecessary if an SRE mitigates the inherent conflicts of interest according to the policies and procedures submitted with its application for recognition. In addition, many types of companies, such as professional services firms, routinely mitigate conflicts of interest.

As part of the application process, the Department intends to require, at a minimum, that each entity disclose potential conflicts and provide a firewall between SRE and prospective IRAP staff, or assign key tasks to an independent third party. The Department expects that a firewall would prohibit program designers from involvement in recognition decisions and would prohibit SRE personnel who receive complaints from reporting through the same supervisory channels as IRAP managers. To ensure that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeships, the Department envisions that SREs' processes would further require that the recognition, quality-control, and suspension and derecognition processes and procedures are designed and administered to treat any nonaffiliated IRAPs equitably. DOL intends to enforce such processes, procedures, or structures involving potential conflicts of interest through the quality assurance process in 29.23 and the review process in 29.26.

The Department shares the concern that the right of an apprentice to file a complaint under § 29.22(j) and (k) could be jeopardized where the IRAP and the SRE are related entities. The Department anticipates that SREs' conflict of interest policies and procedures will address this possibility, guarantee fairness, and guarantee an apprentice the right to file a complaint without being subject to retaliation. An apprentice may also file a complaint against an SRE, in accordance with § 29.25, that could lead to the Administrator's review of the SRE under § 29.26. Additionally, certain Federal, State, and local laws, such as EEO laws, prohibit retaliation for filing a complaint and, if applicable, provide apprentices another avenue of relief.

The Department agrees that the conflict-of-interest provisions in proposed § 29.22(e) needed strengthening, which the Department has accomplished by requiring every SRE to address conflicts of interest in their applications. The Department has also eliminated the form in the proposed rule that contained an attestation relating to conflicts of interest, and has replaced the attestation with the substantive requirements now contained in § 29.21(b)(6). The Department agrees that officers, directors, and managers of SREs that own or control prospective IRAPs would present a potential conflict of interest. The Department expects that such conflicts would be disclosed and mitigated as part of the application requirement imposed by the final text of § 29.21(b)(6).

In response to the comment concerned with an SRE's ability to recognize its own program to receive expedited registration and benefits under subpart A, the Department notes that proposed § 29.25 was not carried forward into the final rule, as explained below. Accordingly, IRAPs will not be able to receive expedited registration under subpart A.

The Department does not share the concern that an SRE's ability to recognize its own programs would somehow allow SREs to regulate competitors. Seeking recognition as an IRAP is a voluntary process, and any employer may decide to meet its workforce training needs by using registered apprenticeship under subpart A, industry-recognized apprenticeship under subpart B, or any other model of the employer's choosing. In fact, even without this regulation, the Department expects that various entities could—and would, given the nature of the skills gap and the opportunities it represents—develop relationships and apprenticeship programs to help equip America's workers with the skills they need.

The Department appreciates the opinion of commenters who found the Department's proposed approach to put in place meaningful but not burdensome protections and who found the Department's proposed approach to be similar to impartiality requirements in ANSI 17024. The Department has revised the text of proposed § 29.22(e) in the final rule, as discussed above, in order to strike a balance between minimizing burdens while mitigating conflicts of interest.

Paragraph (f) of proposed § 29.22 would have required that an SRE either not offer services, including consultative and educational services for example, to IRAPs that would impact the impartiality of the SRE's recognition decisions, or the SRE must provide for impartiality, and mitigate any potential conflicts of interest via specific policies, processes, procedures, structures, or a combination thereof. This proposed paragraph was amended and moved to § 29.21(b)(6) in response to comments, as explained below.

Numerous commenters suggested that SREs should be prohibited from offering

consultative services. One commenter suggested that the prohibition on offering consultative services should be extended to related entities or subsidiaries of the SRE. One commenter proposed that consultative services be further defined to make the paragraph clearer. A different commenter questioned who would be able to provide consultative services to IRAPs, other than SREs.

One commenter proposed that a conflict of interest that develops after an SRE's recognition should constitute a substantive change that must be submitted to the Administrator. Several commenters proposed that the potential conflicts and the mitigation processes, procedures, or structures be subject to a public disclosure requirement. One commenter suggested that best practices for preventing conflicts be collected in an online repository. Another commenter proposed that all communications between SREs and IRAPs be made publicly available.

Other commenters suggested that evidence of conflicts should trigger heightened scrutiny from the Department. A commenter questioned how often the Department would identify conflicts of interest.

Numerous commenters suggested that conflicts beyond those discussed in proposed § 29.22(e) and (f) could be present. Several commenters pointed to the potential for financial conflicts. Multiple commenters suggested that SREs will have a financial incentive to recognize as many IRAPs as possible. One such commenter suggested that SREs provide a plan for how they will sustain losses from reduced fees if the SRE must derecognize IRAPs. The commenter suggested that such a financial tension has been a central challenge for the higher education accreditation system. A different commenter suggested that subpart B may develop into a pay-to-play apprenticeship system whereby only employers with significant resources are able to afford recognition. A commenter suggested that the financial incentive to seek fees throws into question the impartiality and objectivity of an SRE's processes, procedures, or structures.

One commenter suggested that the Department establish conflict of interest mitigation requirements specific to the type of organization identified in § 29.20(a)(1). One commenter proposed an extensive list of proposed revisions to the rule for addressing conflicts of interest. Among the proposals were that only non-profit organizations should be eligible to become recognized SREs, that all SRE expenses related to standards-setting and training be paid by a trust, that SREs and IRAPs be required to provide to the Department any documentation relating to compliance, and that the Department should develop model polices to address anti-harassment, whistleblower protections, HIPAA compliance, conflicts of interest, complaints, intellectual property, lobbying, expenses, and gifts and entertainment.

Still other commenters suggested that the conflict of interest approach in the proposed rule was reasonable. One commenter suggested that the approach strikes the appropriate balance between putting in place meaningful measures to mitigate conflicts while simultaneously minimizing burdens. One commenter noted that the Department's provisions for demonstrating impartiality appeared similar to those in ANSI 17024. Another commenter noted the importance of allowing SREs to offer consultative services in order to expand apprenticeship opportunities, and the commenter urged the Department to take a reasonable approach to meeting the SRE impartiality requirements.

The Department agrees that SREs are likely to be in the best position to offer consultative services to IRAPs and therefore decided not to prohibit the practice in the final rule. Were SREs to be prohibited from offering such services to employers or prospective IRAPs, the restriction could stifle the expansion of high-quality apprenticeships. In order to strengthen the provisions in proposed § 29.22(f), the Department has moved the requirement to § 29.21(b)(6), thereby requiring every SRE to address conflicts of interest arising from offering services in the SRE's application. Proposed § 29.22(e) and (f) have been combined into one paragraph in § 29.21(b)(6) because proposed § 29.22(e) and (f) addressed different potential conflicts, but imposed the same substantive requirement of mitigating such conflicts through policies, procedures, structures, or a combination thereof. The text of proposed § 29.22(f) has also been amended to clarify that an SRE certifying its own IRAPs or offering consultative services are nonexclusive examples of the types of conflicts that an entity applying to be an SRE must address. The language in proposed § 29.22(f) has been further broadened by clarifying that providing services to actual or prospective IRAPs may present a conflict of interest.

While the Department has determined that related entities or subsidiaries need not be prevented from offering services, the Department agrees that the actions of entities related to the SRE could lead to potential conflicts of interest. To address this concern, the Department has added § 29.21(b)(4) to the final rule. This paragraph requires entities applying to become recognized SREs to disclose relationships with subsidiaries or related entities that could impact the SRE's impartiality. The Department intends that such actual or potential conflicts would be mitigated by providing processes, procedures, structures, or a combination thereof as required by § 29.21(b)(6).

The Department agrees that ambiguity existed in the term ''consultative services.'' The final rule deletes the term ''consultative'' and instead requires that an SRE address its processes, procedures, structures, or a combination thereof for providing services to actual or prospective IRAPs. The Department has determined that any compensated service that SREs offer to actual or prospective IRAPs that is not required by this subpart and not described in the SRE's processes and procedures could present a potential conflict. The Department intends for ''services'' to be broader than ''consultative services'', and to apply to any type of advice, assistance, or consultation not required by this subpart for which the SRE seeks compensation. Services required by this subpart include, for example, recognizing or rejecting applications from IRAPs, collecting data from its IRAPs, and remaining in an on-going quality-control relationship with its IRAPs, as well as any services included in the SRE's policies and procedures submitted to the Department. If, however, an SRE were to offer employers advice regarding credentialing or offer training courses to non-IRAPs, such services would fall within § 29.21(b)(6), unless they were required by the processes and procedures submitted to the Department.

The Department agrees with the commenter who suggested that a conflict of interest that develops after an SRE is recognized should constitute a substantive change that would result in the SRE updating its policies and procedures and notifying the Administrator. The language in proposed § 29.22(e) and (f) required an SRE to either not recognize its own programs and not offer consultative services, or, that it describe in detail in its application how it would mitigate any potential conflicts of interest. The Department anticipates that some SREs may not know during the application process whether an affiliated employer, local, or other related entity may wish to apply for recognition or request services. The Department resolved this comment by requiring that all entities

mitigate conflicts of interest in their applications to become recognized SREs. In addition, the Department added § 29.22(p) to the final rule, which requires that SREs follow all policies and procedures submitted to the Department and that SREs notify the Administrator when they make significant changes to their policies or procedures. Accordingly, an SRE could notify the Department in its application that the SRE will not recognize any related entity or subsidiary as an IRAP. If the SRE unexpectedly received an application for recognition from a related entity, but did not have policies and procedures in place sufficient to mitigate the conflict of interest, the SRE would not be allowed to recognize the prospective IRAP unless updated policies and procedures were provided to the Administrator.

The Department has determined that requiring SREs to publicly disclose their conflict of interest procedures for compilation in a publicly available repository would be difficult to administer for a variety of reasons. The Department anticipates that such policies and procedures would be highly individualized such that a State agency's procedures would be of little benefit to a non-profit organization. Furthermore, such procedures would normally include potentially sensitive information about business operations as well as employees or officers that would be burdensome to redact on a rolling basis. The Department has similarly determined that requiring all communications between SREs and IRAPs to be publicly disclosed would constitute an immense and unnecessary burden.

The Department agrees that conflicts of interest may require heightened scrutiny of applicants, and the Department strengthened the conflict of interest requirements related to the application, as explained above. The Department did not establish a cycle for identifying conflicts of interest. Most Departmental review of potential conflicts of interest subsequent to an SRE's recognition would likely occur because an SRE provided updated processes and procedures under § 29.22(p), as part of the quality assurance processes provided for in § 29.23, and through the review process under § 29.26.

The Department agrees that potential or actual conflicts of interest could arise beyond an SRE recognizing its own IRAPs or offering services to current or prospective IRAPs. The Department, therefore, has amended the regulatory text of the final rule to make the list of conflicts that must be addressed nonexhaustive. Regarding potential financial conflicts, the Department notes that entities must demonstrate their ability to be financially stable for the next 5 years under § 29.21(b)(3). The Department will ensure that an entity's application accounts for the possibility of having to suspend or derecognize IRAPs if necessary, thereby ensuring that its financial viability is not based on certifying as many IRAPs as possible at the expense of recognizing only high-quality programs.

The Department removed the attestation in Section V.E. of the proposed Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form that would have addressed conflicts of interest by requiring an attestation. By replacing the attestation in the proposed form with the application requirement in § 29.21(b)(6), the Department is requiring that entities must address actual or potential conflicts of interest in their applications or be ineligible for recognition from the Department. In addition, the Department requires in § 29.21(a) that all entities attest that information provided is true and accurate. Thus, an entity that makes a false statement regarding conflicts of interest in its application may still be subject to potential criminal penalties under 18 U.S.C. 1001.

The Department agrees that different types of entities that are eligible to become recognized SREs could present different potential conflicts of interest. The Department anticipates that applicants will be in the best position to identify and mitigate actual or potential conflicts of interest that may be unique to the type of entity applying. No change to the text has been made in response to this comment.

The Department agrees that SREs should be required to provide requested materials to the Administrator, so the wording in § 29.23(b) has been changed from *should* to *must.* However, no change to the text has been made to require IRAPs to share information with the Department, because the Department collects no information directly from IRAPs. The Department declines to limit SRE eligibility to non-profit organizations or to require that operating expenses be paid from a trust. The Department envisions that model policies will necessarily be situation-specific and that a model policy for a consortia of private entities may not meet the needs of model policies for an educational institution or community colleges. Model policies would necessarily be dependent on the type of entity, the variety of actual and potential conflicts present, and the geographic scope of the entity. The Department cannot provide model policies tailored to each type of organization and each type of potential conflict in the preamble to the final rule.

Section 29.23 Quality Assurance

Section 29.23 provides that the Administrator may request and review materials from an SRE to determine whether the SRE is in conformity with the requirements of the subpart and may conduct periodic compliance assistance reviews. It also states that SREs must provide requested materials, consistent with § 29.22(a)(3), and clarifies that the Administrator may use the information described in this subpart to recognize, review, suspend, or derecognize SREs.

Many commenters expressed concern that the proposed rule did not provide adequate monitoring and quality assurance of SREs and IRAPs. Commenters also warned that the proposed rule did not provide sufficient authority to the Department to take action when IRAPs fail to protect apprentices. A few commenters stated that the proposed rule lacked quality assurance mechanisms to hold IRAPs or SREs accountable for poor program outcomes. Other commenters faulted the Department for not including a quality assurance mechanism for direct review of IRAPs.

The Department has made changes to § 29.23(a) and (b) and added a new paragraph (c), as discussed further below, to strengthen its oversight of SREs. The Department acknowledges commenters' concerns about oversight of IRAPs. Nevertheless, the Department declines to add additional measures in this section for Departmental oversight of IRAPs. The Department believes that SREs, following all the requirements of this rule, are best situated to directly monitor IRAPs, especially given SREs' responsibilities for recognizing IRAPs, developing and implementing policies and procedures applicable to the industries and occupational areas in which they will be recognizing IRAPs, and ensuring that the IRAPs they recognize continue to meet the standards of high-quality apprenticeships as set forth by the Department. It is also worth noting that the Department will be collecting and assessing data about the performance of IRAPs, as discussed in § 29.22(h). Further, as discussed in § 29.22(a)(4), the Department's standards of high-quality apprenticeship set forth the requirements for safeguarding the welfare of apprentices and ensuring quality training, progressively advancing skills, and industry-relevant credentials. As the rule makes clear, an

IRAP must comply with the requirements of high-quality apprenticeships and with its SRE's policies and procedures. The SRE must also establish a quality-control relationship with its IRAPs that meets the requirements of § 29.22(f). This rule gives the responsibility of monitoring IRAP compliance to the SREs in the first instance; the Department then exercises its oversight authority to ensure that SREs and, by extension, the IRAPs they recognize are meeting the requirements of this subpart. Thus, the Department retains ultimate oversight authority of the IRAP program through its oversight of SREs. In response to several comments, discussed below, the Department has added language to § 29.23 to clarify its quality assurance role.

Commenters recommended that the Department require regular reviews and assessments of SREs and IRAPs by the Administrator. One commenter recommended that the Department conduct such assessments on a quarterly basis. Another commenter compared SREs to SAAs in the registered apprenticeship context and suggested that the Department similarly conduct assessments through on-site reviews, self-assessments, and reviews of SREs' policies and procedures.

The Department agrees with commenters' suggestions regarding the Administrator's ability to conduct reviews of SREs, but not the mandated frequency, and has added that the Administrator ''may conduct periodic compliance assistance reviews of [SREs]'' to § 29.23(a). The Department intends that these reviews be an assessment of the SRE's compliance with this subpart and an opportunity to provide assistance that the SRE may need to come into compliance with this subpart. The Department envisions engaging in a collaborative process with the SRE, as appropriate, to assist the SRE in achieving compliance prior to initiating any further review under § 29.26. The Department also notes, however, that the results of a compliance assistance review could lead to a formal review under § 29.26.

The Department disagrees with the recommendation to mandate quarterly reviews of SREs. The Department believes that the quality assurance set forth in this section, including the Administrator's ability to request information when necessary, is sufficient. Quarterly reviews of SREs would be unduly burdensome, unnecessary, and unlikely to yield useful information. Rather, the yearly SRE reporting requirements in § 29.22(h), combined with the Department's authority under this section to conduct periodic reviews of SREs and request information as needed is the most efficient manner for the Department to obtain relevant information and monitor compliance. The Department may also initiate a review of an SRE under § 29.26 if it receives information indicating that the SRE is not in substantial compliance with this subpart or that it is no longer capable of continuing as an SRE.

The Department has also made a minor modification to § 29.23(a) to improve readability by changing ''to ascertain [SREs]' conformity'' to ''to ascertain their conformity.''

Several commenters noted that the proposed rule only requires that the SRE ''should'' provide materials requested by the Administrator, suggesting an aspirational goal rather than a requirement to comply with the Administrator's requests. The Department has changed the language in § 29.23(b) from ''should'' to ''must'' and added ''to the Administrator'' to clarify that SREs are required to provide any program information to the Administrator upon request.

Another commenter recommended adding a provision to § 29.23 requiring that the Administrator regularly evaluate IRAPs using the performance data provided by SREs. Other commenters made similar suggestions about using data and performance metrics to monitor and evaluate IRAPs and SREs. The Department agrees with the commenters' recommendation to add an additional provision to § 29.23 concerning data and performance information. To address this, the Department has added a new provision at paragraph (c): ''The information that is described in this subpart may be utilized by the Administrator to discharge the recognition, review, suspension, and derecognition duties outlined in § 29.21(c)(1), § 29.26, and § 29.27 of this subpart.'' The Department has added this provision to clarify that any information collected under this subpart, which includes information provided to the Department under § 29.22(h), may be used to monitor and evaluate SREs at the recognition phase, as a part of the Administrator's review of the SRE, or as a part of suspension or derecognition. The data and performance requirements detailed in 29.22(h) also allow the Department to collect and review program-level outcomes. In performing quality assurance activities, the Administrator may learn or otherwise come into the possession of commercial or financial information of SREs, IRAPs, and any other entities serviced by these entities. FOIA exemption (b)(4) exempts from mandatory disclosure under FOIA trade secrets and certain commercial or financial information. The Trade Secrets Act prohibits the disclosure of trade secrets and confidential business information without legal authority. The Department will keep as private and confidential, and will not disclose, unless required by law, any information provided to the Department under this section that is ''both customarily and actually treated as private by'' the SRE or IRAP. *Food Mktg. Inst.* v. *Argus Leader Media,* 139 S. Ct. 2356, 2366 (2019).

As for the comment about regularly assessing the data, the Department notes that it will utilize the data at SRE re-recognition, every 5 years. Otherwise, the Department may also assess data annually upon receipt of the required information from SREs, in response to a complaint against an SRE, or upon review of an SRE under § 29.26. The Department has determined that there is no additional need to specify how frequently the Administrator will be assessing data and performance metrics.

Section 29.24 Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs

Section 29.24 requires the Administrator to make publicly available a list of SREs and the IRAPs they recognize. Section 28.28 requires the Administrator to include an SRE's suspension on this list. As discussed below, final § 29.28 now requires the Administrator to include derecognized SREs on this publicly available list mandated by § 29.24.

A few commenters discussed § 29.24. Commenters primarily sought clarification relating to implementation and maintenance of this list. Others recommended the Department make publicly available on a website many other types of documents associated with the SRE recognition process and performance data for IRAPs. Some commenters suggested more specificity with regard to how the Department will collect information necessary for the list, and the frequency and method by which the Department will make this list publicly available.

The Department added information to expand the usefulness and purpose of the list. As discussed below, final § 29.28(b) requires the Administrator to update this public list to reflect recognition, suspension, and derecognition of SREs and IRAPs. Accordingly, the Department has modified § 29.24 to include SREs suspended and derecognized under § 29.27, not just SREs favorably

recognized, as well as IRAPs that an SRE has suspended or derecognized under § 29.22. The Department's publication of a list of SREs and IRAPs now serves two purposes: To inform the public, including apprentices and potential apprentices, of IRAPs that have been recognized by an SRE; and to apprise the public and IRAPs of any changes to an SRE's recognition status, including suspension and derecognition.

The Department plans to provide SRE and IRAP recognition information in an easy-to-access, user-friendly format on the Department website. As SRE applications are reviewed and granted recognition, the Department will refresh this recognition information periodically, clearly noting the date of the most recent update. As discussed in § 29.22(h), the Department agrees with commenters' concerns about additional transparency and is now requiring performance reporting directly to the Department. As for SRE application information, the Department responded to a number of concerns from commenters regarding the SRE application process in § 29.21 by strengthening the required submissions for consideration by the Department.

The Department encourages interested parties to check the Department's website frequently for the current list of SREs and IRAPs. Any clarifications about this list of SREs and IRAPs will be issued via the Department's website.

Proposed § 29.25 (Expedited Process for Recognizing Industry Programs as Registered Apprenticeship Programs)

In the NPRM, § 29.25 proposed a process for the Administrator to consider IRAPs for expedited registration under subpart A's registered apprenticeship program whereby recognized IRAPs could have requested that OA register it within 60 calendar days of the Administrator's receiving all information necessary to make a decision. In this final rule, the NPRM's proposed provisions are not carried forth and are deleted. Accordingly, §§ 29.26 through 29.31 of the NPRM have been redesignated in this final rule as §§ 29.25 through 29.30.

While the Department received no comments supporting the proposed expedited registration process, some commenters questioned the purpose of the expedited registration proposal.

One commenter asserted that the proposed rule provided no explanation as to why, if an IRAP seeks approval to become a registered apprenticeship program, it receives special treatment and is handled more expeditiously than any other apprenticeship program. Another commenter suggested that the final regulations should specify, explicitly and clearly, the ineligibility of IRAP participants from Davis-Bacon and State prevailing-wage coverage. Other commenters asserted that an expedited process for IRAPs would be insufficient to ensure IRAPs meet the same quality standards as registered apprenticeships, put organizations seeking registration under subpart A at a disadvantage, and lessen the apprenticeship opportunities for women, minorities, and other protected classes. Other commenters suggested that an expedited registration process could interfere with registered apprenticeship program management, integrity, and operations in States where an SAA is the registration agency for programs registered under subpart A. Another commenter suggested that SAAs should have the opportunity to approve or reject IRAPs based on existing State standards for registered apprenticeships. Numerous commenters suggested that the Department should remove the proposal for expedited registration.

E.O. 13801 directed the Department to assess whether proposed regulations might provide IRAPs recognized under subpart B with expedited and streamlined registration under the Department's registered apprenticeship program. Accordingly, the NPRM included proposed regulatory text that would permit such an expedited and streamlined registration. The NPRM also included some operational parameters specifically authorizing the Administrator to request additional information and requiring the Administrator to make a decision within 60 days of receiving all necessary information. None of the public comments supported the proposal permitting the Administrator to use an expedited and streamlined process for registration of IRAPs to become registered apprenticeship programs. Given this lack of public support, and upon consideration of the comments either opposing or raising questions about the need for expedited registration, Department agrees with the commenters' concerns and is not finalizing the proposal regarding expedited registration. As noted in the NPRM's preamble, DOL does not expect many, if any, apprenticeship programs to seek recognition by an SRE and registration under subpart A. The Department has determined that requirements, and associated processes and procedures, established under subpart A continue to be appropriate and useful in the administration of the registered apprenticeship system by the Department and its partners in recognized SAAs.

Section 29.25 Complaints Against Standards Recognition Entities

Section 29.25 of this final rule (designated as § 29.26 in the NPRM) establishes the procedure for reporting complaints against SREs arising from SREs' compliance with the subpart. This section provides an avenue for the Administrator to learn of relevant information that might impact the SRE's continued qualification under § 29.21(b) and for potential consideration for any actions taken under § 29.26, § 29.27, or both.

Paragraph (a) of § 29.25 in this final rule provides that a complaint arising from an SRE's compliance with this subpart may be submitted by an apprentice, the apprentice's authorized representative, a personnel certification body, an employer, a Registered Program representative (someone authorized to speak on behalf of a registered apprenticeship program), or an IRAP. Some commenters suggested that the complaint process against an SRE should be open to any interested party to ensure that any party with information in regard to an SRE has an opportunity to submit information to the Administrator. One commenter supported the proposal whereby only the apprentice, the apprentice-authorized representative, an employer, or an IRAP would be eligible to initiate a complaint about an SRE in order to avoid possible conflicts of interest that may arise with other entities.

The Department's position is that an apprentice, an apprentice's authorized representative, a personnel certification body, an employer, or an IRAP are in the best position to identify potential noncompliance on the part of an SRE. While other individuals or entities may seek to gain the Department's attention and express interest in the matter, the Department may not be able to readily confirm their expertise, experience, or association with the SRE, or their particular relevance to the filing of a complaint. Nothing precludes these individuals or entities from providing the Department with information, if they believe it has relevance and usefulness to a complaint against an SRE. It is the Department's purview to assess that information and determine propriety and relevance. Therefore, the Department declines to expand the list of individuals or entities who may file a complaint against an SRE.

Additionally, the final rule deletes ''a registered apprenticeship representative'' from the list of individuals or entities that can file a

complaint against an SRE under this section. As detailed above in discussion of proposed § 29.25, the Department is removing from the final rule the proposal for an expedited registration process for IRAPs recognized by an SRE seeking registration under subpart A. Therefore, a Registered Program representative will not automatically be in a position of knowledge, experience, or expertise with an SRE in the context of the IRAP initiative established under subpart B, and for the reasons discussed above, cannot file a complaint. Accordingly, § 29.25(a) of this final rule carries forward the provisions proposed in the NPRM as § 29.26(a) but removes references to a Registered Program representative.

Proposed paragraph (b) described the requirements for complaints submitted to the Administrator. The proposed language required, among other things, that the complaint be in writing and be submitted within 60 days of the circumstances giving rise to the complaint, contains relevant information, and has what is needed to determine whether the complaint warrants review under proposed § 29.27 (finalized as § 29.26). Numerous commenters stated that the proposal was unduly restrictive, because complaints must be filed within 60 days of the incident the complaint arises from, not within 60 days of when the complainant acquires actual knowledge of the circumstances giving rise to the complaint. Some commenters requested the time limit for filing a complaint be extended to at least 180 days, which aligns with the time limit for filing a discrimination complaint at the EEOC. Another commenter suggested a 90-day timeframe for filing a complaint. Finally, one commenter recommended the Department provide instructions for complaints submission via online portals or specific mailing addresses.

The Department agrees with concerns that the time period for filing a complaint should be expanded and that more specificity is needed. The Department has adopted in the final rule two changes recommended by commenters. In the final rule the time period is changed from 60 days to 180 calendar days, and the starting point for the time period is the complainant's actual or constructive knowledge of the circumstances giving rise to the complaint, not simply when the circumstances occurred. The Department has also removed from paragraph (b) the proposed requirement for copies of pertinent documents and correspondence to accompany the complaint submission to the Administrator. The Administrator can request relevant parties provide copies of these documents during the Department's review of the complaint. The Department has removed this sentence due to the potential legal issues regarding complainants' ability to possess and disclose proprietary information. The Department has adjusted final § 29.25(b) accordingly. The Department has not adopted the recommendation to include instructions for complaint submission via online portals or specific mailing addresses into the regulatory text. Website and mailing addresses may change and are easier to update on the Department's website and in technical assistance materials.

Paragraph (c) of § 29.25 in this final rule clarifies that the Department will address complaints submitted to the Department only through the review process outlined in § 29.26. One commenter recommended that the process outlined in proposed § 29.26 (finalized as § 29.25) should not be the only means to resolve a complaint against an SRE under this subpart. As discussed below, the review of an SRE established by § 29.26 is thorough and ensures a fulsome process for hearing and addressing complaints against SREs. Adhering to this singular process, rather than permitting the possibility of alternative options for handling complaints, will maintain uniformity, consistency, and transparency in the Department's oversight of SREs and administration of the IRAP program. Additionally, the Department notes that complaints or matters regarding SRE conduct that are beyond the scope of § 29.25 (such as adherence to applicable Federal, State, and local laws for EEO) should be handled by the appropriate, applicable authority. Therefore, the Department has determined that for the purposes of complaints brought against SREs under § 29.25, the Administrator's review of SREs following requirements outlined in § 29.26 is adequate and appropriate for SREs. No change was made in the regulatory text in response to this comment.

In the NPRM, proposed § 29.26(d) (redesignated as § 29.25(d) in the final rule) provided that nothing in the section would preclude a complainant from pursuing any remedy authorized under Federal, State, or local law. The Department did not receive any comments on paragraph (d). The final rule adopts the section as proposed with the exception of the two changes discussed above in § 29.25(a) and (b).

Section 29.26 Review of a Standards Recognition Entity

Section 29.26 of this final rule (designated as § 29.27 in the NPRM) outlines the process for the Administrator's review of SREs. It allows the Administrator to initiate a review that may ultimately result in suspension of the SRE, if the Administrator receives information indicating that an SRE is either not in substantial compliance with this subpart or may no longer be capable of continuing as an SRE. This section also provides an SRE with the opportunity to respond to the Administrator with relevant information, which could include information showing the SRE has acknowledged and taken steps to resolve any deficiency, making suspension unnecessary. The Department has made clarifying edits to this section.

One commenter suggested that proposed § 29.27 (Review of a Standards Recognition Entity) would be more accurately titled ''SRE application and review process.'' The Department did not change the title of proposed § 29.27 (finalized as § 29.26) as suggested because a formal review under this section would involve an already-recognized SRE and not a review of an initial application for recognition. The application process to become a recognized SRE is addressed in § 29.21.

Another commenter suggested that complaints about SREs need to be heard and appropriately addressed and that a mechanism is needed for forcing immediate derecognition of an IRAP found in violation.

The Department appreciates the concern that complaints against an SRE need to be heard and appropriately addressed. The Department has determined that this section, with the clarifying edits noted below, will ensure that complaints against SREs are heard and appropriately addressed. The Department did not incorporate changes into this section that would require immediate derecognition of an IRAP found to be in violation. The Department notes that this section addresses complaints against SREs and not the IRAPs that they recognize. A review under this section could be initiated based on an SRE's failure to ensure that its IRAPs comply with this subpart. DOL anticipates that SREs would ultimately derecognize IRAPs that remain in violation of the SRE's requirements or this subpart after appropriate fact-finding is conducted. If an SRE allows IRAPs to remain out of compliance with § 29.22 or other provisions of this subpart, the SRE itself

may be suspended or derecognized. No change was made in the regulatory text in response.

Paragraph (a) of § 29.26 in this final rule explains that an Administrator may initiate review of an SRE if it receives information indicating that the SRE is not in substantial compliance with this subpart, or that the SRE is no longer capable of continuing as an SRE. For example, the Administrator may learn of such information through an SRE's notification of a substantive change under § 29.21(c)(2), a complaint under § 29.25, or an SRE's reports under § 29.22(h), among other methods. The Department does not intend for the receipt of information to be limited to formal channels such as mail or email. The Department may initiate reviews if evidence indicating that an SRE may not be in substantial compliance is available in the public domain.

Several commenters suggested that, to be allowed to operate, SREs should be required to remain in full compliance with applicable laws and regulations, rather than being allowed to be substantially compliant. A commenter suggested that full compliance would be in the best interest of apprentices. Alternatively, the commenter proposed that SREs be permitted to remain in substantial compliance for a limited period of time. One commenter proposed that substantial compliance be further defined to explain whether the Department considers some regulatory requirements to be more important than others. The commenter characterized substantial compliance as affording leeway, and suggested that the Department is bound to make arbitrary decisions if it does not further explain the types of noncompliance that will not result in suspension or derecognition.

A commenter proposed that the Department clarify how it would determine that an SRE is no longer capable of functioning. Another commenter suggested that reviews should be mandatory and ongoing, rather than left to the discretion of the Administrator.

The Department has determined that it would be most appropriate to carry forward the standard of substantial compliance in the final rule. However, the Department anticipates that SREs generally will be able to achieve full compliance with this subpart. The standard of substantial compliance allows the Administrator to suspend or derecognize an SRE for failure to fulfill any requirement of this subpart, except for minor technical, mathematical, or clerical errors that can in all likelihood be corrected by the SRE once brought to the SRE's attention. Suspending or derecognizing SREs for minor technical, mathematical, or clerical errors that do not impact the quality of training delivered by IRAPs may not be in the best interest of apprentices because it could result in an IRAP having to apply to a different SRE for recognition. The standard of substantial compliance is not intended to suggest that certain provisions in this subpart are less important than others. The Department has determined that emphasizing certain standards over others in the review, suspension, and derecognition process would be unworkable and has determined it to be appropriate to instead focus on the underlying violation and its potential impact on apprentices. For example, the Administrator would not suspend an SRE for omitting a digit in an IRAP's address resulting in a failure to report up-to-date contact information. If, however, an SRE chose not to report updated contact information as required, the SRE would have failed to fulfill the requirements of this subpart in a manner not based on a minor technical, mathematical, or clerical error. The standard of substantial compliance is carried over from the NPRM and text in § 29.26(a) is adopted without changes.

The Department has similarly decided not to limit the period for which an SRE can be substantially compliant. The Department expects that full compliance will be achieved by SREs and, as discussed above, it has determined that certain minor deficiencies may be more appropriately addressed through the procedures provided for in § 29.23 in the first instance. However, the Department has determined that such a timeframe is not susceptible to precise definition and, even if it were, such instances can and should be handled on a case-by-case basis.

The Department intends ''no longer capable of continuing'' to be interpreted to encompass scenarios in which the SRE becomes unable to perform most or all required functions. Such scenarios might include an SRE no longer being financial solvent or unable to continue as a going concern, as well as the SRE's being debarred. The Department has included this second standard to minimize the uncertainty for IRAPs and apprentices in the limited, sudden situations where circumstances make it immediately evident that an SRE is no longer capable of functioning, even if a lack of substantial compliance is not immediately evident. For example, a natural disaster could irreparably damage SRE's resources and infrastructure, and as a result, its leadership announces that it is no longer a going concern. This separate basis provides a clear basis for derecognition in this situation rather than going through the administratively inefficient process of generating a basis for derecognition based on a lack of substantial compliance. Additionally, it is conceivable that an SRE could have met all requirements of this subpart, including its reporting requirements, up until a sudden traumatic event and decision to stop operating, which could lengthen the derecognition process and create unnecessary uncertainty for IRAPs recognized by that SRE.

The Department declines to make reviews mandatory and ongoing. Reviews are intended to be in response to the Department's being made aware of an SRE's potential failure to remain substantially compliant. Moreover, the Department will also offer compliance assistance reviews under § 29.23 to any SREs that request such assistance. No changes were made to the text in response to these comments.

Paragraph (b) of § 29.26 describes the notice of review SREs would receive, and procedures the Administrator would follow in carrying out such a review. The Administrator would provide the SRE written notice of the review by certified mail, with return receipt requested. The notice would describe the basis for the Administrator's review, including potential areas in which the SRE is not in substantial compliance with the subpart and a detailed description of the information supporting review. The notice will provide the SRE with an opportunity to provide information for the Administrator's review, thereby helping to ensure that the Administrator is fully and fairly informed as the Administrator seeks to evaluate the SRE in light of paragraph (a) of this section. This opportunity also provides the SRE with the option of providing information that would show that no deficiency exists or that the identified deficiency was cured, making suspension unnecessary.

The Department did not receive any comments on this paragraph, and the final rule substantively adopts the paragraph as proposed. However, the Department has corrected the language in the proposed rule that would have required that the Administrator include potential areas of ''substantial noncompliance'' with a requirement that the Administrator identify potential areas in which the SRE is not in substantial compliance. The change is consistent with the Department's intention, as noted above, to require that SREs remain in substantial compliance with this subpart or risk suspension.

Referring to the standard as substantial compliance in paragraph (b) also serves to align paragraph (b) with paragraph (a).

Paragraph (c) of § 29.26 in this final rule provides that on conclusion of the Administrator's review, the Administrator will give written notice of the decision either to take no action or to suspend the SRE as provided under § 29.27. The Department did not receive any comments on this section. The final rule adopts the provision as proposed.

Section 29.27 Suspension and Derecognition of a Standards Recognition Entity

Section 29.27 of this final rule (designated as § 29.28 in the NPRM) describes the means by which the Administrator can suspend and, if necessary, derecognize an SRE. Such a process is necessary to ensure that an Administrator can address an SRE's failure to remain substantially compliant with this subpart or its inability to continue as an SRE. It also provides the SRE with an additional opportunity to work with the Administrator to address failures to remain in substantial compliance. Overall, these steps preserve the integrity of the recognition process necessary for high-quality IRAPs. To clarify and better align this section with the bases for review in § 29.26(a), the Department has added ''or circumstances that render it no longer capable of continuing as an SRE, or both'' to § 29.27(b), (c)(1), (c)(1)(i), and (c)(1)(ii) to this final rule. This indicates that both bases for review under § 29.26(a) can result in suspension or derecognition.

Paragraph (a) of § 29.27 in this final rule begins by explaining that the Administrator may suspend an SRE for 45 calendar days based on the Administrator's review and determination that any of the situations described in § 29.26(a)(1) (the SRE is not in substantial compliance with the subpart) or (a)(2) (the SRE is no longer capable of continuing as an SRE) exist.

If, after the review required by § 29.26, the Administrator has determined that suspension is appropriate, (a) requires that the Administrator must provide notice of suspension in accordance with § 29.21(d)(2) and (3). The notice must state that a request for administrative review may be made within 45 calendar days of receipt of the notice. No comments were received on this paragraph and the text is adopted as proposed.

Paragraph (b) of § 29.27 in this final rule requires that the notice set forth an explanation of the Administrator's decision, including identified areas in which the SRE is not in substantial compliance and necessary remedial actions. It also requires that the notice explain that the Administrator will derecognize the SRE in 45 calendar days unless remedial action is taken or a request for administrative review is made.

Several commenters stated that the proposed rule lacks criteria by which DOL should determine the suspension or derecognition of SREs. In addition, a commenter proposed that the final rule ''address the situation where a nascent occupation actually evolves along the continuum of becoming a bona fide profession, and determine at what point the SRE should be suspended or derecognized such that oversight can properly transition to an entity more akin to a professional association.''

The Department has provided criteria for suspension or derecognition—whether the SRE is not in substantial compliance or incapable of continuing to act as an SRE. The Department will notify SREs of potential areas in which the SRE is not substantially compliant at the outset of a review, as required by § 29.26(b). The Department therefore expects that any SRE would know that the Department considers a violation of this subpart to be grounds for suspension if left uncorrected.

In response to the comment proposing that an SRE be derecognized if a nascent occupation evolves into a bona fide profession, the Department does not intend to establish procedures by which an SRE would be derecognized as a result of its success in developing a new and innovative occupation into a bona fide profession. As discussed above, an SRE would be suspended or derecognized only if the Administrator determines that the SRE is not in substantial compliance with this subpart or is no longer capable of acting as an SRE. The Department made one change to paragraph (b), which was to replace the reference in the proposed rule to substantial noncompliance with substantial compliance to align final § 29.27(b) with final § 29.26(a).

Paragraph (c) of § 29.27 in this final rule outlines the various outcomes that could follow the notice of suspension. Each outcome depends on the SRE's response to the notice. Under § 29.27(c)(1), if the SRE responds by specifying its proposed remedial actions and commits itself to remedying the identified areas in which the SRE is not in substantial compliance, the Administrator will extend the 45-day period to allow a reasonable time for the SRE to implement remedial actions. If at the end of that time the Administrator determines that the SRE has remedied the identified deficiencies, the Administrator must notify the SRE, and the suspension will end. In the alternative, if at the end of that time the Administrator determines that the SRE has not remedied the identified deficiencies, the Administrator will derecognize the SRE and must notify the SRE in writing and specify the reasons for its determination. Such notice must comply with § 29.21(d)(2) through (3).

A commenter suggested that proposed § 29.28(c)(1)(ii) (redesignated as § 29.27(c)(1)(ii) in the final rule) should be expanded to require that DOL notify not just the SRE, but also the IRAPs and associated apprentices under the SRE, of the SRE's derecognition. DOL agrees with the suggestion that notice be provided to IRAPs, and the final rule incorporates such a requirement. However, for reasons of readability and clarity, the Department has added the requirement to § 29.28 of this final rule (designated as § 29.29 in the NPRM), which addresses other impacts of derecognition on IRAPs. The Department notes that SREs are not required to collect personally identifiable information relating to apprentices or to provide such information to DOL, and DOL would thus be unable to reliably provide notice of an SRE's derecognition to individual apprentices. However, § 29.28 of this final rule has also been amended to clarify that the Administrator will work with SREs and IRAPs to notify all apprentices in those programs. The Department anticipates that the Administrator's notice to IRAPs would request that the IRAPs take all actions necessary to notify impacted apprentices. In addition, the Department has added a requirement that DOL publish notice of the derecognition on the public list described in § 29.24.

Another commenter suggested that all action pertaining to suspension and derecognition be made publicly available, but the Department declines to make all actions relating to suspension or derecognition publicly available. Notably, the Administrator will provide notice to the public of an SRE's suspension pursuant to § 29.27(d)(2) and an SRE's derecognition pursuant to § 29.28(b), as explained above. The Department has determined, however, that providing notice of other actions relating to suspension or derecognition, such as the initiation of a review, would be of limited benefit to the public, as many reviews may not result in suspension or derecognition.

Under § 29.27(c)(2), if the SRE responds to the notice by making a

request for administrative review within the 45-day period, the Administrator must refer the matter to the Office of Administrative Law Judges to be addressed in accordance with § 29.29. The Department determined that an appeal right is appropriate given the significant impact of suspension on SREs under paragraph (d) of § 29.27, which bars the SRE from recognizing new programs during suspension and requires the Administrator to publish the SRE's suspension publicly as described in § 29.24.

Under § 29.27(c)(3), if the SRE does not act in response to the notice under paragraphs (c)(1) or (c)(2) of this section, the Administrator will derecognize the SRE, as indicated in the notice already given to the SRE under paragraph (b) of this section. Absent recognition, an entity is no longer and may not function as an SRE under this subpart. This means the former SRE could neither recognize apprenticeship programs, nor remain listed as a recognized SRE on the Administrator's website under § 29.24. The Department received no comments on this paragraph. One grammatical change was made to replace ''accord'' with ''accordance'' in paragraphs (a) and (c)(2) of § 29.27.

Paragraph (d) of § 29.27 in this final rule explains what will take place during an SRE's suspension. Paragraph (d)(1) of this section explains that an SRE is barred from recognizing new programs during the suspension period. Paragraph (d)(2) of § 29.27 explains that the suspension will be published on the public list referenced in § 29.24.

The Department received one comment on this paragraph, suggesting that the Department clarify who will oversee IRAPs recognized by an SRE that is subsequently suspended or derecognized. The Department's response to this comment was addressed in final § 29.28, as discussed below.

An SRE that is suspended may not recognize or re-recognize IRAPs during the suspension period. Unless otherwise noted in the Department's notice to an SRE, the Department expects that an SRE would continue to perform other functions required by this subpart during any suspension period, including, for example, continuing to comply with the responsibilities provided for in § 29.22. Paragraph (d)(2) of § 29.27 explains that the Administrator will publish notice of the SRE's suspension on the public list described in § 29.24. No changes were made to the regulatory text in response to this comment.

Section 29.28 Derecognition's Effect on Industry-Recognized Apprenticeship Programs

Section 29.28 of this final rule (designated as § 29.29 in the NPRM) explains the effects an SRE's derecognition would have on IRAPs that it recognized. Under § 29.28(a), an IRAP would maintain its status until 1 year after the Administrator's decision derecognizing the IRAP's SRE becomes final, including any appeals. At the end of that time, the IRAP would lose its status unless it is already recognized by another SRE. A few commenters, including a State government agency and an advocacy organization, requested clarification in the final rule regarding the impact of SRE derecognition. These requests included: What happens if the SRE appeals the derecognition decision; who manages the IRAP during the appeal; who monitors the IRAP during this 1-year period; and what is the fate of the apprentices if the IRAP loses its status. An advocacy organization noted that the proposal ''lacks information about how apprentices will be protected'' if an IRAP loses its recognition and recommended that DOL ''outline protections for learners in derecognized programs and outline DOL's role in protecting workers, especially youth and students.'' One of the commenters, an industry group, raised additional questions as to why an IRAP retains its status for 1 year after its SRE is derecognized, including what the basis for a 1-year time allotment is, whether another SRE would be available in rural areas or less popular trades, and what happens if the IRAP finds another SRE, but that SRE has a competing IRAP already in place. Some State government agencies expressed concern that allowing programs to receive recognition from multiple SREs could result in programs shopping around for approval following denial.

The Department shares commenters' general concerns regarding SRE derecognition and the impact on IRAPs and apprentices due to derecognition. In this final rule, the Department has significantly strengthened the recognition process and the requirements for maintaining recognition, including new operational, reporting, and performance requirements contained in §§ 29.21, 29.22, and 29.23. This final rule adds transparency regarding the significant responsibilities SREs are undertaking with their recognition, and more clearly puts potential SREs on notice regarding the Department's expectations for high-quality, high-performing programs. Additionally and importantly, along with new § 29.28(b) discussed below, these provisions strengthen the Department's role in holding SREs accountable. From the outset, the Department believes these changes will serve as an increased deterrent against unqualified or subpar entities seeking to become recognized SREs.

With the standards the Department is putting into place in this final rule, it is possible that derecognition may need to occur. The Department intends to work closely with any SREs that need assistance to avoid that outcome. However, should derecognition occur, the Department has maintained the 1-year transition period for IRAPs to find recognition with another SRE. The Department will, to the extent practicable, assist with this process, and notes the commenters' concerns that special attention needs to be paid to rural areas. As stated in the NPRM, the Department anticipates that the IRAP will continue to adhere to the SRE's rules even if the SRE ceases to exist. That is, the final rule's requirements to become a recognized SRE, as established in § 29.21, and the detailed responsibilities and requirements of SREs set forth in § 29.22, mean that SREs will, in effect, set up a ''blueprint'' for how IRAPs are built and maintained. IRAPs built around such a blueprint are likely to retain their nature and structure for some period of time, even if the SRE ceases to exist.

Lastly, recognizing the concerns raised here and elsewhere, the Department strengthened notification requirements after derecognition in § 29.22(m) above and § 29.28(b) below. The Department has made no changes to this provision and adopts § 29.28(a) as proposed.

In the NPRM, paragraph (b) of proposed § 29.29 provided that if an IRAP is also registered under subpart A in the registered apprenticeship program, the derecognition of its SRE would not impact its registration status.

Although the Department received no comments on the provision, the Department has determined that this provision is not necessary since the two programs are clearly distinct. To avoid unnecessary text and potential confusion, the final rule does not carry forward this provision.

The final rule instead inserts a new provision in paragraph (b) of § 29.28 establishing two new requirements for the Administrator. First, the Administrator must update the public list of SREs required in § 29.24 to reflect derecognition status for SREs that have been derecognized. Second, the Administrator must notify the IRAPs impacted by this derecognition. These

additional notifications, both on the publicly available list of SRE status and the individualized notification from the Department, provide the impacted IRAP(s) with information that, if it wishes to continue operations as an IRAP, it should seek to be recognized by another SRE recognized under this subpart if it has not already done so. Additionally, the Department intends for the Administrator to work with the derecognized SRE and the impacted IRAPs to notify all apprentices in those impacted programs.

Section 29.29 Requests for Administrative Review

Section § 29.29 of this final rule (designated as § 29.30 in the NPRM) describes procedures and requirements for requests for administrative review under this subpart. A prospective SRE may request review of the Administrator's denial of recognition as provided under § 29.21(d). Likewise, an SRE may appeal the Administrator's decisions under § 29.27. The process for requesting administrative review exists to ensure that prospective and recognized SREs have an adequate opportunity to express their positions and to ensure that their rights are protected. The provisions are generally modeled after the process outlined in current 29 CFR 29.13(g), which outlines the requirement for OA's denial of SAA recognition under subpart A.

Paragraph (a) of § 29.29 in this final rule provides that, within 30 calendar days of the filing of a request for administrative review, the Administrator should prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge. Paragraph (b) of § 29.29 in this final rule provides that the procedural rules contained in 29 CFR part 18 apply to the disposition of requests for administrative review, with two exceptions. Paragraph (c) of § 29.29 in this final rule provides that the Administrative Law Judge should submit proposed findings, a recommended decision, and a certified record of the proceedings to the Administrative Review Board, SRE, and Administrator within 90 calendar days after the close of the record. The Department added the term ''calendar'' to Paragraph (d) of § 29.29 in this final rule to clarify that that days are calculated as calendars days for the provisions where, within 20 calendar days of the receipt of the recommended decision, any party may file exceptions to it, and where, any party may file a response to the exceptions filed by another party within 10 calendar days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae. Paragraph (e) of § 29.29 in this final rule provides that after the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Department added the term ''calendar'' to § 29.29(e) to clarify the relevant timeframe for the requirement for the Administrative Review Board to issue a decision in any case it accepts for review within 180 calendar days of the close of the record. If the Administrative Review Board does not act, the Administrative Law Judge's decision constitutes final agency action. The Department previously established systems of discretionary secretarial review over the decisions of the ARB to ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, and thereby fulfill his duty to take care that the laws be faithfully executed. Under this system, the Secretary would not exercise review over ARB cases until after a decision has been rendered. This final rule reflects these changes by requiring the ARB to ''issue a decision'' and removes the conclusion that such a decision ''constitutes final agency action.'' Finally, the final rule includes a standard of review in a new paragraph (f) to provide procedural clarity to Administrative Law Judges and the Administrative Review Board when considering appeals. This paragraph states that Administrator's decision under this subpart will be upheld ''unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'' This standard of review is common under the Administrative Procedure Act and other appeals under statutes implemented by ETA.

Two commenters recommended two considerations for proposed § 29.30, Requests for Administrative Review (redesignated as § 29.29, Requests for Administrative Review, in the final rule). First, the commenters asserted that Administrator's decisions to find noncompliance issues and derecognize an SRE should be subject to internal review by the Administrator before the matter is referred to an Administrative Law Judge. Second, the commenters recommended time limits for such appeals should match those of the 29 CFR part 29 subpart A.

The Department notes that the first recommendation—internal review before making a decision to suspend and, if warranted, derecognize an SRE—appears duplicative of the review procedures in § 29.26, Review of a Standards Recognition Entity, and § 29.27, Suspension and Derecognition of a Standards Recognition Entity, which allow SREs to provide additional information for the Administrator's consideration before suspending or derecognizing an SRE. According to these procedures, the Administrator would weigh available evidence carefully before reaching the determination that an SRE should be suspended or derecognized. The Department therefore determined that no additional internal review is necessary beyond the procedures provided for in §§ 29.26 and 29.27.

Regarding the second recommendation for appeals process timeframes in § 29.29, the Department notes that these subpart B provisions are generally modeled on § 29.13(g), denial of SAA recognition, and include similar time limits.

Section 29.30 Scope of Industry-Recognized Apprenticeship Programs Recognition by Standards Recognition Entities

Section 29.30 of this final rule (designated as § 29.31 and titled ''Scope and Deconfliction between Apprenticeship Programs under Subpart A of this Part and This Subpart B'' in the NPRM) excludes the construction sector from the scope of the final rule. The section provides that the Administrator will not recognize as SREs entities that intend to recognize as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs. It also provides that SREs that obtain recognition from the Administrator are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities, consisting of the erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

This description of construction tracks the short description of the sector in the North American Industry Classification System (NAICS) Manual. *See* Executive Office of the President, Office of Management and Budget, *North American Industry Classification System* 16 (2017). As discussed below, many commenters asserted that the NAICS Manual's description of Sector

23—Construction best captures construction activities for the purpose of this regulation. Accordingly, in interpreting and applying § 29.30, the Department will use the NAICS Manual to determine whether an activity falls within the construction sector. In particular, the Department will draw upon the manual's description of Sector 23 as a whole as well as its descriptions of its subsectors. *See id.* at 123–41. However, it will do so only to determine whether the *activities* in which programs train apprentices fall within the definition of construction in § 29.30. DOL will not rely alone on job titles or job classifications referenced in NAICS 23 or be bound strictly by O*NET codes in determining whether § 29.30 prohibits recognition of an SRE or IRAP; rather, DOL will look holistically at all information in the SRE's application to determine whether an SRE seeks to train in construction activities.

This is a change from the proposed rule, which would have excluded sectors from the scope of the rule through a formula that was intended to capture those sectors that have significant registered apprenticeship opportunities. The Department explained in the NPRM that it expected that the formula would at least initially prohibit the Department from accepting applications from entities seeking to recognize apprenticeship programs in the U.S. military or in construction. The vast majority of the 326,000 comments received by the Department addressed this section of the proposed rule, with many calling for an express exclusion of construction from the final rule. After reviewing and analyzing the comments on this section, the Department has determined that a complete exclusion of construction, but no other sector, is most consistent with the goal of encouraging more apprenticeships in new industry sectors that lack widespread and well-established registered apprenticeship opportunities. The Department's use of the NAICS Manual description of construction activities is also different than the NPRM's suggestion for how to define the construction sector. The Department agrees with commenters that adopting the NAICS Manual's description is more consistent with the Department's economic analysis of the rule and is likely the simplest to apply.

The remainder of this section is a topic-by-topic review and analysis of the comments received on proposed § 29.31 (redesignated as § 29.30 in the final rule).

The Deconfliction Formula Proposed in the NPRM

Commenters—both those opposed to and in support of the exclusion of construction—nearly uniformly opposed the proposed deconfliction formula. The formula was intended to capture—and exclude—those sectors with significant registered apprenticeship opportunities. Under the formula, a sector with significant registered apprenticeship opportunities was one that has had more than 25 percent of all federal registered apprentices per year on average over the prior 5-year period, or that has had more than 100,000 federal registered apprentices per year on average over the prior 5-year period, or both, as reported through the prior fiscal year by the Office of Apprenticeship.

Several commenters argued there were flaws in the NPRM's proposed alternative thresholds for determining well-established opportunities in registered apprenticeship in a sector. Many commenters argued that these figures were too low; many other commenters argued the figures were too high. For example, one commenter recommended that, in the absence of a blanket exclusion of construction, the Department use a threshold of 30,000 apprentices per year on average over the prior 5-year period to identify sectors where registered apprenticeship opportunities are already significant. On the other hand, one commenter argued that the exclusion standard unfairly blocks the ''supermajority'' of nonunion construction training programs from participating in IRAPs because of significant union involvement in registered apprenticeships. This commenter argued that the Department could not assert that registered apprenticeships had adequately occupied a sector if the number of apprentices in that sector was fewer than 50 percent. Other commenters stated that the formula was illogical and unnecessary, and should be eliminated.

Several commenters stated that it was unclear from the preamble what precise method the Department would use in calculating the number of registered apprentices in a sector. These commenters questioned why the NPRM stated that the Department ''expects'' the exclusion will apply ''at least initially'' to construction and military apprenticeships. In evaluating the provision creating the formula, one commenter said the basis of the formula was ''questionable'' and described the provision as a whole as ''nebulous.'' Another commenter stated that the NPRM was unclear on how the Department would apply the exclusion—including at what time of the year and with what notice to the public—and what the scope of the deconfliction provision was. Commenters also criticized the implication that the industry sectors covered by the exclusion could change, potentially annually.

Commenters further argued that the Department's deconfliction formula was untenable because the data used by the Department is incomplete. Commenters contended that because the Department relied on data from only the 25 non-SAA States, this data did not provide a complete or appropriate description of whether certain sectors have adequate opportunities in registered apprenticeship and that the Department's methodology effectively dismissed registered apprenticeship programs in SAA States. Numerous commenters stated that the limited scope of the data available to the Department would result in significant undercounting of apprenticeships in construction in particular. Some of these commenters relied on their own data collections on construction training programs to argue that the Department's data is vague, incomplete, or inaccurate. One commenter independently secured data from the SAAs in 13 States revealing more than 75,000 additional construction industry apprentices in fiscal year (FY) 2018 in those States, and the commenter pointed out inconsistencies between RAPIDS and the Federal data contained in the NPRM.

Commenters also questioned the NPRM's discussion of the United Services Military Apprenticeship Program (USMAP) as support for the application of the formula's criteria. These commenters argued that there is great variance in how the Department and other agencies track participation in military apprenticeships as compared to civilian registered apprenticeships. A commenter maintained that USMAP mainly documents skills that service members acquire based on their ordinary, day-to-day military training and experience, as opposed to civilian registered apprenticeships, which provide trainees with skills that they may not develop otherwise. Some of the commenters also noted that the military is not a sector similar or comparable to construction and argued that USMAP programs do not align with the industry-driven focus of the IRAP model.

One commenter proposed a hybrid approach that would include both a formula and two express exclusions. The commenter suggested that the Department revise its deconfliction

formula to define ''a sector with significant registered apprenticeship opportunities'' as: (1) Construction; (2) the military; and (3) any other sector that meets a proportional or numerical threshold.

After reviewing these comments, the Department has decided to eliminate the deconfliction formula. The Department agrees that hard numerical thresholds are flawed means to determine the sectors in which registered apprenticeships are significantly established. The use of strict numerical thresholds suggests a level of precision that is currently unattainable with the data available from RAPIDS, which does not cover the entire United States. The Department also agrees that applying a formula would create significant uncertainty regarding whether any given sector would be excluded from year to year. The development of IRAPs could be chilled by that uncertainty alone; SREs and IRAP sponsors need certainty in investing in this new apprenticeship model.

Construction Exclusion

The vast majority of the over 326,000 comments that the Department received expressed opposition to the use of IRAPs in construction. These commenters called on the Department to expressly exclude construction from the IRAP rule and to make the construction exclusion permanent.

Numerous commenters asserted that the registered apprenticeship model was most appropriate for construction and expressed concern that new IRAPs would undermine the existing, effective registered apprenticeship model in the construction sector, which was described as being widespread and supported by substantial existing investment. As noted above, commenters in favor of a construction exclusion emphasized that registered apprenticeship programs serving the construction sector are well-established and that the construction sector boasts by far the highest number of apprentices. The registered apprenticeship system in the construction sector was described as the ''gold-standard.'' Numerous commenters praised the high standards for training, safety, and wage progression associated with the registered apprenticeship programs these commenters support or use, warning that the introduction of IRAPs in construction would reduce these standards and would not serve the interests of apprentices. Commenters also contended that construction IRAPs would force the erosion of the quality of registered programs by introducing a lower-quality alternative.

Generally, these commenters opposed the deconfliction formula in proposed § 29.31 (discussed above) as well as a sunset of an exclusion of construction. Many commenters expressed concern that the deconfliction formula could allow construction IRAPs in the future. Some commenters argued that permanently excluding construction was the surest way for the Department to accomplish its goal of expanding apprenticeships to sectors where it is underused.

In contrast, some commenters opposed the exclusion of construction, arguing that IRAPs would help fill skilled-training needs in the sector. Commenters argued that excluding construction contradicted the ''expansive purpose'' of the proposal to increase the number and use of apprenticeships. Commenters stated that the recognition of alternative IRAPs in the construction industry would expand the training pool without weakening or detracting from registered apprenticeship programs, and that, conversely, exclusion of construction would prolong the skills shortage in the construction industry. Commenters argued that apprenticeship is underused in the construction sector, stating that there are 144,000 apprentices in registered construction programs but several million people working in the sector. Another commenter argued that the data indicates that registered apprenticeships supply only 4 percent of the needed construction workers, demonstrating that registered apprenticeship programs alone cannot fill the industry's labor needs and skills gap. Others argued that the exclusion, and the Department's broad definition of construction, showed the Department's lack of understanding of the construction industry and its skilled-training needs. It was suggested that existing registered programs feed workers predominantly to employers on the commercial construction side of the sector, but not employers on the residential construction side. Other commenters urged the Department to be impartial in considering which sectors or industries should be included or excluded from the IRAP rule. These commenters stated that IRAPs were a new workforce development tool that employers from all industries would be eager to use.

Additionally, many commenters opposed to the exclusion noted, in their view, the difficulty in recruiting young people into construction trades and argued the construction sector needs an alternative such as IRAPs to improve recruitment and retention. Some commenters argued that the construction sector needs IRAPs as an alternative in the construction industry because registering a program with the Department or SAA can be difficult and the requirements of registered apprenticeship are too prescriptive and complicated.

Many commenters opposing the exclusion complained about registered apprenticeship programs being sponsored by or involving unions. Several commenters in the construction industry stated that they typically do not use union apprenticeship programs and asserted these programs are ineffective, overly detailed, and overlong, necessitating the need for an alternative such as IRAPs. Commenters also discussed segmentation in the construction labor market between union and nonunion workers, with union workers more likely to work on the commercial side of the sector than the residential, and cited BLS data showing that only a fraction of construction workers belonged to labor unions. Commenters suggested that IRAPs are necessary to prevent monopolization by unions of training in certain construction fields, especially those on the commercial construction side of the sector. Commenters argued that union-dominated registered programs could not address the existing labor shortage, especially in residential construction.

Commenters urged the Department not to exclude the construction sector, or (more specifically) not to exclude the residential construction sector, or (alternatively) to include a sunset provision to eventually allow competition between the registered program and IRAP models. Another commenter said union apprenticeships had ''monopolized'' the elevator trade in its State and urged the Department to allow IRAPs in elevator construction.

The Department has carefully reviewed these comments and has decided to expressly exclude the construction sector from the IRAP rule.

As explained in the NPRM, the Department's goal in this rulemaking is to expand apprenticeships to *new* industry sectors and occupations. That approach is consistent with the focus of the President's Task Force on ''sectors where apprenticeship programs are insufficient.'' This rulemaking's purpose is to expand apprenticeship in industries where apprenticeships are emerging or underutilized.

Construction is not a new industry sector when it comes to apprenticeships. Although the data available does not allow the Department to apply strict numerical thresholds, as discussed above, it does clearly

demonstrate that apprenticeships are more established in the construction sector than in any other.[16] According to RAPIDS data from February 2020, a greater proportion of construction workers are currently apprentices in registered programs than in any other sector and the ratio of current construction apprentices to the construction workforce is many times the ratio for the American economy as a whole.[17] Moreover, construction apprenticeship programs are simply more widespread and train more apprentices than in other sectors. Indeed, the construction sector accounts for over half of all current participants in registered apprenticeship programs according to RAPIDS data and accounted for nearly half over the five year period preceding publication of the NPRM. Notably, commenters opposed to excluding the construction sector did not provide persuasive evidence that contradicted the Department's conclusion that registered apprenticeship programs are more widespread in the construction sector than in other sectors.

Many commenters raised significant concerns that allowing IRAPs in the construction sector would have an adverse impact on registered construction programs. Commenters expressed their belief that construction IRAPs' introduction would reduce the quality and safety of construction jobs.

As an initial matter, the Department disagrees with commenters who contended that IRAPs will be inherently unsafe or inequitable, create a lower-skilled lower-paid workforce, or endanger any American by constructing less-safe infrastructure. The Department's requirements for SRE recognition, standards of high-quality IRAPs, and oversight measures, discussed at length above, provide the necessary safeguards, protections, and oversight to allay such concerns. The Department also has increased its oversight and the requirements of these standards in this final rule to better ensure quality and safe apprenticeship opportunities that properly instruct apprentices on how to carry out skilled work.

However, the Department acknowledges that it is possible that construction IRAPs could compete to some extent with registered construction programs. Some employer funding that currently supports registered programs might be diverted to new IRAPs or participants who otherwise would likely participate in a registered program might instead choose an IRAP, perhaps because the registered program is of longer duration than an IRAP that trains on similar activities. Because the purpose of this rulemaking is to expand the apprenticeship model into *new* frontiers, the Department has concluded that taking the risk, whatever its magnitude, of disrupting or displacing registered construction programs is not warranted at this time. The Department believes it is prudent to exclude the construction sector in light of the concerns raised by so many commenters about allowing IRAPs in that specific sector and because the construction sector in fact plainly stands out as the industry sector with the greatest existing utilization of registered apprenticeship programs.

The Department appreciates the arguments against excluding the construction sector, but ultimately disagrees with those commenters' conclusions. To begin, that union registered programs might predominate over non-union registered programs is not itself a compelling reason for or against the exclusion. Employers and employer associations can sponsor registered programs, and unions can sponsor IRAPs or become SREs. And even assuming it is true that registered programs tend to feed workers to commercial builders rather than residential builders, the Department believes that the best rule is to exclude the entire sector rather than to require the Administrator and SREs to attempt to distinguish between commercial and residential programs. Although the NAICS Manual includes residential-specific subsectors, it is far from clear that the Administrator and SREs would be able to identify programs as training in activities and skills that are applicable to only residential construction and not other construction subsectors, given the overlap in skills necessary for activities in both residential and other types of construction, much less make the distinction as consistently and fairly as required by § 29.22(d). Some commenters further complained that union-backed programs can take too long and are overly detailed. These comments are beside the point of whether there should be construction IRAPs—registered apprenticeships can be union or non-union supported and their program design can be long or short, detailed or less-detailed. The Department is adopting the construction exclusion because it sees no reason to take the risk, whatever the magnitude, of disrupting the registered programs in light of the Department's stated purpose to create an alternative pathway for developing apprenticeship programs in new industry sectors and occupations.

The Department agrees with commenters opposed to the exclusion that the market for apprentices in the construction sector is not saturated and even that demand might be much greater than supply. But, as discussed above, the Department disagrees that excluding the construction sector from the scope of the IRAP rule is inconsistent with the purpose of this rulemaking. The Department's goal is to expand apprenticeships broadly to *new* industry sectors and occupations. The Department may, and has chosen to, proceed incrementally. The Department's focus is on increasing apprenticeship opportunities in sectors of the economy which have not seen nearly the same level of apprenticeship programs and opportunities as the construction sector.

The Department also has determined that the exclusion of the construction sector from IRAP eligibility should not ''sunset,'' *i.e.,* expire after a certain date. The Department agrees that it conceivably could be appropriate in the future to reconsider its decision not to allow IRAPs in the construction sector. Among other things, that reconsideration could be based on new and compelling evidence showing, for example, that IRAPs have worked so well in other sectors that repealing the exclusion is worth risking disruption or displacement of established registered construction programs, or that registered construction programs have materially faltered either in terms of prevalence or quality. But no compelling argument was made for automatically repealing the exclusion after a particular period of time. Accordingly, no such time limitation has been added to § 29.30 of this final rule.

Describing the Construction Sector

Several commenters requested that the Department clarify its definition of ''the construction industry.''

In particular, it was suggested that the Department's definition—''to provide labor whereby materials and constituent

[16] Although the Department does not have data from all SAA states, no persuasive reason has been given to doubt that the data is not broadly representative of the state of registered apprenticeship programs across the nation as a whole.

[17] According to RAPIDS data, only the utilities sector and the educational services sector come at all close to the construction sector in terms of the proportion of workers that are currently apprentices. However, the utilities and educational services sectors combined have less than half the number of apprentices than the construction sector. Separately, the NPRM suggested that the U.S. military had a large fraction of registered apprentices. As discussed elsewhere, commenters pointed out that the military is not a sector similar or comparable to construction or other industry sectors.

parts may be combined on a building site to form, make, or build a structure,'' 84 FR 29981 & n.22—was too narrow. To ensure that the proposed construction exclusion fulfills the Department's goal of preserving well-established registered apprenticeship programs in construction, a commenter urged the Department to use the definition of construction sector (NAICS Code 23) activities that is included in the 2017 version of the NAICS Manual at page 16: ''Activities of this sector are erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repair.'' This definition, according to the commenter, would more clearly convey the industry's breadth. As the commenter points out, the Department actually used the NAICS code for construction in estimating the cost impact of the proposed rule (*see* 84 FR at 29999, nn.48–49, and exhibit 28 (construction) at 30009), and in determining the significant number of apprenticeship opportunities provided by the construction sector (84 FR at 29980—percentage based on NAICS code). The commenter further argued that the Department did not need to rely on an applicant-supplied NAICS code, as the NPRM explained was a concern. See 84 FR 29981 n.22. The commenter pointed out that the Department (and, presumably, SREs) could look at the occupations that apprentices are actually trained for.

Numerous other commenters endorsed using the definition of construction sector activities that appears in the NAICS Manual. Several commenters said the language from the NAICS Manual was a more comprehensive definition encompassing the ''real-world meaning'' of the construction industry. A commenter requested that DOL use the NAICS Manual's definition of construction because it is the standard used by Federal statistical agencies in classifying business establishments.

Multiple commenters discussed various cases, including the National Labor Relations Board's decision in *Carpet, Linoleum, and Soft Tile Local Union No. 1247* (*Indio Paint*), 156 NLRB 951 (1966), which grappled with broad definitions of the construction industry, and they stated that the NAICS Manual's language describing the construction industry has been affirmed by industry stakeholders as a comprehensive, workable, and accurate definition. Several commenters cited *Indio Paint* as legal precedent to substantiate the claim that ''construction'' should encompass additional activities like repairs or the replacement of parts in an immovable structure. These commenters suggested that the NAICS Manual's definition was an appropriately broad and comprehensive definition, and they urged DOL to adopt such a definition. Several commenters opined that a broader definition of construction, specifically the NAICS Manual's definition, was necessary to protect the widespread and effective apprenticeship programs already in place in their industries. Several comments requested that the definition be amended to ensure coverage for specific industries, activities, or occupations. One commenter took issue with the NPRM's invocation of case law using the NPRM's proffered definition while interpreting section 8(f) of the National Labor Relations Act (NLRA), arguing that pre-hire agreements had nothing to do with apprenticeship. This commenter said it was inappropriate to resort to NLRA case law to define the scope of the construction industry.

In contrast, multiple commenters defended the definition used in the NPRM preamble, arguing that it is consistent with case law applying statutes that are administered by the Department, such as the Employment Retirement Income Security Act and the Taft-Hartley Act. One commenter requested that the Department retain the NPRM's definition of construction because it accurately describes the industry. Yet, some of these commenters opined the Department would be better served by adopting the definition of construction in the Department's regulations implementing the Davis-Bacon Act at 29 CFR 5.2(j). These commenters said that the definition of the term ''construction'' in the Davis-Bacon Act regulations offers a more comprehensive description of the scope of construction activities, and is a well-established definitional framework that the Department already utilizes.

After considering these comments, the Department has decided to adopt a suggestion offered by numerous commenters, and noted in the NPRM, to use the NAICS Manual to determine activities in the construction sector. The Department agrees that the NAICS Manual description—''[a]ctivities of this sector are erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repair''—is more comprehensive and more suitable than the more limited definition of the sector that appeared in the NPRM (at 84 FR 29981), which stated that an apprenticeship program would be in construction ''if it equips apprentices to provide labor whereby materials and constituent parts may be combined on a building site to form, make, or build a structure.'' The text of § 29.30 incorporates the above description from the NAICS Manual. As noted above, in considering whether an SRE application falls within the construction sector, the Department will draw upon the manual's description of Sector 23 as a whole as well as its descriptions of its subsectors. However, it will do so only to determine whether the *activities* in which programs train apprentices fall within the definition of construction in § 29.30. The focus on activities is intended to prevent artificially circumscribing the outer bounds of what qualifies as a construction program. Similarly, the Department will not rely alone on job titles or job classifications referenced in NAICS 23 or be bound strictly by O*NET codes in determining whether § 29.30 prohibits recognition of a SRE or IRAP; rather, as discussed above, the Department will consider all information in the application to determine whether an SRE seeks to train in construction activities.

Military Exclusion

The NPRM stated that, based on the deconfliction formula, SREs would not be allowed to recognize apprenticeship programs in the U.S. military.

Commenters noted that the military is not analogous to economic sectors, such as construction, manufacturing, or mining, quarrying, and oil and gas extraction, and that USMAP does not correspond to training in any particular industry or occupation. Thus, excluding apprenticeship programs in the U.S. military would not align with the Department's stated goal of encouraging more apprenticeships in new industry sectors that lack widespread and well-established registered apprenticeship opportunities.

Commenters also contended that USMAP generally documents skills that members of the armed forces learn during their ordinary, day-to-day military training and experience, as opposed to during a distinct occupation-focused training program. The raw number of participants in USMAP thus likely overstates the number of military apprentices whose experiences are comparable to those in civilian programs. Similarly, a commenter discussed how it is challenging to retain military apprentices in the civilian workforce.

The Department agrees with the thrust of these comments and has decided not to exclude military apprenticeships

from the scope of the IRAP rule. However, any military apprenticeships in construction activities, as defined in the NAICS Manual, are prohibited under § 29.30 of the final rule.

Distinguishing Between Recognition of SREs and IRAPs

Section 29.31 of the proposed rule provided that the Department would not recognize SREs that seek to recognize programs in certain sectors as IRAPs. Section 29.31 did not expressly prohibit SREs from recognizing as IRAPs programs that seek to train apprentices for those sectors. The Department has revised Section 29.30 of the final rule to clarify that SREs are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities. If an SRE does recognize a program that trains apprentices to perform construction activities, it would be subject to derecognition.

Section 29.31 Severability

The Department has decided to include a severability provision as part of this final rule. To the extent that any provision of subpart B of this final rule is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions of subpart B that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

Removal of Proposed Appendix A to Subpart B—IRAP SRE Application Form (ETA Form 9183)

The NPRM included an appendix A to subpart B (Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form) containing the proposed form that would be utilized by potential SREs in applying for recognition from the Department. In developing this final rule, however, the Department determined that the retention of this form within the body of the rule could make administration of this program challenging. As a practical matter, the Department is concerned that embedding the form in the rule would prevent the Department from making minor modifications in the future without regulatory action. Accordingly, the Department has decided to remove the form from the body of the final regulation and has developed an updated version of the form to collect relevant information from potential SREs seeking recognition from the Department (see Paperwork Reduction Act discussion below for additional details).

III. Agency Determinations

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. *See* 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* This final rule is an economically significant regulatory action, under sec. 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

1. Public Comments

A commenter stated that the proposed rule would help address the current shortage of skilled workers in craft and trade industries, as well as the costly and lengthy delays in the current apprenticeship approval process. The commenter stated that while 90 percent of apprenticeship program participants will have a job after their program concludes and a $300,000 increase in lifetime earnings without the burden of student loan debt, only 0.3 percent of the workforce has taken part in registered apprenticeship programs, partly due to the lack of flexibility under the registered apprenticeship model.

The Department concurs that this new program offers many new benefits, which will harness industry expertise and encourage private industry to determine the skills that workers need to acquire through apprenticeship programs. This industry-led, market-driven approach will provide employers with flexibility to develop customized programs that serve their specialized business requirements.

A commenter expressed concern that the combination of significant and quantifiable costs with broad non-quantified benefits may lead to low participation rates among companies in the IRAP program.

The Department agrees that quantifiable benefits would be ideal to include in the economic analysis. However, this is a new program, so data do not yet exist on its effectiveness. The Department would need to make numerous untested assumptions to attempt to quantify the benefits; therefore, the Department has maintained a qualitative discussion of the benefits in the final rule.

A commenter stated that the advantages of IRAPs discussed in the proposed rule are actually those of registered apprenticeship programs and will not accrue to IRAPs because they avoid many of the requirements of registered apprenticeship programs that give rise to those benefits to society. Another commenter stated that every dollar of public investment in registered apprenticeship programs yields a $27 return to the economy, while IRAPs are ''unproven'' and ''unneeded.'' Multiple commenters cited the substantial return on investment associated with registered apprenticeship and expressed concern that the registered apprenticeship system is under threat from the proposed rule.

The Department agrees that the Mathematica study citation in the proposed rule pertains to the effectiveness of registered apprenticeship: Individuals who successfully complete an apprenticeship program are estimated to amass career-long earnings (including employee benefits) that are greater than the earnings of similarly situated individuals who did not enroll in such

programs.[18] The IRAP system is a new program, so data do not yet exist on its effectiveness. Through the public comment process, the Department did not receive recommendations for relevant data, which likely reflects the fact that this is a new program, so the Department was unable to quantify the benefits in the final rule. In any case, the Department does not expect the expansion of apprenticeships under this rule to come at the expense of existing registered apprenticeship programs. Instead, the Department anticipates that this parallel apprenticeship system will encourage the expansion of apprenticeships in additional industries and occupations. We agree that the registered apprenticeship system works well for its participants—and the Department is working to increase their numbers—but historically the number of those participants has been limited, especially compared to apprenticeship in other countries. This rule is intended to reach new and emerging sectors of the economy where apprenticeship has been underused.

One commenter asserted that the proposed rule is likely to be considered economically significant under E.O. 12866 and, therefore, a ''major rule'' under the Congressional Review Act because the activities the Department quantified represent only a small fraction of an IRAP's responsibilities under the rule. The commenter stated that the Department based its estimate of the rule's overall costs almost entirely on the discrete actions it anticipates the SREs' and IRAPs' Training and Development Managers will take, but it declined to quantify numerous costs related to the actual development and operation of IRAPs. Further, the commenter stated that the Department failed to use its experience with registered apprenticeship programs to quantify the development, staffing, and operations costs of IRAPs, and asserted that the costs and impact on the economy would increase if the Department quantified these costs. Specifically, the commenter claimed that if the Department attributed a cost-per-apprentice of only $5,000 (20 percent of the Department of Commerce's lower estimate in its 2016 study of 13 businesses and intermediaries [19]) for 10 apprentices per IRAP, the costs and impact on the economy would increase by more than $100 million in the first year. Further, the commenter claimed that if the Department assumed each IRAP would hire one full-time employee (based on the Department of Commerce's 2016 study in which most of the firms dedicated at least one staff member to manage their programs), the cost of the rule to IRAPs alone would increase to over $190 million per year.

As the Department explained in the proposed rule, the 2016 study published by the Department of Commerce found that apprenticeship programs vary significantly in length and cost. The shortest program in the study lasted 1 year, while the longest lasted more than 4 years. Importantly, the Commerce report was a case study of only 13 programs, so it is not a representative sample. Moreover, the variety of apprenticeship programs is expected to grow dramatically under this rule, with an even greater variety of sizes, durations, occupations, and industries. Furthermore, compensation costs for apprentices were the major cost of the programs in the Commerce report and compensation is typically considered a ''transfer'' rather than a ''cost'' in regulatory impact analyses. It is also important to note that many of the costs of an apprenticeship program would still be incurred if the company filled the job through another method, such as hiring an already-trained worker, contracting a temporary worker, or increasing the hours of existing staff. For these reasons, the Department continues to maintain that the estimated cost-per-apprentice of $25,000 to $250,000 in the Commerce study is not a reasonable basis for estimating IRAP costs, nor is using a share of that study's cost-per-apprentice as the commenter did.

Another commenter expressed concern that there were no cost estimates for the training component of IRAPs and remarked that these estimates could prove to be in the hundreds of millions of dollars. The commenter claimed that with the substantial growth of registered apprenticeship, there is a large amount of available data from existing programs about yearly training costs.

The Department does not track cost-per-program data nor cost-per-participant data under the registered apprenticeship program. Although program sponsors may track such data, cost per participant and cost per program are not required performance measures under the registered apprenticeship system, so the Department has no way to capture or track such data. Moreover, even if such data did exist, it would not be suitable for this analysis because IRAPs are likely to differ substantially from registered apprenticeship programs in size, nature, scope, duration, industry, and occupational area. In the economic analysis, the Department acknowledges the cost of apprenticeship programs; however, due to data limitations, the costs are described qualitatively in section III.A.7 (Nonquantifiable Costs).

A commenter stated that, if the Department does not exclude the construction industry, the rule is likely to have an economic impact on the construction industry of at least $100 million per year because IRAPs in the construction industry would displace more than 10 percent of the private investment made in registered apprenticeship programs. Several commenters stated that the proposed rule failed to take into account the devaluing effect that IRAPs would have on registered apprenticeship program apprentices' credentials because of lower standards associated with the new program versus the registered apprenticeship program.

The Department does not expect the expansion of apprenticeships under this rule to come at the expense of existing registered apprenticeship programs. Instead, the Department anticipates that this parallel apprenticeship system will encourage the expansion of apprenticeships beyond those industries where registered apprenticeships already are effective and substantially widespread. With respect to the construction industry in particular, the Administrator will not recognize SREs that recognize IRAPs that seek to train apprentices in construction activities as defined in § 29.30, mooting these concerns as to the construction sector.

A commenter stated that deregulation would not decrease the costs of purchasing facilities and equipment, developing curriculum, hiring instructors and administrators, and other amounts that are required to finance first-class programs. Another commenter stated that without the ability to reasonably estimate a quantitative value for participating in an IRAP, most companies will either use the registered apprenticeship system or proceed with an unregistered apprenticeship program to avoid the costs associated with IRAPs.

[18] Mathematica Policy Research, ''An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report,'' July 25, 2012, *https://www.mathematica.org/our-publications-and-findings/publications/an-effectiveness-assessment-and-costbenefit-analysis-of-registered-apprenticeship-in-10-states.*

[19] Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, ''The Benefits and Costs of Apprenticeship: A Business Perspective,'' Nov. 2016, *https://files.eric.ed.gov/fulltext/ED572260.pdf.*

The Department anticipates that a wide variety of entities across numerous industries and occupations will opt to participate in this new program. As such, the Department expects the size, duration, staff levels, overhead costs, capital expenditures, and other elements of IRAPs to vary widely. Consequently, the Department is unable to accurately quantify all of the potential costs IRAPs may incur.

Several commenters stated that the AAI grant program is not the best guidepost for estimating the number of SRE applications because the standards for IRAPs are lower than those for registered apprenticeship programs and AAI grants are limited to H–1B occupations and have more requirements than IRAPs do. Another commenter suggested that the Department should consider that millions of dollars were awarded to each successful AAI grant application and no similar award is forthcoming for designation as an SRE, potentially reducing the number of applicants for SRE designation. Another commenter also expressed concern with the use of historical projections based on the AAI grant program and questioned whether there are significant numbers of potential SREs beyond those that already received Federal grants, and if so, whether there will be a sustainable 5-percent growth rate over 10 years.

The Department acknowledges that estimating the number of SRE applicants using the AAI grant program is subject to data limitations and uncertainties. However, in the absence of an alternative data source suggested during the public comment process, the Department has maintained its methodology and data source for estimating the number of SRE applicants. With respect to the 5-percent growth rate, the Department maintains that it is a reasonable estimate given that as many as 50 occupations are ripe for apprenticeship expansion [20] and that this regulation is intended to expand the apprenticeship model broadly—including to employers and workers that might not previously have considered participating.

A commenter stated that the Department is forecasting tepid initial demand and rapidly declining future demand for the program, reaching only 32 recognized IRAPs per SRE through the first 10 years, and that these estimates, if accurate, are likely to deter many organizations from pursuing recognition as an SRE.

To address America's skills gap, the Department welcomes all interested entities to submit an application to become a recognized SRE and encourages SREs to recognize as many qualified programs as feasible. The Department agrees with the commenter that it is difficult to accurately forecast future demand for a new program. As such, the numbers of SREs in the economic analysis are the Department's best estimation of future demand.

A commenter stated that the 2-hour time estimate for SRE rule familiarization is low and lacks the executive decision time to undertake this project. Another commenter stated that the 1-hour time estimate for IRAP rule familiarization is unrealistic; similarly, a commenter stated that an IRAP would likely need more time for rule familiarization than an SRE would.

The Department acknowledges that some entities may take longer than 2 hours to read the rule and become familiar with its requirements, and that some IRAPs may take longer than 1 hour to do so. On the other hand, some entities may simply rely on industry-produced fact sheets or information on the Department's website to familiarize themselves with the rule, which could take less time than the estimates. The time burden estimates are assumed to be averages; some entities may take more time, while others may take less. Furthermore, the commenters did not provide data for the Department to use to improve its estimates. Accordingly, the Department has maintained the 2 hours for SRE rule familiarization and 1 hour for IRAP rule familiarization in the final rule.

A commenter stated that the time estimate for SREs to complete the application process assumes that organizations applying for SRE status already possess all of the policies, procedures, and systems required in the application form. Another commenter stated that the 2-hour estimate for completing Section I of the application form would have to assume an existing program with a Federal EIN and a website in place. The same commenter contended that the 2-hour estimate for completing Section II of the application form fails to recognize that some of the tasks would have to be developed for a new program prior to completing this section, and that interaction with other departments such as finance is not accounted for. With respect to Sections III and IV, the same commenter stated that there are at least 20 tasks per section, but the estimates do not account for the time to create many of the items being reported. The same commenter also contended that 5 minutes is inadequate for completing Sections V and VI.

The final rule's time estimates for completing the SRE application differ from the time estimates in the NPRM because the Department has made changes to the application form in an effort to improve and streamline the process for prospective SREs. The Department anticipates that a wide variety of entities across numerous industries and occupational areas will opt to participate in this new program. As such, the Department expects the nature and experience of applicants to vary widely. For example, many prospective SREs may already have an EIN, have systems and procedures in place, and plan to recognize only one or two small IRAPs; therefore, the Department expects the time burden for such entities to be lower than the estimates in the analysis. The time burden estimates in the economic analysis are assumed to be averages; some entities may take more time to complete the application, while others may take less.

In response to public comments, the Department increased the time burden estimates for completing Sections III and IV of the application to account for an SRE's development of the policies and procedures required under this rule. Specifically, SREs must develop policies and procedures related to the following paragraphs: 29.21(b)(6), which pertains to mitigating conflicts of interest; 29.22(d), which pertains to consistency in assessing prospective IRAPs; 29.22(f)(5), which pertains to the suspension or derecognition of an IRAP; 29.22(i), which pertains to requiring IRAPs to adhere to applicable Federal, State, and local EEO laws; and 29.22(j), which pertains to addressing complaints against IRAPs.

A commenter stated that a 70-percent success rate for initial applicants is too high, that half of rejected applicants reapplying is too low, and that 1 percent requesting administrative review is too low.

The Department did not receive a specific estimate or a data source to substantiate the commenter's statements, so the Department has continued to rely on its experience with other workforce development programs and has maintained its estimates in the final rule.

A commenter stated that the 10-percent estimate for the share of SREs that will be required to supply data or information to the Administrator under § 29.22(a)(3) seems low.

[20] Joseph B. Fuller and Matthew Sigelman, ''Room to Grow: Identifying New Frontiers for Apprenticeships,'' Nov. 2017, 7–8, *https://www.hbs.edu/managing-the-future-of-work/Documents/room-to-grow.pdf*.

The Department acknowledges that the share may be lower or higher than 10 percent, but without receiving a specific estimate or data source during the public comment process, the Department has maintained the 10-percent estimate in the final rule.

A commenter stated that the 80-hour time estimate for SREs' quality control of IRAPs is not only too low, but should be based on the estimated number of IRAPs rather than on the estimated number of SREs. Likewise, the same commenter stated that the 30-hour time estimate for an SRE to make publicly available performance data from each of its IRAPs is not only too low, but should be based on the estimated number of IRAPs rather than on the estimated number of SREs.

The Department took these recommendations under advisement and revised these two calculations by basing them on the estimated number of IRAPs rather than on the estimated number of SREs because the time burden will vary by SRE, depending on the number of IRAPs it recognizes. Moreover, the estimated time burdens have increased due to additional requirements in the final rule: (1) SREs must conduct periodic compliance reviews of IRAPs; (2) SREs must not only publicize performance data, but also provide performance data to DOL; and (3) SREs must provide additional performance data, namely attainment of industry-recognized credentials, average earnings of completers, training cost per apprentice, and demographic information.

A commenter stated that the 5-minute estimate for disclosure of wages to apprentices is inadequate because IRAPs will first need to establish a starting pay structure, and then periodically review and update the wage scale. Similarly, the same commenter stated that disclosure of ancillary costs to apprentices will take longer than 5 minutes because IRAPs will have to determine those costs. Moreover, the commenter stated that both of these disclosure calculations should apply to 100 percent (rather than 10 percent) of IRAPs because this is a new program.

The Department expects the nature and experience of IRAPs to vary widely. For example, some IRAPs may already have a pay structure in place, have predetermined costs for educational materials, or plan to train only one or two apprentices. Accordingly, the Department expects the time burdens to vary widely. The time burden estimates in the economic analysis are assumed to be averages; some IRAPs may take more time, while others may take less. That being said, the Department took a different approach in the final rule in light of the new requirement at § 29.22(a)(4)(x) for IRAPs to provide a written apprenticeship agreement. Given that the written apprenticeship agreement will likely include the disclosure of wages and costs, the Department combined the three activities into two costs: Develop written apprenticeship agreements (8 hours per new IRAP) and sign the written apprenticeship agreements (10 minutes per apprentice).

Several commenters stated that the 1-hour estimate for Step 1 in the Department's review of applications (*i.e.,* processing by Program Analysts) seems too low. Furthermore, a commenter stated that the time estimates for Step 2 (*i.e.,* panel review) and Step 3 (*i.e.,* panel meeting) do not include additional supervision of the panelists by the Administrator and assume no conflicting opinions or negotiations over applications. Commenters also contended that 15 minutes for Step 4 (*i.e.,* review by the Administrator) is inadequate.

The Department acknowledges that the time for reviewing applications may be higher or lower than the estimates in the economic analysis, depending on the complexity of the responses, qualifications of the prospective SRE, quality of the application, etc. The time burden estimates are assumed to be averages; some applications may take more time to review, while others may take less. Furthermore, the commenters did not provide data for the Department to use to improve its estimates; therefore, the Department maintains that its estimates in the proposed rule were reasonable averages.

A commenter stated that the costs for review by an Administrative Law Judge, and all other legal costs, would increase as the number of appeals increases, and the costs do not include Administrator time needed to facilitate this review.

The Department agrees that the legal costs would increase as the number of appeals increases and accounted for this by multiplying the estimated time burdens by the hourly compensation rates and by the estimated number of applicants that would request administrative review in each year of the 10-year analysis period. The estimates were based on the input of an Administrative Law Judge at the Department. With respect to the Administrator's time to facilitate this review, that cost was captured in the subsection titled ''DOL Preparation of Administrative Record When a Denied Entity Requests Review.'' The estimated time to prepare an administrative record is 6 hours by a Program Analyst.

A commenter noted that the annualized costs over the 10-year analysis period for three activities (*i.e.,* rule familiarization, completing Section I of the application form, and completing Section II of the application form) were different although the estimated time (2 hours) and the hourly compensation rate ($113.16) were the same for all three activities.

The reason for the difference is that SREs must undergo the Department's process for continued recognition every 5 years; however, the Department assumes SREs will only need to familiarize themselves with the rule one time. Accordingly, the same number of entities is used for both calculations in Years 1–5 (270 in Year 1, 14 in Year 2, 14 in Year 3, 15 in Year 4, and 16 in Year 5) but the numbers differ in Years 6–10. For rule familiarization, the number of entities is estimated at 44 in Year 6, 19 in Year 7, 20 in Year 8, 21 in Year 9, and 22 in Year 10. For the application form, the number of entities is estimated at 226 in Year 6, 28 in Year 7, 29 in Year 8, 31 in Year 9, and 32 in Year 10.

A commenter questioned whether SREs have Title VII Uniform Guidelines on Employee Selection Procedures responsibility for written test job requirements and, if so, why it is not included the cost analysis.

This rule does not add a burden to employers related to the Uniform Guidelines on Employee Selection Procedures under Title VII.

With respect to the IRAP costs that the Department addressed qualitatively in the proposed rule, a commenter stated that the claim from the 2016 Department of Commerce study [21] that many of the costs of an apprenticeship program would still be incurred if a company filled the job through another method is ''incorrect'' because the company would carry none of the training, mentorship, or nonproductive paid hours that an apprenticeship must assume.

The Department acknowledges that apprenticeships include training, mentorship, and other costs that hiring an already-trained worker, contracting a temp worker, or increasing the hours of existing staff would not entail; however, the Department also recognizes that already-trained workers, temporary workers, and existing staff are likely to be paid at a higher rate than

[21] Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, ''The Benefits and Costs of Apprenticeship: A Business Perspective,'' Nov. 2016, *https://files.eric.ed.gov/fulltext/ED572260.pdf.*

apprentices, mitigating some of the costs referenced by the commenter. Without data to substantiate the commenter's claims or provide reliable estimates of IRAP costs, the Department has retained a qualitative discussion in the final rule.

A commenter suggested that rather than calling the IRAP model ''apprenticeship,'' the Department should achieve the goal of providing funding to companies for long-term, on-the-job training through various other methods such as expanding WIOA or a separate discretionary funding stream. Another commenter suggested that the Department propose a policy that leads to higher journeyman wage rates in industries where the government wants to encourage apprenticeships. Another commenter remarked that the best way to address ''softness'' in the construction industry would be a dramatic, 10-year investment in infrastructure. A fourth commenter cited the annual cost of administering the proposed rule, remarked that OA does not have enough professional staff to carry out its mission effectively, and suggested that the Department expand the resources devoted to traditional apprenticeship instead.

The Department is unable to act on these suggestions as they are legislative proposals that fall under the purview of the legislative branch of government (*i.e.,* Congress).

A commenter suggested that, given current U.S. Treasury rates, the Department should use a 3-percent discount rate rather than a 7-percent discount rate.

As the commenter noted, the Department is constrained in its selection of the discount rates by OMB Circular A–4, which instructs agencies to ''present annualized benefits and costs using real discount rates of 3 and 7 percent.'' [22] Accordingly, the Department estimated the costs of the rule over 10 years at discount rates of both 3 percent and 7 percent. The Department narrowed its analysis to the 7-percent discount rate only in the Regulatory Flexibility Analysis because including two additional columns in each of the 18 industry tables would be cumbersome and have little impact on the results. Specifically, the first year cost per IRAP is estimated at $17,796 at a discount rate of 7 percent, compared to $18,487 at a discount rate of 3 percent. The annualized cost per IRAP is estimated at $9,379 at a discount rate of 7 percent, compared to $9,049 at a discount rate of 3 percent. Moreover, according to OMB Circular A–4, ''[a]s a default position, OMB Circular A–94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis.''

2. Summary of the Economic Analysis

The Department anticipates that the final rule will result in benefits and costs for SREs, IRAPs, apprentices, and society. The benefits of the final rule are described qualitatively in section III.A.3 (Benefits). The estimated costs are explained in sections III.A.4 (Quantitative Analysis Considerations), III.A.5 (Subject-by-Subject Analysis), and III.A.6 (Summary of Costs). The nonquantifiable costs are described qualitatively in section III.A.7 (Nonquantifiable Costs). The nonquantifiable transfer payments are described qualitatively in section III.A.8 (Nonquantifiable Transfer Payments). Finally, the regulatory alternatives are explained in section III.A.9 (Regulatory Alternatives).

The costs of the final rule for SREs include rule familiarization, completing the application form, and remaining in an ongoing quality-control relationship with IRAPs. The costs of the final rule for IRAPs include rule familiarization and providing performance information to the SRE. The costs of the final rule for the Federal Government are associated with development and maintenance of an online SRE application form, reviewing applications, and development and maintenance of an online list of SREs and IRAPs.

Exhibit 1 shows the total estimated costs of the final rule over 10 years (2020–2029) at discount rates of 3 percent and 7 percent. The final rule is expected to have first year costs of $42.3 million in 2018 dollars. Over the 10-year analysis period, the annualized costs are estimated at $46.5 million at a discount rate of 7 percent in 2018 dollars. In total, over the first 10 years, the final rule is estimated to result in costs of $326.8 million at a discount rate of 7 percent in 2018 dollars.

Exhibit 1: Estimated Costs (2018 dollars)

	Costs
First Year Total	$42,261,859
Annualized, 3% discount rate, 10 years	$47,104,991
Annualized, 7% discount rate, 10 years	$46,530,920
Total, 3% discount rate, 10 years	$401,815,127
Total, 7% discount rate, 10 years	$326,813,710

When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the perpetual annualized cost is $38,738,885 at a discount rate of 7 percent in 2016 dollars.[23]

3. Benefits

This section provides a qualitative description of the anticipated benefits

[22] OMB, ''Circular A–4,'' Sept. 17, 2003, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[23] To comply with E.O. 13771 accounting, the Department multiplied the annual cost for Year 10 ($59,248,016) by the GDP deflator (0.9582) to convert the cost to 2016 dollars ($56,769,601). The Department used this result for a long-term pattern totaling $601,417,957 over 20 years with a 7-percent discount rate. The Department then calculated the present value ($725,411,079) and perpetual annualized cost ($50,778,776) in 2016 dollars. Assuming the rule takes effect in 2020, the Department divided $50,778,776 by 1.07^4, which equals $38,738,885.

associated with the final rule. The Department expects this regulation to have a net benefit overall.

Through this regulation, and as explained in the rule's Background section, above, the Administration seeks to address a persistent and serious long-term challenge to American economic leadership in the global marketplace: A significant mismatch between the occupational competencies that businesses require and the job skills that aspiring employees possess. While there were 6.4 million job openings in the United States at the end of 2019,[24] some openings go unfilled because there are not enough workers with needed skills.[25] This pervasive skills gap poses a serious impediment to job growth and productivity throughout the economy.

The promotion and expansion of quality apprenticeships can play a key role in alleviating the skills gap by providing individuals including young people, women, and other populations with relevant workplace skills and a recognized credential. This proven workforce development technique not only helps individuals to move into decent, family-sustaining jobs, but also assists businesses with finding the workers they need to maintain their competitive edge. Individuals who successfully complete an apprenticeship program are estimated to amass career-long earnings (including employee benefits) that are greater than the earnings of similarly situated individuals who did not enroll in such programs.[26]

The final report of the Task Force noted that ''[w]hile the Federal Government can establish the framework for a successful apprenticeship program and provide support, substantial change must begin with industry-led partnerships playing the pivotal role'' of creating, recognizing, and managing apprenticeship programs.[27] Underlying this approach is the conviction that private industry—rather than government—is best suited to determine the occupational skills that workers need to acquire through apprenticeship programs. Such an industry-led approach will provide employers the flexibility they need to devise customized programs that serve their specialized business requirements.

Accordingly, the Department is issuing this regulation, which will supplement the current system of registered apprenticeships with a parallel system of IRAPs, thereby enabling the rapid expansion of quality apprenticeships across a wide range of industries and occupational areas. This regulation requires SREs to recognize and maintain recognition of only high-quality IRAPs, which will benefit apprentices and encourage the expansion of the apprenticeship model.

4. Quantitative Analysis Considerations

The Department estimated the costs of the final rule relative to the existing baseline (*i.e.,* no IRAPs). In accordance with the regulatory analysis guidance articulated in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the final rule (*i.e.,* the costs that are expected to accrue to the affected entities). The analysis covers 10 years to ensure it captures the major costs that are likely to accrue over time. The Department expresses the quantifiable impacts in 2018 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4.

a. Estimated Number of Applications and SREs

To calculate the annual costs, the Department first needed to estimate the number of applications and SREs over the 10-year analysis period. The Department believes a reliable guidepost for estimating the number of SRE applications is the number of entities that submitted grant applications in FY 2016 under OA's AAI grants program. As noted earlier, commenters did not supply alternative data sources for the Department to estimate SRE participation.

Like IRAPs, the AAI grant program was designed to encourage innovative approaches to the development of apprenticeship programs by a wide cross-section of groups, including private sector employers, labor unions, educational institutions, and not-for-profit organizations. In the 4 months during which AAI grant applications were accepted, OA received 191 applications for grants from the intended cross-section of program sponsors and innovators. The 191 AAI applicants were diverse in terms of geography, industry sector, and apprenticeship-program design. The Department anticipates that the diversity in AAI applicants will be replicated in the context of this final rule.

Starting with 191 AAI grantee applicants as a reasonably analogous baseline, the Department rounded this figure slightly upwards to 200 to provide for ease of estimation. The Department then reduced this number by 10 percent to 180 to account for how some entities in industries that applied for AAI grants may choose not to seek to participate as IRAPs. The Department then adjusted this figure 50 percent higher to account for its planned efforts to promote IRAPs in the private sector, resulting in an estimate of 270 SRE applications in Year 1 (= 180×1.5). The Department further estimates that it will recognize approximately 75 percent of applicants as SREs, either during their initial submission or their resubmission as permitted under paragraph 29.21(d)(1). Accordingly, the Department estimates that there will be 203 SREs (= $270 \times 75\%$) in Year 1.

To estimate the number of applications and SREs in Years 2–10, the Department began by assuming that the total number of SREs will increase by 5 percent per year based on historic growth in the registered apprenticeship program. For example, in Year 2 the total number of SREs is estimated to be 213 (= 203 SREs in Year 1×1.05). The last column in Exhibit 2 shows the total number of SREs each year based on the Department's 5-percent growth rate assumption.

Next, the Department calculated the number of new SREs. For Years 1–5, the estimated number of new SREs is simply the difference between the total number of SREs each year. For example, in Year 5 the number of new SREs is estimated to be 12 (= 247 total SREs in Year 5—235 total SREs in Year 4).[28] But in Year 6, the calculation has an additional component because SREs will be recognized for 5 years, so SREs that wish to be recognized for another 5 years will need to undergo the Department's process for continued recognition. For purposes of this analysis, the Department estimates that

[24] BLS, ''Job Openings and Labor Turnover—December 2019,'' Feb. 11, 2020, *https://www.bls.gov/news.release/archives/jolts_02112020.pdf.*

[25] *See, e.g.,* Task Force on Apprenticeship Expansion, ''Final Report to the President of the United States,'' May 10, 2018, 16 (citing 2018 report from National Federation of Independent Business); Business Roundtable, ''Closing the Skills Gap,'' *https://www.businessroundtable.org/policy-perspectives/education-workforce/closing-the-skills-gap* (last visited Dec. 7, 2019).

[26] *See, e.g.,* Mathematica Policy Research, ''An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report,'' July 25, 2012, *https://www.mathematica.org/our-publications-and-findings/publications/an-effectiveness-assessment-and-costbenefit-analysis-of-registered-apprenticeship-in-10-states.*

[27] Task Force on Apprenticeship Expansion, ''Final Report to the President of the United States,'' May 10, 2018, 19.

[28] Note: 12 ÷ 235 = 5 percent, which is the estimated growth rate for total SREs.

90 percent of SREs will undergo the Department's process for continued recognition. Thus, 183 SREs (= 203 new SREs in Year 1 × 90%) will submit applications for continued recognition in Year 6. The Department estimates that there will be 33 new SREs in Year 6, which reflects the 5-percent growth between Year 5 and Year 6 (259 − 247 = 12),[29] plus new SREs that will supplant the 10 percent of Year 1 SREs that do not submit applications for continued recognition in Year 6 (203 − 183 = 20).[30] This same calculation was used for Years 7–10.

Then, the Department estimated the number of new applications in Years 2–10 by dividing the number of new SREs each year by 75 percent since 75 percent of applicants are assumed to become recognized as SREs. For example, in Year 6, the number of new applications is estimated to be 44 (= 33 new SREs ÷ 75%).

The number of applications for continued recognition was calculated by multiplying the number of new SREs 5 years prior by 90 percent since the Department assumes that 90 percent of SREs will undergo the Department's process for continued recognition. For example, the Department estimates that 183 SREs (= 203 new SREs in Year 1 × 90%) will submit applications for continued recognition in Year 6, and that 9 SREs (= 10 new SREs in Year 2 × 90%) will submit applications for continued recognition in Year 7.

Finally, the number of total applications each year was estimated by summing the estimated number of new applications and the estimated number of applications for continued recognition each year. For example, in Year 1 the total number of applications is estimated to be 270 (= 270 new applications + 0 applications for continued recognition), while in Year 6 the total number of applications is estimated to be 226 (= 44 new applications + 183 applications for continued recognition).[31]

Exhibit 2 presents the projected number of applications and SREs for each year of the analysis period.

Exhibit 2: Projected Number of Applications and Standards Recognition Entities

Year	New Applications	Applications for Continued Recognition[1]	Total Applications	New Standards Recognition Entities[2]	Total Standards Recognition Entities[3]
1	270	--	270	203	203
2	14	--	14	10	213
3	14	--	14	11	224
4	15	--	15	11	235
5	16	--	16	12	247
6	44	183	226	33	259
7	19	9	28	14	272
8	20	10	29	15	286
9	21	10	31	15	300
10	22	11	32	16	315

[1] Assumes 90% of New SREs will seek to continue recognition.

[2] Assumes 75% of New Applications and 100% of Applications for Continued Recognition will be recognized as SREs.

[3] Assumes a 5% growth rate in Total SREs.

b. Estimated Number of IRAPs

To estimate the number of IRAPs, the Department looked at the number of programs in the registered apprenticeship system in relevant contexts and, based on those data and related considerations, estimated that each SRE will recognize approximately 32 IRAPs. The recognition of all 32 IRAPs is not likely to occur immediately after an SRE is recognized by the Department; rather, an SRE will probably recognize additional programs each year so that by the end of its tenth year, the SRE will have recognized 32 programs. For purposes of this analysis, the Department estimates that an SRE will recognize 10 new IRAPs in its 1st year as an SRE, 8 new IRAPs in its 2nd year, 5 new IRAPs in its 3rd year, 3 new IRAPs in its 4th year, and 1 new IRAP per year in its 5th through 10th years.

Based on these assumptions, the number of new IRAPs in Year 1 is estimated to be 2,030 (= 203 new SREs in Year 1 × 10 new IRAPs per SRE). The number of new IRAPs in Year 2 is estimated to be 1,724 [= (203 new SREs in Year 1 × 8 new IRAPs per SRE) + (10 new SREs in Year 2 × 10 new IRAPs per SRE)]. As explained above, the Department assumes that 90 percent of SREs will undergo the Department's process for continued recognition, so in Year 6 the estimated number of new Year 1 SREs will shrink to 183 (= 203 new SREs in Year 1 × 90%). Accordingly, the number of new IRAPs in Year 6 is estimated to be 707 [= (183 Year 1 SREs with continued recognition × 1 new IRAPs per SRE) + (10 new SREs in Year 2 × 1 new IRAPs per SRE) + (11 new SREs in Year 3 × 3 new IRAPs per SRE) + (11 new SREs in Year 4 × 5 new IRAPs per SRE) + (12 new SREs in Year 5 × 8 new IRAPs per SRE) + (33 new SREs in Year 6 × 10 new IRAPs per SRE)].

The total number of IRAPs per SRE equals the cumulative total of new IRAPs per SRE. So, a new SRE in Year 1 is estimated to have recognized a total of 18 IRAPs in Year 2 (= 10 new IRAPs in Year 1 + 8 new IRAPs in Year 2). Therefore, the total number of IRAPs in Year 2 is estimated to be 3,754 [= (203 new SREs in Year 1 × 18 total IRAPs per

[29] Note: 12 ÷ 247 = 5 percent, which is the estimated growth rate for total SREs.

[30] The numbers do not sum to the total due to rounding. After calculating the estimated numbers of applications and SREs, the Department rounded the numbers to integers to use in the remaining calculations in this analysis.

[31] The numbers do not sum to the total due to rounding.

SRE) + (10 new SREs in Year 2 × 10 total IRAPs per SRE)]. As explained above, the estimated number of new Year 1 SREs is expected to shrink to 183 in Year 6. Accordingly, the total number of IRAPs in Year 6 is estimated to be 6,479 [= (183 Year 1 SREs with continued recognition × 28 total IRAPs per SRE) + (10 new SREs in Year 2 × 27 total IRAPs per SRE) + (11 new SREs in Year 3 × 26 total IRAPs per SRE) + (11 new SREs in Year 4 × 23 total IRAPs per SRE) + (12 new SREs in Year 5 × 18 total IRAPs per SRE) + (33 new SREs in Year 6 × 10 total IRAPs per SRE)].

Exhibit 3 presents the projected number of IRAPs over the 10-year analysis period.

Exhibit 3: Projected Number of IRAPs

Year	New IRAPs per SRE	Total New IRAPs	Total IRAPs per SRE	Total IRAPs
1	10	2,030	10	2,030
2	8	1,724	18	3,754
3	5	1,205	23	4,959
4	3	857	26	5,816
5	1	496	27	6,312
6	1	707	28	6,479
7	1	700	29	7,152
8	1	676	30	7,801
9	1	663	31	8,437
10	1	653	32	9,063

c. Estimated Number of Apprentices

To estimate the number of apprentices, the Department looked at the number of apprentices in the registered apprenticeship system and, based on those data and related considerations, estimated that each IRAP will have an average of 35 apprentices. Also, given that the duration of programs may vary widely (from weeks to years), the Department used an average duration of 1 year in its calculations.

Exhibit 4 presents the projected number of apprentices over the 10-year analysis period.

Exhibit 4: Projected Number of Apprentices

Year	Total Number of IRAPs	Average Number of Apprentices per IRAP	Total Number of Apprentices*	Cumulative Total Number of Apprentices
1	2,030	35	71,050	71,050
2	3,754	35	131,390	202,440
3	4,959	35	173,565	376,005
4	5,816	35	203,560	579,565
5	6,312	35	220,920	800,485
6	6,479	35	226,765	1,027,250
7	7,152	35	250,320	1,277,570
8	7,801	35	273,035	1,550,605
9	8,437	35	295,295	1,845,900
10	9,063	35	317,205	2,163,105

* Assumes the average duration of programs is one year.

d. Compensation Rates

The Department anticipates that the bulk of the workload for private sector workers will be performed by employees in occupations similar to those associated with the following SOC codes: SOC 11–3131 (Training and Development Managers) and SOC 43–0000 (Office and Administrative Support Occupations).

According to BLS, the mean hourly wage rate for Training and Development Managers in May 2018 was $58.53.[32] For this analysis, the Department used a fringe benefits rate of 46 percent [33] and an overhead rate of 54 percent,[34]

[32] BLS, ''Occupational Employment and Wages, May 2018,'' *https://www.bls.gov/oes/current/oes113131.htm.*

[33] BLS, ''Employer Costs for Employee Compensation,'' *https://www.bls.gov/ncs/data.htm* (last visited Dec. 7, 2019). Wages and salaries averaged $24.86 per hour worked in 2018, while benefit costs averaged $11.52, which is a benefits rate of 46 percent.

[34] U.S. Department of Health and Human Services (HHS), ''Guidelines for Regulatory Impact Analysis,'' 2016, *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.* In its guidelines, HHS states, as ''an interim default, while HHS conducts more research, analysts should assume overhead costs (including benefits) are equal to 100 percent of pre-tax wages.'' HHS explains that 100 percent is roughly the midpoint between 46 and 150 percent, with 46 percent based on ECEC data that suggest benefits average 46 percent of wages and salaries, and 150 percent based on the private sector ''rule of thumb'' that

resulting in a fully loaded hourly compensation rate for Training and Development Managers of $117.06 [= $58.53 + ($58.53 × 46%) + ($58.53 × 54%)].

According to BLS, the mean hourly wage rate for Office and Administrative Support Occupations in May 2018 was $18.75.[35] The Department used a fringe benefits rate of 46 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Office and Administrative Support Occupations of $37.50 [= $18.75 + ($18.75 × 46%) + ($18.75 × 54%)].

The compensation rate for the Administrator of OA is based on the salary of a Federal employee at Level IV of the Senior Executive Service, which is $166,500 per annum;[36] the corresponding hourly base pay for an SES at this level is $80.05 (= $166,500 ÷ 2,080 hours). The Department used a fringe benefits rate of 69 percent [37] and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for the Administrator of $178.51 [= $80.05 + ($80.05 × 69%) + ($80.05 × 54%)].

The compensation rate for a Program Analyst in OA was estimated using the midpoint (Step 5) for Grade 13 of the General Schedule, which is $53.85 in the Washington, DC, locality area.[38] The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Program Analysts of $120.09 [= $53.85 + ($53.85 × 69%) + ($53.85 × 54%)].

The compensation rate for an Administrative Law Judge is based on the salary of a Federal Administrative Law Judge at AL–3 Rate F, which is $176,900 per annum; [39] the corresponding hourly base pay for an Administrative Law Judge at this level is $85.05 (= $174,500 ÷ 2,080 hours). The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for an Administrative Law Judge of $189.66 [= $85.05 + ($85.05 × 69%) + ($85.05 × 54%)].

The compensation rate for a Staff Attorney in the Department's Office of Administrative Law Judges was estimated using the highest level (Step 10) for Grade 15 of the General Schedule, which is $79.78 in the Washington, DC, locality area.[40] The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Staff Attorneys of $177.91 [= $79.78 + ($79.78 × 69%) + ($79.78 × 54%)].

The compensation rates for a Legal Assistant and Law Clerk in the Department's Office of Administrative Law Judges were estimated using the midpoint (Step 5) for Grade 11 of the General Schedule, which is $37.79 in the Washington, DC, locality area.[41] The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Legal Assistants and Law Clerks of $84.27 [= $37.79 + ($37.79 × 69%) + ($37.79 × 54%)].

The compensation rate for a Paralegal in the Department's Office of Administrative Law Judges was estimated using the midpoint (Step 5) for Grade 7 of the General Schedule, which is $25.53 in the Washington, DC, locality area.[42] The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Paralegals of $56.93 [= $25.53 + ($25.53 × 69%) + ($25.53 × 54%)].

The Department used the hourly compensation rates presented in Exhibit 5 throughout this analysis to estimate the labor costs for each provision.

Exhibit 5: Compensation Rates

Occupation	Grade Level	Base Hourly Wage Rate	Fringe Benefits Rate	Overhead Rate	Hourly Compensation Rate
Private Sector Employees					
Training and Development Managers	N/A	$58.53	46%	54%	$117.06
Office and Administrative Support Occupations	N/A	$18.75	46%	54%	$37.50
Federal Government Employees					
Office of Apprenticeship Administrator	SES, Level 4	$80.05	69%	54%	$178.51
Program Analyst	GS-13, Step 5	$53.85	69%	54%	$120.09
Administrative Law Judge	AL-3, Rate F	$85.05	69%	54%	$189.66
Staff Attorney	GS-15, Step 10	$79.78	69%	54%	$177.91
Legal Assistant	GS-11, Step 5	$37.79	69%	54%	$84.27
Law Clerk	GS-11, Step 5	$37.79	69%	54%	$84.27
Paralegal	GS-7, Step 5	$25.53	69%	54%	$56.93

fringe benefits plus overhead equal 150 percent of wages. To isolate the overhead costs from HHS's 100-percent assumption, the Department subtracted the 46-percent benefits rate that HHS references, resulting in an overhead rate of approximately 54 percent.

[35] BLS, ''Occupational Employment and Wages, May 2018,'' *https://www.bls.gov/oes/current/oes430000.htm.*

[36] Office of Personnel Management, ''Rates of Basic Pay for the Executive Schedule,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/EX.pdf* (last visited Dec. 7, 2019).

[37] Congressional Budget Office, ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015,'' Apr. 25, 2017, *https://www.cbo.gov/publication/52637.* The wages of Federal workers averaged $38.30 per hour over the study period, while the benefits averaged $26.50 per hour, which is a benefits rate of 69 percent.

[38] Office of Personnel Management, ''General Schedule (GS) Locality Pay Tables,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf* (last visited Dec. 7, 2019).

[39] Office of Personnel Management, ''Administrative Law Judges Locality Rates of Pay,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/ALJ_LOC.pdf* (last visited Dec. 7, 2019).

[40] Office of Personnel Management, ''General Schedule (GS) Locality Pay Tables,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf* (last visited Dec. 7, 2019).

[41] *Id.*

[42] *Id.*

5. Subject-by-Subject Analysis

The Department's subject-by-subject analysis covers the estimated costs of the final rule. The hourly time burdens and other estimates used to quantify the costs are largely based on the Department's experience with the registered apprenticeship program.

a. Costs

(1) Rule Familiarization

When the final rule takes effect, prospective SREs will need to familiarize themselves with the new regulation, thereby incurring a one-time cost. To estimate the cost of rule familiarization for the 10-year period of this analysis, the Department multiplied the projected number of new SRE applications in each year by the estimated time to review the rule (2 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new SRE applications in Year 1 is 270, so the estimated Year 1 cost is $63,212 (= 270 new SRE applications × 2 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $11,413 at a discount rate of 3 percent and $12,475 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $97,353 at a discount rate of 3 percent and $87,617 at a discount rate of 7 percent.

In addition, prospective IRAPs will need to familiarize themselves with elements of the new rule. To estimate the cost of rule familiarization for IRAPs, the Department multiplied the projected number of new IRAPs in each year by the estimated time to review the rule (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $237,632 (= 2,030 new IRAPs × 1 hour × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $117,700 at a discount rate of 3 percent and $123,119 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,004,009 at a discount rate of 3 percent and $864,738 at a discount rate of 7 percent.

(2) SRE Applications

To become a recognized SRE, an entity will need to submit an application to the Department, and then the Administrator will determine whether the entity is qualified to be an SRE. The application titled ''Industry-Recognized Apprenticeship Program Standards Recognition Entity Application'' contains five sections. The estimated costs for completing each section are detailed below.

(i) Section I—Standards Recognition Entity Identifying Information

The estimated average response time for a prospective SRE to provide the identifying information requested in Section I is approximately 2 hours, which includes the time to gather and attach the documentation for this section. To estimate the costs for completing Section I over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section I (2 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $63,212 (= 270 SRE applications × 2 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $16,407 at a discount rate of 3 percent and $17,229 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $139,951 at a discount rate of 3 percent and $121,012 at a discount rate of 7 percent.

(ii) Section II—Capabilities and Experience of the Standards Recognition Entity

The estimated average response time for a prospective SRE to describe its operations, capabilities, experience, and qualifications to be an SRE is approximately 5 hours, including the time to gather the necessary documentation. To estimate the costs for completing Section II over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section II (5 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $158,031 (= 270 SRE applications × 5 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $41,016 at a discount rate of 3 percent and $43,074 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $349,877 at a discount rate of 3 percent and $302,531 at a discount rate of 7 percent.

(iii) Section III—Evaluating and Monitoring Elements of a High-Quality Apprenticeship Program

The estimated average response time for a new SRE applicant to provide information regarding the elements of the IRAPs it will recognize is 60 hours, including the time to develop the pertinent policies and procedures. Because an SRE applying for continued recognition will already have policies and procedures in place, the estimated average response time for an SRE applying for continued recognition in Years 6–10 is 6 hours. To estimate the costs for completing Section III over the 10-year analysis period, the Department multiplied the projected number of new SRE applications in each year by the estimated time to complete Section III (60 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). Then, the Department added the product of the projected number of SRE applications for continued recognition in each year and the estimated time to complete Section III (6 hours) and the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new SRE applications in Year 6 is 44 and the projected number of SRE applications for continued recognition is 183, so the estimated Year 6 cost is $437,570 [= (44 new SRE applications × 60 hours × $117.06 per hour) + (183 SRE applications for continued recognition × 6 hours × $117.06 per hour)]. The annualized cost over the 10-year analysis period is estimated at $357,558 at a discount rate of 3 percent and $388,682 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $3,050,043 at a discount rate of 3 percent and $2,729,943 at a discount rate of 7 percent.

(iv) Section IV—Policies and Procedures

The estimated average response time for a new SRE applicant to provide information concerning its proposed policies and procedures for recognizing and quality control of IRAPs is 40 hours, including the time to develop the pertinent policies and procedures. Because an SRE applying for continued recognition will already have policies and procedures in place, the estimated average response time for an SRE applying for continued recognition in Years 6–10 is 4 hours. To estimate the costs for completing Section IV over the 10-year analysis period, the Department multiplied the projected number of new SRE applications in each year by the estimated time to complete Section IV

(40 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). Then, the Department added the product of the projected number of SRE applications for continued recognition in each year and the estimated time to complete Section IV (4 hours) and the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new SRE applications in Year 6 is 44 and the projected number of SRE applications for continued recognition is 183, so the estimated Year 6 cost is $291,714 [(= 44 new SRE applications × 40 hours × $117.06 per hour) + (183 SRE applications for continued recognition × 4 hours × $117.06 per hour)]. The annualized cost over the 10-year analysis period is estimated at $238,372 at a discount rate of 3 percent and $259,122 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $2,033,362 at a discount rate of 3 percent and $1,819,962 at a discount rate of 7 percent.

(v) Section V—Attestation

The Department estimates that it will take 10 minutes for each prospective SRE to review the application for completeness and to sign it. To estimate the costs for completing Section V over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section V (10 minutes) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $5,373 (= 270 SRE applications × 10 minutes × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $1,395 at a discount rate of 3 percent and $1,465 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $11,896 at a discount rate of 3 percent and $10,286 at a discount rate of 7 percent.

(3) Resubmitting an Application

If a prospective SRE is denied recognition, it may resubmit its application after remedying any deficiencies. For purposes of this analysis, the Department estimates that approximately 30 percent of applications will be denied on the first attempt, and that 50 percent of the denied applications will be resubmitted after the deficiencies have been addressed, which means 15 percent of all applications will be resubmitted. The Department estimates that remedying the deficiencies and resubmitting the application will take approximately 16 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 15 percent, and then multiplied that product by the estimated time to resubmit the application (16 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $75,855 (= 270 SRE applications × 15% × 16 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $19,688 at a discount rate of 3 percent and $20,675 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $167,941 at a discount rate of 3 percent and $145,215 at a discount rate of 7 percent.

(4) Request for Administrative Review of Denial

If a prospective SRE is denied recognition, it may request administrative review by the Department's Office of Administrative Law Judges. For purposes of this analysis, the Department estimates that approximately 1 percent of all applications will request administrative review and that filing a request for administrative review will take approximately 60 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time to file a request for administrative review (60 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $18,964 (= 270 SRE applications × 1% × 60 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $3,717 at a discount rate of 3 percent and $4,029 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $31,705 at a discount rate of 3 percent and $28,300 at a discount rate of 7 percent.

(5) Notification of Right To File Complaint Against IRAP

Pursuant to § 29.22(k), an SRE must notify the public about the right of an apprentice, a prospective apprentice, the apprentice's authorized representative, a personnel certification body, or an employer, to file a complaint with the SRE against an IRAP and the requirements for filing a complaint. For example, the SRE could provide the information online, on a poster, or in a handbook. The Department estimates that it will take 1 hour for a Training and Development Manager to comply with this provision. To estimate the costs over the 10-year analysis period, the Department multiplied the projected number of new SREs in each year by the estimated time to notify the public (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new SREs in Year 1 is 203, so the estimated Year 1 cost is $23,763 (= 203 new SREs × 1 hour × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $4,267 at a discount rate of 3 percent and $4,669 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $36,402 at a discount rate of 3 percent and $32,790 at a discount rate of 7 percent.

(6) Notification of Right To File Complaint Against SRE

Pursuant to § 29.22(l), an SRE must notify the public about the right to file a complaint against it with the Administrator. For example, the SRE could provide the information online, on a poster, or in a handbook. The Department estimates that it will take 1 hour for a Training and Development Manager to comply with this provision. To estimate the costs over the 10-year analysis period, the Department multiplied the projected number of new SREs in each year by the estimated time to notify the public (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new SREs in Year 1 is 203, so the estimated Year 1 cost is $23,763 (= 203 new SREs × 1 hour × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $4,267 at a discount rate of 3 percent and $4,669 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $36,402 at a discount rate of 3 percent and $32,790 at a discount rate of 7 percent.

(7) Notification of Substantive Changes by SRE

In accordance with § 29.21(c)(2), an SRE will need to notify the Administrator and provide all related material if it makes a substantive change to its processes or seeks to recognize IRAPs in additional industries, occupational areas, or geographical

areas. The Department estimates that approximately 50 percent of SREs will make a substantive change each year and that complying with this provision will take approximately 10 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 50 percent, and then multiplied that product by the estimated time to comply with this provision (10 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $118,816 (= 203 SREs × 50% × 10 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $147,719 at a discount rate of 3 percent and $145,478 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,260,072 at a discount rate of 3 percent and $1,021,779 at a discount rate of 7 percent.

(8) Recognition or Rejection of Apprenticeship Programs Seeking Recognition

In accordance with paragraph 29.22(a)(1), an SRE will need to recognize or reject a prospective IRAP in a timely manner. Moreover, in accordance with § 29.22(b), an SRE will need to validate its IRAPs' compliance with the requirements listed in § 29.22(a)(4) when the SRE provides the Administrator with notice of recognition of an IRAP. The Department estimates that complying with these two provisions will take approximately 12 hours per program seeking recognition per year. The Department used the estimated number of new IRAPs as a proxy for this calculation, anticipating that the vast majority of programs seeking recognition will be recognized. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with this provision (12 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $2,851,582 (= 2,030 IRAPs × 12 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $1,412,406 at a discount rate of 3 percent and $1,477,430 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $12,048,109 at a discount rate of 3 percent and $10,376,853 at a discount rate of 7 percent.

(9) Inform Administrator of IRAP Recognition, Suspension, or Derecognition

In accordance with § 29.22(a)(2), an SRE will need to inform the Administrator when it has recognized, suspended, or derecognized an IRAP. The Department estimates that complying with this provision will take approximately 30 minutes per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (30 minutes) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $11,882 (= 203 SREs × 30 minutes × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $14,772 at a discount rate of 3 percent and $14,548 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $126,007 at a discount rate of 3 percent and $102,178 at a discount rate of 7 percent.

(10) Provision of Data or Information to the Administrator

In accordance with § 29.22(a)(3), an SRE will need to provide to the Administrator any data or information the Administrator is expressly authorized to collect. The Department estimates that approximately 10 percent of SREs will need to provide additional data or information each year and that complying with this provision will take approximately 2 hours per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 10 percent, and then multiplied that product by the estimated time to comply with this provision (2 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $4,753 (= 203 SREs × 10% × 2 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $5,909 at a discount rate of 3 percent and $5,819 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $50,403 at a discount rate of 3 percent and $40,871 at a discount rate of 7 percent.

(11) Provision of Written Attestation to the Administrator

In accordance with § 29.22(b), an SRE must provide the Administrator an annual written attestation that its IRAPs meet the requirements of § 29.22(a)(4) and any other requirements of the SRE. The Department estimates that complying with this provision will take SREs approximately 10 minutes per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by 10 minutes and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $40,397 (= 2,030 IRAPs × 10 minutes × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $119,607 at a discount rate of 3 percent and $115,230 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,020,268 at a discount rate of 3 percent and $809,325 at a discount rate of 7 percent.

(12) SREs' Disclosure of Credentials That Apprentices Will Earn

In accordance with § 29.22(c), an SRE will need to disclose the credential(s) that apprentices will earn during their successful participation in or upon completion of an IRAP. An SRE could disclose these credentials on its website, for example. The Department estimates that complying with this provision will take approximately 30 minutes per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (30 minutes) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $11,882 (= 203 SREs × 30 minutes × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $14,772 at a discount rate of 3 percent and $14,548 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $126,007 at a discount rate of 3 percent and $102,178 at a discount rate of 7 percent.

(13) SREs' Quality Control of IRAPs

In accordance with § 29.22(f), an SRE will need to remain in an ongoing quality-control relationship with the IRAPs it has recognized, including periodic compliance reviews of its

IRAPs. The Department estimates that complying with this provision will take an SRE approximately 4 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (4 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $950,527 (= 2,030 IRAPs × 4 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $2,814,272 at a discount rate of 3 percent and $2,711,287 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $24,006,312 at a discount rate of 3 percent and $19,042,948 at a discount rate of 7 percent.

(14) Performance Data Reporting

In accordance with § 29.22(h), an SRE must report to the Administrator performance data for each IRAP it recognizes. Assuming the SRE will submit the information via the online portal that will be developed by OA, the Department estimates that complying with this provision will take an SRE approximately 4 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (4 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $950,527 (= 2,030 IRAPs × 4 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $2,814,272 at a discount rate of 3 percent and $2,711,287 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $24,006,312 at a discount rate of 3 percent and $19,042,948 at a discount rate of 7 percent.

In accordance with § 29.22(h), an SRE must also make publicly available performance data for each IRAP it recognizes. The Department estimates that complying with this provision will take an SRE approximately 2 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (2 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $475,264 (= 2,030 IRAPs × 2 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $1,407,136 at a discount rate of 3 percent and $1,355,644 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $12,003,156 at a discount rate of 3 percent and $9,521,474 at a discount rate of 7 percent.

In order for an SRE to comply with these provisions, the IRAPs it recognizes will need to provide the pertinent performance data. The Department estimates that it will take IRAPs approximately 25 hours per year to collect and provide the relevant data. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by 25 hours and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $5,940,795 (= 2,030 IRAPs × 25 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $17,589,201 at a discount rate of 3 percent and $16,945,546 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $150,039,452 at a discount rate of 3 percent and $119,018,422 at a discount rate of 7 percent.

(15) SREs' Public Notification of Fees

Pursuant to § 29.22(n), an SRE must publicly disclose any fees it charges to IRAPs. An SRE could disclose its fees on its website, for example. The Department estimates that complying with this provision will take approximately 1 hour per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $23,763 (= 203 SREs × 1 hour × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $29,544 at a discount rate of 3 percent and $29,096 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $252,014 at a discount rate of 3 percent and $204,356 at a discount rate of 7 percent.

(16) SREs' Recordkeeping

Pursuant to § 29.22(o), an SRE must ensure that its records regarding each IRAP that the SRE recognized are maintained for a minimum of 5 years. The Department estimates that complying with this provision will take an SRE approximately 20 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (20 hours) and by the hourly compensation rate for Office and Administrative Support Occupations ($37.50 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $1,522,500 (= 2,030 IRAPs × 20 hours × $37.50 per hour). The annualized cost over the 10-year analysis period is estimated at $4,507,740 at a discount rate of 3 percent and $4,342,785 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $38,451,935 at a discount rate of 3 percent and $30,501,902 at a discount rate of 7 percent.

(17) IRAPs' Development of Written Training Plan

In accordance with § 29.22(a)(4)(ii), an IRAP must have a written training plan that details the structured work experiences and appropriate related instruction, is designed so that apprentices demonstrate competency and earn credential(s), and provides apprentices progressively advancing industry-essential skills. The Department estimates that it will take IRAPs approximately 80 hours per year to comply with this provision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with these provisions (80 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $19,010,544 (= 2,030 new IRAPs × 80 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $9,416,040 at a discount rate of 3 percent and $9,849,537 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $80,320,727 at a discount rate of 3 percent and $69,179,023 at a discount rate of 7 percent.

(18) IRAPs' Development of Written Apprenticeship Agreement

In accordance with § 29.22(a)(4)(x), an IRAP must include a written apprenticeship agreement outlining the terms and conditions of the employment and training with each apprentice. For purposes of this analysis, the Department assumes the written apprenticeship agreement will disclose the wages apprentices will receive and under what circumstances apprentices' wages will increase pursuant to § 29.22(a)(4)(vii), as well as any costs or expenses that will be charged to apprentices pursuant to § 29.22(a)(4)(ix). The Department estimates that it will take IRAPs approximately 8 hours per year to comply with these three provisions. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with these provisions (8 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is $1,901,054 (= 2,030 new IRAPs × 8 hours × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $941,604 at a discount rate of 3 percent and $984,954 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $8,032,073 at a discount rate of 3 percent and $6,917,902 at a discount rate of 7 percent.

(19) IRAPs' Preparation and Signing of Written Apprenticeship Agreement

In addition to developing a written apprenticeship agreement, which may be applicable to multiple apprentices, an IRAP must prepare and sign an apprenticeship agreement with each individual apprentice. The Department estimates that it will take IRAPs approximately 10 minutes per apprentice to prepare and sign a written apprenticeship agreement. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of apprentices in each year by the estimated time to comply with these provisions (10 minutes) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour). For example, the projected number of apprentices in Year 1 is 71,050, so the estimated Year 1 cost is $1,413,909 (= 71,050 apprentices × 10 minutes × $117.06 per hour). The annualized cost over the 10-year analysis period is estimated at $4,186,230 at a discount rate of 3 percent and $4,033,040 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $35,709,390 at a discount rate of 3 percent and $28,326,384 at a discount rate of 7 percent.

(20) DOL Development of Online Application Form and Internal Review System

Before an entity could submit an application to become a recognized SRE, the Department will first need to develop an online application form and a system for managing the internal review process. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total $546,462. Contractor labor for developing the program and the application form will account for 20 percent of the total cost, contractor labor for developing a public website that will accept the applications and a private system for managing the internal review of the applications will account for 77 percent of the total cost, and material costs for software hosting and licensing will account for 3 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at $62,196 at a discount rate of 3 percent and $72,714 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $530,546 at a discount rate of 3 percent and $510,712 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be $125,000. Contractor labor to support maintenance of the online application form and case management system will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is estimated at $1,066,275 at a discount rate of 3 percent and $877,948 at a discount rate of 7 percent.

(21) DOL Development of Online Resource for Performance Measures

Another online tool that will need to be developed by the Department will be an online resource for receiving performance data from SREs. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total $1,163,085. Contractor labor for developing the online system will account for 20 percent of the total cost, contractor labor for developing a public website that will accept the performance data and a private system for managing the internal review of the performance data will account for 77 percent of the total cost, and material costs for software hosting and licensing will account for 3 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at $132,378 at a discount rate of 3 percent and $154,764 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,129,209 at a discount rate of 3 percent and $1,086,995 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be $245,909. Contractor labor to support maintenance of the online performance system will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is estimated at $2,097,654 at a discount rate of 3 percent and $1,727,162 at a discount rate of 7 percent.

(22) DOL Development of Online Resource for List of SREs and IRAPs

Another online tool that will need to be developed by the Department will be an online resource for the list of SREs and IRAPs. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total $92,000. Contractor labor for developing the online resource will account for 98 percent of the total cost, while material costs for software hosting and licensing will account for 2 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at $10,471 at a discount rate of 3 percent and $12,242 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $89,320 at a discount rate of 3 percent and $85,981 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be $18,000. Contractor labor to support maintenance of the online list of SREs and IRAPs will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is

estimated at $153,544 at a discount rate of 3 percent and $126,424 at a discount rate of 7 percent.

(23) DOL Review of SRE Applications

The following steps summarize the estimated costs that will be borne by OA in connection with processing and reviewing the application information provided by prospective SREs.

(i) Step 1: Processing by Program Analysts

The Department anticipates that the initial intake, review, and analysis of the information in the application form will be conducted by a Program Analyst in OA. The Department estimates that a Program Analyst will take an average of 1 hour to review and analyze the information. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by the estimated time to process each application (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $32,424 (= 270 SRE applications × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $8,416 at a discount rate of 3 percent and $8,838 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $71,787 at a discount rate of 3 percent and $62,072 at a discount rate of 7 percent.

(ii) Step 2: Panel Review

Applications that pass the initial review process by a Program Analyst will then be forwarded to a review panel. For purposes of this analysis, the Department estimated the labor costs for a panel consisting of one Program Analyst and two Federal contractors who are Training and Development Managers. The three panelists will review each application and make a recommendation for recognition or denial to the Administrator. For purposes of this analysis, the Department estimates that 90 percent of applications will pass the initial review process by a Program Analyst and will be forwarded to the review panel.

The Department estimates that the Program Analyst on the review panel will take 8 hours to conduct a complete review of each application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $233,455 (= 270 SRE applications × 90% × 8 hours × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $60,592 at a discount rate of 3 percent and $63,631 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $516,864 at a discount rate of 3 percent and $446,921 at a discount rate of 7 percent.

The Department estimates that the Training and Development Managers on the review panel will take 8 hours each to conduct a complete review of each application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour) and by 2 to account for both Training and Development Managers on the review panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $455,129 (= 270 SRE applications × 90% × 8 hours × $117.06 per hour × 2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at $118,127 at a discount rate of 3 percent and $124,052 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,007,646 at a discount rate of 3 percent and $871,289 at a discount rate of 7 percent.

(iii) Step 3: Panel Meeting

The Department expects that the panel members will meet on a consistent basis to discuss their review findings for each application. The Department estimates that the Program Analyst on the review panel will spend 1 hour per application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $29,182 (= 270 SRE applications × 90% × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $7,574 at a discount rate of 3 percent and $7,954 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $64,608 at a discount rate of 3 percent and $55,865 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will each spend 1 hour per application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $56,891 (= 270 SRE applications × 90% × 1 hour × $117.06 per hour × 2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at $14,766 at a discount rate of 3 percent and $15,506 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $125,956 at a discount rate of 3 percent and $108,911 at a discount rate of 7 percent.

(iv) Step 4: Review by the Administrator

After the three panelists review the applications, the satisfactory applications will be forwarded to the Administrator for final review and approval. The Administrator will reach a final determination as to whether the entities should be recognized as SREs. The Department estimates that 70 percent of applications will be forwarded to the Administrator and that the Administrator will spend 15 minutes per application making a final decision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 70 percent, and then multiplied this product by the estimated time for review by the Administrator (15 minutes) and by the hourly compensation rate for the Administrator ($178.51 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $8,435 (= 270 SRE applications × 70% × 15 minutes × $178.51 per hour). The annualized cost over the 10-year analysis period is estimated at $2,189 at a discount rate of

3 percent and $2,299 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $18,674 at a discount rate of 3 percent and $16,147 at a discount rate of 7 percent.

(v) Notification of Recognition or Denial of Recognition

Finally, OA will notify each applicant of the results of the review process. Each applicant will either be recognized as an SRE or be denied recognition. The Department estimates that a Program Analyst will spend an average of 1 hour notifying each applicant. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by the estimated time for notification (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $32,424 (= 270 SRE applications × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $8,416 at a discount rate of 3 percent and $8,838 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $71,787 at a discount rate of 3 percent and $62,072 at a discount rate of 7 percent.

(24) DOL Review of Resubmitted SRE Applications

For purposes of this analysis, the Department estimates that approximately 30 percent of applications will be denied on the first attempt, and that 50 percent of the denied applications will be resubmitted after the deficiencies have been addressed, which means 15 percent of all applications will be resubmitted. The Department will then follow the same five steps for reviewing the resubmitted applications.

(i) Resubmission Step 1: Processing by Program Analysts

The Department estimates that a Program Analyst will take 1 hour to process the information in a resubmitted application. To estimate the costs over the 10-year analysis period for Step 1 of the resubmission review process, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to process each application (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $4,864 (= 270 SRE applications × 15% × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $1,262 at a discount rate of 3 percent and $1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $10,768 at a discount rate of 3 percent and $9,311 at a discount rate of 7 percent.

(ii) Resubmission Step 2: Panel Review

The Department estimates that the Program Analyst on the review panel will take 8 hours to conduct a complete review of each resubmitted application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $38,909 (= 270 SRE applications × 15% × 8 hours × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $10,099 at a discount rate of 3 percent and $10,605 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $86,144 at a discount rate of 3 percent and $74,487 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will take 8 hours each to conduct a complete review of each resubmitted application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $75,855 (= 270 SRE applications × 15% × 8 hours × $117.06 per hour × 2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at $19,688 at a discount rate of 3 percent and $20,675 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $167,941 at a discount rate of 3 percent and $145,215 at a discount rate of 7 percent.

(iii) Resubmission Step 3: Panel Meeting

The Department estimates that the Program Analyst on the review panel will spend 1 hour per resubmitted application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $4,864 (= 270 SRE applications × 15% × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $1,262 at a discount rate of 3 percent and $1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $10,768 at a discount rate of 3 percent and $9,311 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will each spend 1 hour per resubmitted application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Training and Development Managers ($117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $9,482 (= 270 SRE applications × 15% × 1 hour × $117.06 per hour × 2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at $2,461 at a discount rate of 3 percent and $2,584 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $20,993 at a discount rate of 3 percent and $18,152 at a discount rate of 7 percent.

(iv) Resubmission Step 4: Review by the Administrator

For purposes of this analysis, the Department estimates that one-third of resubmitted applications will be forwarded to the Administrator, which equates to 5 percent of the total number of applications (= 15% of all applications × ⅓ forwarded to the Administrator). The Department further

estimates that the Administrator will spend 15 minutes per resubmitted application making a final decision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 5 percent, and then multiplied this product by the estimated time for review by the Administrator (15 minutes) and by the hourly compensation rate for the Administrator ($178.51 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $602 (= 270 SRE applications × 5% × 15 minutes × $178.51 per hour). The annualized cost over the 10-year analysis period is estimated at $156 at a discount rate of 3 percent and $164 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $1,334 at a discount rate of 3 percent and $1,153 at a discount rate of 7 percent.

(v) Notification of Recognition or Denial of Recognition for Resubmitted Applications

The Department estimates that a Program Analyst will spend an average of 1 hour notifying each entity that resubmitted an application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for notification (1 hour) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is $4,864 (= 270 SRE applications × 15% × 1 hour × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $1,262 at a discount rate of 3 percent and $1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $10,768 at a discount rate of 3 percent and $9,311 at a discount rate of 7 percent.

(25) DOL Preparation of Administrative Record When a Denied Entity Requests Review

As explained earlier in this section, the Department estimates that approximately 1 percent of all applications will request administrative review of a denial. Within 30 calendar days of the filing of the request for administrative review, the Administrator will have to prepare an administrative record for submission to the Office of Administrative Law Judges. Based on its program experience, the Department estimates that preparing an administrative record will take a Program Analyst approximately 6 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time to prepare an administrative record (6 hours) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $1,945 (= 270 SRE applications × 1% × 6 hours × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $381 at a discount rate of 3 percent and $413 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $3,253 at a discount rate of 3 percent and $2,903 at a discount rate of 7 percent.

(26) Review of Administrator's Denial by Office of Administrative Law Judges

In accordance with § 29.29, a prospective SRE that is denied recognition may file a request for administrative review by an Administrative Law Judge. The Department estimates that it will take 8 hours for an Administrative Law Judge to review the administrative record submitted by OA and conduct a hearing. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for an Administrative Law Judge to conduct a review (8 hours) and by the hourly compensation rate for Administrative Law Judges ($189.66 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $4,097 (= 270 SRE applications × 1% × 8 hours × $189.66 per hour). The annualized cost over the 10-year analysis period is estimated at $803 at a discount rate of 3 percent and $870 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $6,849 at a discount rate of 3 percent and $6,114 at a discount rate of 7 percent.

Next, a Law Clerk in the Office of Administrative Law Judges will draft the proposed findings and the recommended decision based on the hearing. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Law Clerk to draft the proposed findings and the recommended decision (2 hours) and by the hourly compensation rate for Law Clerks ($84.27 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $455 (= 270 SRE applications × 1% × 2 hours × $84.27 per hour). The annualized cost over the 10-year analysis period is estimated at $89 at a discount rate of 3 percent and $97 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $761 at a discount rate of 3 percent and $679 at a discount rate of 7 percent.

In addition, a Paralegal in the Office of Administrative Law Judges will handle the tasks related to placing the matter on the docket of cases. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Paralegal to place the matter on the docket (2 hours) and by the hourly compensation rate for Paralegals ($56.93 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $307 (= 270 SRE applications × 1% × 2 hours × $56.93 per hour). The annualized cost over the 10-year analysis period is estimated at $60 at a discount rate of 3 percent and $65 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $514 at a discount rate of 3 percent and $459 at a discount rate of 7 percent.

(27) Review of Administrator's Denial by Administrative Review Board

In accordance with § 29.29, any party may file exceptions to the Administrative Law Judge's recommended decision in the prior step. If the Administrative Review Board accepts a case for review, the three-judge panel of Administrative Law Judges will review the proposed findings and the recommended decision provided by the Administrative Law Judge in the prior step, and then render a decision on the record. The Department estimates that the review and decision will take approximately 2 hours per Administrative Law Judge. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the

estimated time for each Administrative Law Judge to conduct the review (2 hours) and by the hourly compensation rate for Administrative Law Judges ($189.66 per hour) and by 3 Administrative Law Judges. For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $3,073 (= 270 SRE applications × 1% × 2 hours × $189.66 per hour × 3 Administrative Law Judges). The annualized cost over the 10-year analysis period is estimated at $602 at a discount rate of 3 percent and $653 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $5,137 at a discount rate of 3 percent and $4,585 at a discount rate of 7 percent.

Next, a Staff Attorney for the Administrative Review Board will draft a decision for the Board. The Department estimates that this step of the process will take approximately 6 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Staff Attorney to draft a decision (6 hours) and by the hourly compensation rate for Staff Attorneys ($177.91 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $2,882 (= 270 SRE applications × 1% × 6 hours × $177.91 per hour). The annualized cost over the 10-year analysis period is estimated at $565 at a discount rate of 3 percent and $612 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $4,819 at a discount rate of 3 percent and $4,301 at a discount rate of 7 percent.

In addition, a Legal Assistant will perform docket filing and other administrative tasks associated with the issuance of the Administrative Review Board's decision. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Legal Assistant to perform administrative duties (2 hours) and by the hourly compensation rate for Legal Assistant ($84.27 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is $455 (= 270 SRE applications × 1% × 2 hours × $84.27 per hour). The annualized cost over the 10-year analysis period is estimated at $89 at a discount rate of 3 percent and $97 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $761 at a discount rate of 3 percent and $679 at a discount rate of 7 percent.

(28) Administrator's Compliance Assistance Reviews

Pursuant to § 29.23(a), the Administrator may conduct periodic compliance assistance reviews of SREs to assist with their conformity to the requirements of this rule. For purposes of this analysis, the Department estimates that OA will perform a compliance assistance review of 5 percent of SREs per year, and that such a review will take approximately 10 hours per SRE. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 5 percent, and then multiplied this product by the estimated time to comply with this provision (10 hours) and by the hourly compensation rate for Program Analysts ($120.09 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is $12,189 (= 203 SREs × 5% × 10 hours × $120.09 per hour). The annualized cost over the 10-year analysis period is estimated at $15,154 at a discount rate of 3 percent and $14,924 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at $129,269 at a discount rate of 3 percent and $104,823 at a discount rate of 7 percent.

b. Payments From IRAPs to SREs

The Department anticipates that SREs may charge a fee to the IRAPs that they recognize, though such a fee is neither required nor prohibited under this final rule. Such a fee will help SREs offset the costs described earlier in this section.

SREs' fees will likely vary widely, so the Department explored different ways to estimate those fees. The Department began by looking at the application and annual fees charged by entities that focus primarily on setting standards, thinking it would make sense to base its estimate on the fees currently charged by such entities. However, after further reflection, the Department decided that such entities are not representative of the full range of potential SREs, which may include but are not limited to trade, industry, and employer groups or associations; educational institutions; State and local government agencies or entities; non-profit organizations; unions; joint labor-management organizations; and partnerships of multiple entities. Entities that focus primarily or exclusively on standards-setting are not representative of the variety of entities likely to apply to become recognized SREs, so the fees charged by such entities would not be representative of the fees that may (or may not) be charged by other types of entities.

Therefore, the Department decided that a better approach to estimating SRE fees would be to develop an estimate based on the quantified costs in this analysis. To approximate a break-even point between SRE costs and SRE fees under this final rule, the Department estimates an average initial application fee of $3,000 and an average annual fee of $2,000. The remaining difference between SRE costs and SRE fees reflects the unquantified costs under this final rule.

Since the payment of SRE fees by IRAPs will help SREs recoup their costs under this final rule, and since those costs have already been quantified in the economic analysis above, the potential payments from IRAPs to SREs are not included in Exhibits 1 or 6.

6. Summary of Costs

Exhibit 6 presents a summary of the quantifiable costs associated with this final rule.

Exhibit 6: Estimated Costs (2018 dollars)	
Year	**Costs**
1	$42,261,859
2	$42,085,967
3	$42,663,991
4	$43,344,141
5	$41,863,302
6	$46,881,519
7	$49,075,275
8	$52,433,000
9	$55,851,825
10	$59,248,016
Annualized, 3% discount rate, 10 years	$47,104,991
Annualized, 7% discount rate, 10 years	$46,530,920
Total, 3% discount rate, 10 years	$401,815,127
Total, 7% discount rate, 10 years	$326,813,710

7. Nonquantifiable Costs

This section addresses the nonquantifiable costs of the final rule.

a. SRE Costs

Under § 29.22(j), an SRE must make publicly available the aggregated number of complaints pertaining to each IRAP. This is a new program, and in the absence of useful comparable data or other readily applicable information, the Department does not have a reasonable way to estimate the number of complaints that will be filed against each IRAP. Consequently, there is insufficient information to quantify the potential costs of this provision.

Further, under § 29.26, the Administrator may initiate a review of an SRE after receiving a complaint about the SRE or information indicating that the SRE is no longer capable of continuing in its role. If a review is initiated, the SRE will have an opportunity to provide information to the Department. Since this is a new program, the Department does not have a reasonable way to estimate the number of complaints it may receive or reviews it may initiate. Consequently, there is insufficient information to quantify the potential costs of this provision.

Additionally, § 29.27 explains the process through which the Administrator may suspend or derecognize an SRE. A suspended SRE will have an opportunity to implement remedial action or request administrative review. If an SRE does not implement remedial action or request administrative review and is derecognized by the Administrator, the SRE must inform its IRAPs and the public of its derecognition in accordance with § 29.22(m). Since this is a new program, the Department does not have a reasonable way to estimate the number of SREs that will be suspended, nor the percentage of suspended SREs that will implement remedial action or make a request for administrative review, nor the share that will be derecognized. For these reasons, the Department is unable to quantity the potential costs of these provisions.

b. IRAP Costs

A 2016 study published by the Department of Commerce found that apprenticeship programs vary significantly in length and cost. The shortest program in the study lasted 1 year, while the longest lasted more than 4 years. The costs of the programs in the study ranged from $25,000 to $250,000 per apprentice. Importantly, compensation costs for apprentices were the major cost of the programs. Other costs included program start-up, educational materials, mentors' time, and overhead. The authors noted that the ultimate goal of an apprenticeship program is for companies to fill skilled jobs, and apprenticeships are only one way to do so. Many of the costs of an apprenticeship program would still be incurred if the company filled the job through another method, such as hiring an already-trained worker, contracting a temporary worker, or increasing the hours of existing staff.[43] In analyzing the costs of an apprenticeship program, it is essential to consider how an employer would fill the position in the absence of apprentices. The costs of an apprenticeship program should be assessed within the context of the employer's alternative hiring options. The Department notes that such options may be limited given the skills gap that this regulation seeks to help address. Yet, data are not available for the Department to conduct such an analysis. Consequently, the Department was unable to quantify the potential costs of apprenticeship programs that will be established under this final rule.

c. Government Costs

In addition to the SRE and IRAP costs that cannot be quantified, the final rule is also expected to incur costs to the Department. To begin with, § 29.26 requires the Administrator to follow specific steps if the Administrator decides to initiate a review of an SRE after receiving a complaint or information indicating that the SRE is no longer capable of continuing in its

[43] Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, ''The Benefits and Costs of Apprenticeship: A Business Perspective,'' Nov. 2016, *https://files.eric.ed.gov/fulltext/ED572260.pdf.*

role. Those steps include notifying the SRE of the review, conducting the review, and notifying the SRE of the decision to either take no action against the SRE or suspend the SRE. Since this is a new program, the Department does not have a reasonable way to estimate the number of complaints it may receive or reviews it may initiate. Hence, there is insufficient information to quantify the potential costs of this section.

Similarly, § 29.27 requires the Administrator to take certain actions if the Administrator decides to suspend an SRE. For example, the Administrator must publish the SRE's suspension on the Department's publicly available list of SREs and IRAPs. If the SRE commits itself to remedial actions, the Administrator must determine whether the SRE has remedied the identified areas of nonconformity. If the SRE makes a request for administrative review, the Administrator must prepare an administrative record for submission to the Office of Administrative Law Judges. Finally, if the SRE does not commit itself to remedial action or request administrative review, the Administrator will derecognize the SRE. Since this is a new program, the Department does not have a reasonable way to estimate the proportion of SREs that will be suspended by the Administrator. Consequently, there is insufficient information to quantify the potential costs of this provision.

Under § 29.29(a), the Administrator must prepare an administrative record for submission to the Administrative Law Judge after receiving a suspended SRE's request for administrative review. Without a reasonable way to estimate the number of suspended SREs or the share of suspended SREs that will request administrative review, the Department is unable to quantify this cost.

In addition to the costs borne by OA, costs will also be borne by the Office of Administrative Law Judges and the Administrative Review Board. The Chief Administrative Law Judge must designate an Administrative Law Judge to review a suspended SRE's request for administrative review. Within 20 calendar days of the receipt of the Administrative Law Judge's recommended decision, any party may file exceptions with the Administrative Review Board, which must issue a decision in any case it accepts within 180 calendar days of the close of the record. The Department does not have a reasonable way to estimate the number of suspended SREs nor the share that will request administrative review; therefore, the Department is unable to quantify this cost.

8. Nonquantifiable Transfer Payments

As mentioned above, a major cost of apprenticeship programs is the compensation costs of apprentices.[44] For the purposes of a Regulatory Impact Analysis, an increase in wages is not considered a cost; rather, an increase in wages is considered a ''transfer payment.'' According to OMB Circular A–4, transfers occur when wealth or income is redistributed without any direct change in aggregate social welfare.[45] Therefore, an increase in wages is categorized as a transfer payment from the employer to the worker rather than a cost to the employer or a benefit to the worker.

Data are not available for the Department to quantify the transfer payment from employers to apprentices. Some jobs filled by apprentices would likely be filled by non-apprentices in the absence of an IRAP. The transfer payment may be more than $100 million per year; therefore, this rule has been designated as an economically significant regulatory action under section 3(f) of E.O. 12866.

9. Regulatory Alternatives

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. Accordingly, the Department considered two regulatory alternatives related to paragraph 29.22(h). Under the first alternative, SREs would be required to make performance data publicly available every 5 years rather than annually. Under the second alternative, SREs would be required to make performance data publicly available every quarter rather than annually. Both alternatives are discussed in more detail below.

For the first alternative, the Department considered requiring SREs to report to the Administrator and make publicly available the performance data for each IRAP it recognizes on a 5-year reporting cycle rather than on an annual reporting cycle as proposed in paragraph 29.22(h). To estimate the reduction in costs under this alternative, the Department adjusted three of the calculations described in the Subject-by-Subject Analysis. First, the Department decreased from 4 hours to 48 minutes (= 4 hours ÷ 5 years) the time burden for an SRE to report to the Administrator the performance information for each IRAP it recognizes. Second, the Department decreased from 2 hours to 24 minutes (= 2 hours ÷ 5 years) the time burden for an SRE to make publicly available the performance information for each IRAP it recognizes. Third, the Department decreased from 25 hours to 5 hours (= 25 hours ÷ 5 years) the time burden for an IRAP to provide performance information to its SRE since the information would only need to be provided once every 5 years under this alternative. Exhibit 7 shows the estimated costs of the proposed rule under this alternative. Over the 10-year analysis period, the annualized costs are estimated at $29.7 million at a discount rate of 7 percent. In total, this alternative is estimated to result in costs of $208.7 million at a discount rate of 7 percent.

[44] Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, ''The Benefits and Costs of Apprenticeship: A Business Perspective,'' Nov. 2016, *https://files.eric.ed.gov/fulltext/ED572260.pdf.*

[45] OMB, ''Circular A–4,'' Sept. 17, 2003.

Exhibit 7: Alternative 1 Estimated Costs (2018 dollars)	
	Costs
First Year Total	$36,368,591
Annualized, 3% discount rate, 10 years	$29,656,503
Annualized, 7% discount rate, 10 years	$29,720,939
Total, 3% discount rate, 10 years	$252,975,990
Total, 7% discount rate, 10 years	$208,747,435

The Department decided not to pursue this alternative because a longer reporting cycle would be inconsistent with the annual reporting cycles for other workforce investment programs, such as those authorized by WIOA. Furthermore, a longer reporting cycle would be less transparent and provide less accountability to the public.

The second alternative considered by the Department would require SREs to report to the Administrator and make performance data publicly available on a quarterly reporting cycle rather than on an annual reporting cycle. To estimate the growth in costs under this alternative, the Department adjusted three of the calculations described in the Subject-by-Subject Analysis. First, the Department increased from 4 hours to 16 hours (= 4 hours × 4 quarters) the time burden for an SRE to report to the Administrator the performance information for each IRAP it recognizes. Second, the Department increased from 2 hours to 8 hours (= 2 hours × 4 quarters) the time burden for an SRE to make publicly available the performance information for each IRAP it recognizes. Third, the Department increased from 25 hours to 100 hours (= 25 hours × 4 quarters) the time burden for an IRAP to provide performance information to its SRE. Exhibit 8 shows the estimated costs of the proposed rule under this alternative. Over the 10-year analysis period, the annualized costs are estimated at $109.6 million at a discount rate of 7 percent. In total, this alternative is estimated to result in costs of $769.6 million at a discount rate of 7 percent.

Exhibit 8: Alternative 2 Estimated Costs (2018 dollars)	
	Costs
First Year Total	$64,361,617
Annualized, 3% discount rate, 10 years	$112,536,818
Annualized, 7% discount rate, 10 years	$109,568,350
Total, 3% discount rate, 10 years	$959,961,888
Total, 7% discount rate, 10 years	$769,562,240

The Department decided not to pursue this alternative because it would be unduly burdensome for SREs and IRAPs. Moreover, the additional data that would be collected would not justify the onerousness of the quarterly reporting requirement.

The Department considered these two regulatory alternatives in accordance with the provisions of E.O. 12866 and chose to balance flexibility and opportunity for innovation by SREs and IRAPs, while providing for reasonable reporting cycles that demonstrate transparency and accountability.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) imposes certain requirements on Federal agency rules that are subject to the notice-and-comment requirements of APA, 5 U.S.C. 553(b),[46] and that are likely to have a significant economic impact on a substantial number of small entities. The RFA requires agencies promulgating final rules to prepare a Final Regulatory Flexibility Analysis, and to develop alternatives whenever possible, when drafting regulations that will have a significant economic impact on a substantial number of small entities. The RFA requires the consideration of the impact of a final regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

The Department believes that this final rule will have a significant economic impact on a substantial number of small entities and is therefore publishing this Final Regulatory

[46] The RFA, as amended, governs ''any rule for which [a Federal] agency publishes a general [NPRM] pursuant to section 553(b) of [APA], or any other law.'' 5 U.S.C. 601(2) (defining ''rule'' for purposes of RFA).

Flexibility Analysis as required. It should be noted, however, that this initiative is voluntary; therefore, only small entities that choose to participate will experience an economic impact—significant or otherwise. The Department anticipates that small businesses will participate only if they believe it is cost effective to do so.

1. Statement of the Need for and Objectives of the Final Rule

The Department is issuing this final rule to establish IRAPs, a new form of apprenticeships intended to harness industry expertise and leadership in order to address the national shortage of skilled workers. The objective of this final rule is to facilitate the establishment of SREs and IRAPs in order to address the ongoing skills gap that faces our nation.

Congress enacted NAA, 29 U.S.C. 50, in 1937, authorizing the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices,'' as well as ''to bring together employers and labor for the formulation of programs of apprenticeship.'' In June 2017, President Trump issued E.O. 13801, ''Expanding Apprenticeships in America,'' directing the Secretary of Labor, in consultation with the Secretaries of Education and Commerce, to consider regulations to promote the establishment of apprenticeships developed by trade and industry groups, companies, non-profit organizations, unions, and joint labor-management organizations, and to provide the framework under which these entities could recognize high-quality apprenticeship programs.

Consistent with NAA and E.O. 13801, the Department considers it imperative to move forward with implementing regulations that will assist and complement the rapid scaling of high-quality apprenticeships in the United States. Also, this final rule will facilitate the efficient and effective operation of SREs and IRAPs. Such regulations will provide stakeholders with information necessary to evaluate the outcomes of this new initiative.

2. Public Comments

A commenter stated that the significant costs incurred by joint programs required to establish, administer, and sponsor open-shop program training can prove to be especially difficult for smaller employers. Several commenters expressed concern that including the construction industry in the proposed rule would threaten small businesses.

This is a voluntary program. The Department anticipates that small businesses will participate only if they think it is cost effective to do so. With respect to the construction industry in particular, the Administrator will not recognize SREs that seek to train apprentices in construction activities as defined in § 29.30.

Several commenters stated that, in their view, IRAP costs were understated in the proposed rule because SREs will require a higher annual fee to adequately monitor and enforce quality, performance, and compliance of IRAPs.

A wide variety of entities may become recognized SREs and they will incur a wide variation in costs, which will affect any fees they may charge. The Department's estimates for the application fee and annual fee are intended to approximate a break-even point between SRE costs and SRE fees. Some SREs will incur higher costs, while others will incur lower costs, and any fees they charge may reflect these differences. The commenters did not specify how much higher the Department's estimates should be nor did they provide data for the Department to use to improve its estimates. In the final rule, the Department maintained its approach of estimating SRE fees by approximating a break-even point between SRE costs and SRE fees.

3. Comments From the Chief Counsel for the U.S. Small Business Administration

The Department did not receive comments from the U.S. Small Business Administration during the public comment period.

4. Description and Estimate of the Small Entities Affected by the Final Rule

This final rule will primarily affect two types of entities: SREs and IRAPs. SREs may include industry associations, employer groups, labor-management organizations, educational organizations, and consortia of these or other organizations. IRAPs may be developed by entities such as trade and industry groups, companies, non-profit organizations, unions, and joint labor-management organizations.

As explained in the ''Payments from IRAPs to SREs'' subsection above, the Department anticipates that SREs may charge an application fee, an annual fee, or both to the IRAPs they recognize. Such a fee would help SREs recoup their expenses. Therefore, the Department did not include SREs in this Final Regulatory Flexibility Analysis.

Instead, this analysis focuses on the small entities that choose to develop IRAPs. As explained in the E.O. 12866 analysis above, the Department anticipates that each SRE will recognize approximately 32 IRAPs, beginning with 10 new IRAPs in its 1st year as an SRE, and then 8 new IRAPs in its 2nd year, 5 new IRAPs in its 3rd year, 3 new IRAPs in its 4th year, and 1 in its 5th through 10th years. Based on this assumption, the number of new IRAPs in Year 1 is estimated to be 2,030 (= 203 new SREs in Year 1 × 10 new IRAPs per SRE). The number of new IRAPs in Year 2 is estimated to be 1,724 [= (203 new SREs in Year 1 × 8 new IRAPs per SRE) + (10 new SREs in Year 2 × 10 new IRAPs per SRE)]. As explained in the E.O. 12866 analysis above, the Department estimates that 90 percent of SREs will undergo the Department's process for continued recognition, so in Year 6 the estimated number of new Year 1 SREs will shrink to 183 (= 203 new SREs in Year 1 × 90%). Accordingly, the number of new IRAPs in Year 6 is estimated to be 707 [= (183 Year 1 SREs with continued recognition × 1 new IRAPs per SRE) + (10 new SREs in Year 2 × 1 new IRAPs per SRE) + (11 new SREs in Year 3 × 3 new IRAPs per SRE) + (11 new SREs in Year 4 × 5 new IRAPs per SRE) + (12 new SREs in Year 5 × 8 new IRAPs per SRE) + (33 new SREs in Year 6 × 10 new IRAPs per SRE)].

To estimate the total number of IRAPs in each year of the analysis period, the Department first calculated the cumulative total of new IRAPs per SRE. For example, a new SRE in Year 1 is estimated to have recognized a total of 18 IRAPs in Year 2 (= 10 new IRAPs in Year 1 + 8 new IRAPs in Year 2). So, the total number of IRAPs in Year 2 is estimated to be 3,754 [= (203 new SREs in Year 1 × 18 total IRAPs per SRE) + (10 new SREs in Year 2 × 10 total IRAPs per SRE)]. As explained above, the estimated number of new Year 1 SREs is expected to shrink to 183 in Year 6. Accordingly, the total number of IRAPs in Year 6 is estimated to be 6,479 [= (183 Year 1 SREs with continued recognition × 28 total IRAPs per SRE) + (10 new SREs in Year 2 × 27 total IRAPs per SRE) + (11 new SREs in Year 3 × 26 total IRAPs per SRE) + (11 new SREs in Year 4 × 23 total IRAPs per SRE) + (12 new SREs in Year 5 × 18 total IRAPs per SRE) + (33 new SREs in Year 6 × 10 total IRAPs per SRE)].

[47] These numbers are identical to the numbers in Exhibit 3.

Exhibit 9 presents the projected number of new and total IRAPs over the 10-year analysis period.[47]

Exhibit 9: Projected Number of IRAPs

Year	Total New IRAPs	Total IRAPs
1	2,030	2,030
2	1,724	3,754
3	1,205	4,959
4	857	5,816
5	496	6,312
6	707	6,479
7	700	7,152
8	676	7,801
9	663	8,437
10	653	9,063

Given that this is a new initiative, the Department has no way of knowing what size these IRAPs will be. Therefore, the Department assumes that the IRAPs will have the same size distribution as the firms in each of the 18 major industry sectors.[48] This assumption allows the Department to conduct a robust analysis using data from the Census Bureau's Statistics of U.S. Businesses,[49] which include the number of firms, number of employees, and annual revenue by industry and firm size. Using these data allows the Department to estimate the per-program costs of the final rule as a percent of revenue by industry and firm size.

5. Compliance Requirements of the Final Rule

The E.O. 12866 analysis above quantifies several types of labor costs that will be borne by IRAPs: (1) Rule familiarization, (2) submission of performance data to the SRE, (3) development of written training plan; and (4) development and signing of written apprenticeship agreement. Additional costs that may be incurred but could not be quantified due to a lack of data include program start-up expenses, educational materials, and mentors' time. In addition, the final rule will result in transfer payments from IRAPs to apprentices in the form of compensation, but the Department does not expect a measurable transfer payment on aggregate because, in the absence of an IRAP, the jobs filled by apprentices will likely be filled by non-apprentices paid a similar rate or will be addressed by other means.

The final rule may also result in payments from IRAPs to SREs in the form of an application fee, an annual fee, or both charged by SREs. Such fees, which are neither required nor prohibited under this final rule, will help SREs offset their costs. For the Regulatory Flexibility Analysis, these types of fees are considered costs to IRAPs because the analysis estimates the impact on small entities, not on society at large. Accordingly, the SRE's fees are categorized as costs in this analysis.

The Department anticipates that the bulk of the workload for the labor costs in this analysis will be performed by employees in occupations similar to the occupation titled ''Training and Development Managers'' in the SOC system. As with the E.O. 12866 analysis, the Department used a fully loaded hourly compensation rate for Training and Development Managers of $117.06.[50]

In addition to the number of IRAPs and the hourly compensation rate of Training and Development Managers, the following estimates were used to calculate the quantified costs:

- *Rule familiarization (one-time cost):* 1 hour.
- *Provision of performance data to the SRE (annual cost):* 25 hours.
- *Development of Written Training Plan (one-time cost):* 80 hours.
- *Development of Written Apprenticeship Agreement (one-time cost):* 8 hours.
- *Preparation and Signing of Written Apprenticeship Agreement (annual cost):* 10 minutes.
- *SRE's application fee (one-time cost):* $3,000.
- *SRE's annual fee (annual cost):* $2,000.

Exhibit 10 shows the estimated cost per IRAP for each year of the analysis period. The first year cost per IRAP is estimated at $17,796 at a discount rate of 7 percent. The annualized cost per IRAP is estimated at $9,379 at a discount rate of 7 percent. The estimated cost per IRAP is highest in the first year because all IRAPs will be new, so the Department's first-year estimate includes both a $3,000 application fee and $2,000 annual fee for all IRAPs; in later years, ongoing IRAPs will only be charged a $2,000 annual fee under this analysis. These estimates are *average* costs, meaning that some IRAPs will have higher costs while other IRAPs will have lower costs, regardless of firm size.

[47] These numbers are identical to the numbers in Exhibit 3.

[48] Construction is the 19th major industry sector; it is not included in this analysis pursuant to § 29.30.

[49] *See* U.S. Census Bureau, ''Statistics of U.S. Businesses,'' *http://www.census.gov/programs-surveys/susb/data.html* (last visited Dec. 7, 2019).

[50] The mean hourly wage rate for Training and Development Managers in May 2018 was $58.53. (*See* BLS, ''Occupational Employment and Wages, May 2018,'' *https://www.bls.gov/oes/current/oes113131.htm.*) For this analysis, the Department used a fringe benefits rate of 46 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Training and Development Managers of $117.06 (= $58.53 + ($58.53 × 46%) + ($58.53 × 54%)).

Exhibit 10: Estimated Cost per IRAP								
Year	Rule Familiarization	Performance Data Collection	Written Training Plan	Written Apprenticeship Agreement	SRE's Fees	Total Cost	Number of IRAPs	Cost per IRAP
1	$237,632	$5,940,795	$19,010,544	$3,314,964	$10,150,000	$38,653,934	2,030	$19,041
2	$201,811	$10,986,081	$16,144,915	$4,229,179	$12,680,000	$44,241,986	3,754	$11,785
3	$141,057	$14,512,514	$11,284,584	$4,582,437	$13,533,000	$44,053,591	4,959	$8,884
4	$100,320	$17,020,524	$8,025,634	$4,853,448	$14,203,000	$44,202,926	5,816	$7,600
5	$58,062	$18,472,068	$4,644,941	$4,860,846	$14,112,000	$42,147,917	6,312	$6,677
6	$82,761	$18,960,794	$6,620,914	$5,174,760	$15,079,000	$45,918,229	6,479	$7,087
7	$81,942	$20,930,328	$6,555,360	$5,636,954	$16,404,000	$49,608,584	7,152	$6,936
8	$79,133	$22,829,627	$6,330,605	$6,066,512	$17,630,000	$52,935,875	7,801	$6,786
9	$77,611	$24,690,881	$6,208,862	$6,497,316	$18,863,000	$56,337,669	8,437	$6,677
10	$76,440	$26,522,870	$6,115,214	$6,923,964	$20,085,000	$59,723,488	9,063	$6,590
							First year cost, 7% discount rate	$17,796
							Annualized cost, 7% discount rate, 10 years	$9,379

6. Estimated Impact of the Final Rule on Small Entities

The Department used the following steps to estimate the cost of the final rule per IRAP as a percentage of annual receipts. First, the Department used the Small Business Administration's Table of Small Business Size Standards to determine the size thresholds for small entities within each major industry.[51] Next, the Department obtained data on the number of firms, number of employees, and annual revenue by industry and firm size category from the Census Bureau's Statistics of U.S. Businesses.[52] Then, the Department divided the estimated first year cost and the annualized cost per IRAP (discounted at a 7-percent rate) by the average annual receipts per firm to determine whether the final rule will have a significant economic impact on IRAPs in each size category.[53] Finally, the Department divided the number of firms in each size category by the total number of small firms in the industry to determine whether the final rule will have a significant economic impact on a substantial number of small entities.[54] The results are presented in the following 18 tables. In short, the first year cost or annualized cost per IRAP could have a significant economic impact on a substantial number of small entities in 15 out of 18 industries. It should be noted, however, that this initiative is voluntary; therefore, only small entities that choose to participate will experience an economic impact—significant or otherwise.

As shown in Exhibit 11, the first year and annualized costs for IRAPs in the agriculture, forestry, fishing, and hunting industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the agriculture, forestry, fishing, and hunting industry (58.1 percent). The first year costs are estimated to be 35.4 percent of the average receipts per firm and the annualized costs are estimated to be 18.6 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.1 percent of the average receipts per firm and the annualized costs are estimated to be 3.7 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

[51] U.S. Small Business Administration, ''Table of Small Business Size Standards,'' Aug. 19, 2019, *http://www.sba.gov/content/small-business-size-standards*. The size standards, which are expressed either in average annual receipts or number of employees, indicate the maximum allowed for a business in each subsector to be considered small.

[52] U.S. Census Bureau, ''Statistics of U.S. Businesses,'' *http://www.census.gov/programs-surveys/susb/data.html* (last visited Dec. 7, 2019).

[53] For purposes of this analysis, the Department used a 3-percent threshold for ''significant economic impact.'' The Department has used a 3-percent threshold in prior rulemakings. *See, e.g.,* 79 FR 60633 (Oct. 7, 2014) (Establishing a Minimum Wage for Contractors).

[54] For purposes of this analysis, the Department used a 15-percent threshold for ''substantial number of small entities.'' The Department has used a 15-percent threshold in prior rulemakings. *See, e.g.* 79 FR 60633 (Oct. 7, 2014) (Establishing a Minimum Wage for Contractors).

Exhibit 11: Agriculture, Forestry, Fishing, and Hunting Industry

Small Business Size Standard: $1.0 million – $30.0 million

	Number of Firms[1]	Number of Firms as Percent of Small Firms in Industry[2]	Total Number of Employees[3]	Annual Receipts[4]	Average Receipts per Firm[5]	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts[6]	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts[7]
Firms with receipts below $100,000	4,288	20.3%	N/A	$215,803,000	$50,327	$17,796	35.4%	$9,379	18.6%
Firms with receipts of $100,000 to $499,999	7,985	37.8%	17,528	$2,005,870,000	$251,205	$17,796	7.1%	$9,379	3.7%
Firms with receipts of $500,000 to $999,999	3,399	16.1%	15,047	$2,437,918,000	$717,246	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	3,335	15.8%	27,068	$5,192,149,000	$1,556,866	$17,796	1.1%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	1,213	5.7%	19,223	$4,210,314,000	$3,470,993	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	351	1.7%	9,393	$2,067,573,000	$5,890,521	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	210	1.0%	7,143	$1,736,374,000	$8,268,448	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	191	0.9%	10,526	$2,198,845,000	$11,512,277	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	79	0.4%	5,883	$1,226,159,000	$15,521,000	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	29	0.1%	2,399	$617,304,000	$21,286,345	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	29	0.1%	2,108	$627,438,000	$21,635,793	$17,796	0.1%	$9,379	0.0%

N/A = not available, not disclosed

[1] Source: U.S. Census Bureau, Statistics of U.S. Businesses.

[2] Number of firms ÷ Small firms in industry

[3] Source: U.S. Census Bureau, Statistics of U.S. Businesses.

[4] Source: U.S. Census Bureau, Statistics of U.S. Businesses.

[5] Annual receipts ÷ Number of firms

[6] First year cost per firm with 7% discounting ÷ Average receipts per firm

[7] Annualized cost per firm with 7% discounting ÷ Average receipts per firm

As shown in Exhibit 12, the first year and annualized costs for IRAPs in the mining industry are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

Exhibit 12: Mining Industry

Small Business Size Standard: 250 – 1,500 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	12,686	57.3%	20,347	$9,811,191,000	$773,387	$17,796	2.3%	$9,379	1.2%
Firms with 5-9 employees	3,256	14.7%	21,571	$7,696,826,000	$2,363,890	$17,796	0.8%	$9,379	0.4%
Firms with 10-19 employees	2,426	11.0%	32,884	$12,472,042,000	$5,140,990	$17,796	0.3%	$9,379	0.2%
Firms with 20-99 employees	2,677	12.1%	102,569	$39,167,488,000	$14,631,112	$17,796	0.1%	$9,379	0.1%
Firms with 100-499 employees	735	3.3%	116,980	$57,968,047,000	$78,868,091	$17,796	0.0%	$9,379	0.0%
Firms with 500+ employees[1]	369	1.7%	433,275	$428,416,777,000	$1,161,021,076	$17,796	0.0%	$9,379	0.0%

[1] The small business size standard for several subsectors within the mining industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 13, the first year and annualized costs for IRAPs in the utilities industry are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

Exhibit 13: Utilities Industry

Small Business Size Standard: 250 – 1,000 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3,072	51.4%	5,939	$4,148,617,000	$1,350,461	$17,796	1.3%	$9,379	0.7%
Firms with 5-9 employees	984	16.5%	6,330	$2,094,449,000	$2,128,505	$17,796	0.8%	$9,379	0.4%
Firms with 10-19 employees	500	8.4%	6,670	$4,464,945,000	$8,929,890	$17,796	0.2%	$9,379	0.1%
Firms with 20-99 employees	904	15.1%	40,677	$37,395,431,000	$41,366,627	$17,796	0.0%	$9,379	0.0%
Firms with 100-499 employees	314	5.3%	52,009	$50,719,290,000	$161,526,401	$17,796	0.0%	$9,379	0.0%
Firms with 500+ employees[1]	199	3.3%	529,438	$432,375,983,000	$2,172,743,633	$17,796	0.0%	$9,379	0.0%

[1] The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 14, the first year costs for IRAPs in the manufacturing industry are expected to have a significant economic impact (3 percent or more) on small entities with 4 or fewer employees, and those firms constitute a substantial number of small entities in the manufacturing industry (41.7 percent). The first year costs are estimated to be 4.1 percent of the average receipts per firm with 0–4 employees.

Exhibit 14: Manufacturing Industry

Small Business Size Standard: 500 – 1,500 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	106,932	41.7%	199,847	$46,408,019,000	$433,996	$17,796	4.1%	$9,379	2.2%
Firms with 5-9 employees	47,612	18.6%	317,445	$52,345,651,000	$1,099,421	$17,796	1.6%	$9,379	0.9%
Firms with 10-19 employees	38,564	15.0%	526,660	$94,946,327,000	$2,462,046	$17,796	0.7%	$9,379	0.4%
Firms with 20-99 employees	47,443	18.5%	1,939,710	$454,441,177,000	$9,578,677	$17,796	0.2%	$9,379	0.1%
Firms with 100-499 employees	12,186	4.8%	2,103,243	$683,068,069,000	$56,053,510	$17,796	0.0%	$9,379	0.0%
Firms with 500+ employees[1]	3,626	1.4%	6,105,138	$4,399,024,641,000	$1,213,189,366	$17,796	0.0%	$9,379	0.0%

[1] The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 15, the first year and annualized costs for IRAPs in the wholesale trade industry are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

Exhibit 15: Wholesale Trade Industry

Small Business Size Standard: 100 – 250 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	180,049	57.7%	305,056	$319,323,324,000	$1,773,536	$17,796	1.0%	$9,379	0.5%
Firms with 5-9 employees	53,703	17.2%	353,848	$263,541,607,000	$4,907,391	$17,796	0.4%	$9,379	0.2%
Firms with 10-19 employees	36,049	11.6%	481,671	$359,184,882,000	$9,963,796	$17,796	0.2%	$9,379	0.1%
Firms with 20-99 employees	34,536	11.1%	1,276,022	$1,024,608,963,000	$29,667,853	$17,796	0.1%	$9,379	0.0%
Firms with 100-499 employees	7,737	2.5%	1,023,919	$1,085,384,946,000	$140,284,987	$17,796	0.0%	$9,379	0.0%

As shown in Exhibit 16, the first year and annualized costs for IRAPs in the retail trade industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the retail trade industry (47.7 percent). The first year costs are estimated to be 34.1 percent of the average receipts per firm and the annualized costs are estimated to be

18.0 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 6.6 percent of the average receipts per firm and the annualized costs are estimated to be 3.5 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 16: Retail Trade Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	79,415	12.4%	N/A	$4,142,505,000	$52,163	$17,796	34.1%	$9,379	18.0%
Firms with receipts of $100,000 to $499,999	226,195	35.2%	597,967	$61,192,802,000	$270,531	$17,796	6.6%	$9,379	3.5%
Firms with receipts of $500,000 to $999,999	115,616	18.0%	539,126	$82,552,882,000	$714,026	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	115,103	17.9%	885,466	$181,435,583,000	$1,576,289	$17,796	1.1%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	53,905	8.4%	673,056	$187,480,866,000	$3,477,987	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	19,139	3.0%	359,417	$114,151,432,000	$5,964,336	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	9,110	1.4%	234,666	$76,658,889,000	$8,414,807	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	9,236	1.4%	317,056	$107,103,037,000	$11,596,258	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	4,647	0.7%	204,846	$75,536,677,000	$16,254,934	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	3,079	0.5%	162,942	$63,579,375,000	$20,649,359	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	2,115	0.3%	126,196	$53,042,313,000	$25,079,108	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	1,709	0.3%	122,481	$50,891,275,000	$29,778,394	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	1,333	0.2%	104,722	$45,330,650,000	$34,006,489	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	2,055	0.3%	178,778	$82,977,969,000	$40,378,574	$17,796	0.0%	$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 17, the first year and annualized costs for IRAPs in the transportation and warehousing industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the transportation and warehousing industry (61.2 percent). The first year costs are estimated to be 36.7 percent of the average receipts per firm and the annualized costs are estimated to be 19.4 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 17: Transportation and Warehousing Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	34,560	21.0%	N/A	$1,675,127,000	$48,470	$17,796	36.7%	$9,379	19.4%
Firms with receipts of $100,000 to $499,999	66,204	40.2%	164,298	$16,175,517,000	$244,328	$17,796	7.3%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	23,100	14.0%	142,743	$16,279,203,000	$704,727	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	20,675	12.5%	243,088	$32,036,433,000	$1,549,525	$17,796	1.1%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	9,236	5.6%	207,533	$31,579,320,000	$3,419,155	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	3,715	2.3%	128,002	$21,532,906,000	$5,796,206	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	1,991	1.2%	93,148	$15,968,571,000	$8,020,377	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	2,038	1.2%	122,894	$21,945,352,000	$10,768,082	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	1,089	0.7%	88,025	$15,508,043,000	$14,240,627	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	706	0.4%	67,974	$12,389,543,000	$17,548,928	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $25,000,000 to $29,999,999	485	0.3%	56,730	$10,263,306,000	$21,161,456	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	348	0.2%	42,232	$8,074,953,000	$23,203,888	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	273	0.2%	39,751	$6,355,335,000	$23,279,615	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	364	0.2%	57,503	$9,963,222,000	$27,371,489	$17,796	0.1%	$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 18, the first year and annualized costs for IRAPs in the information industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the information industry (57.7 percent). The first year costs are estimated to be 36.7 percent of the average receipts per firm and the annualized costs are estimated to be 19.4 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.2 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue below from $100,000 to $499,999.

Exhibit 18: Information Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	14,555	21.0%	N/A	$705,483,000	$48,470	$17,796	36.7%	$9,379	19.4%
Firms with receipts of $100,000 to $499,999	25,429	36.7%	67,711	$6,301,564,000	$247,810	$17,796	7.2%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	9,467	13.7%	58,475	$6,705,729,000	$708,327	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	9,098	13.1%	104,348	$14,255,220,000	$1,566,852	$17,796	1.1%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	4,509	6.5%	93,553	$15,503,654,000	$3,438,380	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	1,839	2.7%	58,853	$10,822,491,000	$5,884,987	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	1,063	1.5%	45,849	$8,760,095,000	$8,240,917	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	1,195	1.7%	67,920	$13,486,797,000	$11,286,023	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	657	0.9%	48,544	$10,520,902,000	$16,013,549	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	464	0.7%	42,553	$9,176,577,000	$19,777,106	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	282	0.4%	31,492	$6,741,177,000	$23,904,883	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	269	0.4%	32,228	$7,476,148,000	$27,792,372	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	167	0.2%	21,764	$5,365,464,000	$32,128,527	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	259	0.4%	43,635	$9,767,739,000	$37,713,278	$17,796	0.0%	$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 19, the first year and annualized costs for IRAPs in the finance and insurance industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the finance and insurance industry (68.5 percent).

The first year costs are estimated to be 36.1 percent of the average receipts per firm and the annualized costs are estimated to be 19.0 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.1 percent of the average receipts per firm and the annualized costs are estimated to be 3.7 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 19: Finance and Insurance Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	50,093	21.7%	N/A	$2,466,932,000	$49,247	$17,796	36.1%	$9,379	19.0%
Firms with receipts of $100,000 to $499,999	108,248	46.8%	259,664	$27,228,139,000	$251,535	$17,796	7.1%	$9,379	3.7%
Firms with receipts of $500,000 to $999,999	30,194	13.1%	145,543	$20,834,656,000	$690,026	$17,796	2.6%	$9,379	1.4%
Firms with receipts of $1,000,000 to $2,499,999	20,617	8.9%	181,810	$31,648,935,000	$1,535,089	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	8,743	3.8%	158,845	$30,321,167,000	$3,468,051	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	3,900	1.7%	108,367	$23,230,029,000	$5,956,418	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	2,292	1.0%	88,271	$19,151,469,000	$8,355,789	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	2,594	1.1%	134,488	$30,393,812,000	$11,716,967	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	1,437	0.6%	95,832	$23,632,362,000	$16,445,624	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	925	0.4%	76,347	$19,240,191,000	$20,800,206	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	632	0.3%	68,829	$16,235,520,000	$25,689,114	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	532	0.2%	60,193	$15,593,649,000	$29,311,370	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	387	0.2%	48,800	$13,302,624,000	$34,373,705	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	578	0.3%	85,301	$23,112,313,000	$39,986,701	$17,796	0.0%	$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 20, the first year and annualized costs for IRAPs in the real estate and rental and leasing industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the real estate and rental and leasing industry (69.2 percent). The first year costs are estimated to be 35.3 percent of the average receipts per firm and the annualized costs are estimated to be 18.6 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 20: Real Estate and Rental and Leasing Industry									
Small Business Size Standard: $8.0 million – $41.5 million									
	Number of Firms	**Number of Firms as Percent of Small Firms in Industry**	**Total Number of Employees**	**Annual Receipts**	**Average Receipts per Firm**	**First Year Cost per Firm with 7% Discounting**	**First Year Cost per Firm as Percent of Receipts**	**Annualized Cost per Firm with 7% Discounting**	**Annualized Cost per Firm as Percent of Receipts**
Firms with receipts below $100,000	69,381	25.9%	N/A	$3,496,398,000	$50,394	$17,796	35.3%	$9,379	18.6%
Firms with receipts of $100,000 to $499,999	115,993	43.3%	251,175	$28,401,383,000	$244,854	$17,796	7.3%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	37,145	13.9%	169,892	$26,133,483,000	$703,553	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	27,705	10.3%	239,062	$42,364,031,000	$1,529,111	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	9,488	3.5%	165,022	$31,946,434,000	$3,367,036	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	3,047	1.1%	86,769	$17,503,088,000	$5,744,368	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	1,528	0.6%	58,727	$11,926,523,000	$7,805,316	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	1,476	0.6%	69,231	$15,748,767,000	$10,669,896	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	789	0.3%	49,475	$11,156,616,000	$14,140,198	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	485	0.2%	33,800	$8,191,383,000	$16,889,449	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $25,000,000 to $29,999,999	347	0.1%	27,443	$7,110,513,000	$20,491,392	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	260	0.1%	25,368	$6,117,119,000	$23,527,381	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	183	0.1%	17,798	$4,704,982,000	$25,710,284	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	272	0.1%	25,445	$7,707,263,000	$28,335,526	$17,796	0.1%	$9,379	0.0%
N/A = not available, not disclosed									

As shown in Exhibit 21, the first year and annualized costs for IRAPs in the professional, scientific, and technical services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the professional, scientific, and technical services industry (69.5 percent). The first year costs are estimated to be 36.0 percent of the average receipts per firm and the annualized costs are estimated to be 19.0 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.4 percent of the average receipts per firm and the annualized costs are estimated to be 3.9 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 21: Professional, Scientific and Technical Services Industry									
Small Business Size Standard: $8.0 million – $41.5 million									
	Number of Firms	**Number of Firms as Percent of Small Firms in Industry**	**Total Number of Employees**	**Annual Receipts**	**Average Receipts per Firm**	**First Year Cost per Firm with 7% Discounting**	**First Year Cost per Firm as Percent of Receipts**	**Annualized Cost per Firm with 7% Discounting**	**Annualized Cost per Firm as Percent of Receipts**
Firms with receipts below $100,000	193,388	25.2%	N/A	$9,558,991,000	$49,429	$17,796	36.0%	$9,379	19.0%
Firms with receipts of $100,000 to $499,999	339,688	44.3%	750,314	$82,115,768,000	$241,739	$17,796	7.4%	$9,379	3.9%
Firms with receipts of $500,000 to $999,999	99,575	13.0%	524,326	$70,218,001,000	$705,177	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	77,769	10.1%	785,957	$119,889,375,000	$1,541,609	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	29,032	3.8%	578,392	$99,939,437,000	$3,442,389	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	10,314	1.3%	339,687	$61,531,502,000	$5,965,823	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	5,300	0.7%	240,552	$44,308,266,000	$8,360,050	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	5,195	0.7%	304,723	$59,665,120,000	$11,485,105	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	2,608	0.3%	211,885	$41,368,442,000	$15,862,133	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	1,605	0.2%	159,832	$32,088,646,000	$19,992,926	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	1,046	0.1%	122,102	$25,225,025,000	$24,115,703	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	752	0.1%	94,344	$20,975,584,000	$27,893,064	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	522	0.1%	81,816	$16,142,861,000	$30,925,021	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	786	0.1%	138,535	$28,016,841,000	$35,644,836	$17,796	0.0%	$9,379	0.0%
N/A = not available, not disclosed									

As shown in Exhibit 22, the first year and annualized costs for IRAPs in the management of companies and enterprises industry are estimated to have a significant economic impact (3 percent or more) on small entities with

receipts under $2.5 million, and those firms constitute a substantial number of small entities in the management of companies and enterprises industry (33.5 percent). The first year costs are estimated to be 58.2 percent of the average receipts per firm and the annualized costs are estimated to be 30.7 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 8.6 percent of the average receipts per firm and the annualized costs are estimated to be 4.5 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999. The first year costs are estimated to be 4.6 percent of the average receipts per firm for firms with revenue from $500,000 to $999,999. The first year costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $1,000,000 to $2,499,999.

Exhibit 22: Management of Companies and Enterprises Industry

Small Business Size Standard: $22 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	1,107	7.8%	7,938	$33,849,000	$30,577	$17,796	58.2%	$9,379	30.7%
Firms with receipts of $100,000 to $499,999	1,216	8.6%	4,631	$251,252,000	$206,622	$17,796	8.6%	$9,379	4.5%
Firms with receipts of $500,000 to $999,999	743	5.3%	5,764	$285,686,000	$384,503	$17,796	4.6%	$9,379	2.4%
Firms with receipts of $1,000,000 to $2,499,999	1,668	11.8%	17,384	$783,830,000	$469,922	$17,796	3.8%	$9,379	2.0%
Firms with receipts of $2,500,000 to $4,999,999	2,016	14.3%	26,218	$1,395,007,000	$691,968	$17,796	2.6%	$9,379	1.4%
Firms with receipts of $5,000,000 to $7,499,999	1,602	11.3%	26,210	$1,567,547,000	$978,494	$17,796	1.8%	$9,379	1.0%
Firms with receipts of $7,500,000 to $9,999,999	1,229	8.7%	22,064	$1,528,733,000	$1,243,884	$17,796	1.4%	$9,379	0.8%
Firms with receipts of $10,000,000 to $14,999,999	1,969	13.9%	42,504	$2,727,035,000	$1,384,985	$17,796	1.3%	$9,379	0.7%
Firms with receipts of $15,000,000 to $19,999,999	1,454	10.3%	36,455	$2,687,284,000	$1,848,201	$17,796	1.0%	$9,379	0.5%
Firms with receipts of $20,000,000 to $24,999,999	1,114	7.9%	27,887	$2,617,195,000	$2,349,367	$17,796	0.8%	$9,379	0.4%

As shown in Exhibit 23, the first year and annualized costs for IRAPs in the administrative and support, waste management and remediation services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the administrative and support, waste management and remediation services industry (69.8 percent). The first year costs are estimated to be 37.9 percent of the average receipts per firm and the annualized costs are estimated to be 20.0 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.9 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 23: Administrative and Support, Waste Management and Remediation Services Industry

Small Business Size Standard: $6.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	93,960	29.0%	126,543	$4,409,293,000	$46,927	$17,796	37.9%	$9,379	20.0%
Firms with receipts of $100,000 to $499,999	132,326	40.8%	477,646	$32,162,760,000	$243,057	$17,796	7.3%	$9,379	3.9%
Firms with receipts of $500,000 to $999,999	40,136	12.4%	379,760	$28,185,706,000	$702,255	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	31,696	9.8%	672,031	$48,905,893,000	$1,542,967	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	12,452	3.8%	584,765	$42,271,882,000	$3,394,787	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	4,523	1.4%	373,053	$26,193,931,000	$5,791,274	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	2,373	0.7%	271,117	$19,082,571,000	$8,041,539	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	2,522	0.8%	387,341	$27,561,427,000	$10,928,401	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	1,313	0.4%	270,010	$18,902,442,000	$14,396,376	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	892	0.3%	216,790	$15,644,955,000	$17,539,187	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $25,000,000 to $29,999,999	601	0.2%	196,440	$12,764,154,000	$21,238,193	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	456	0.1%	164,713	$10,696,102,000	$23,456,364	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	311	0.1%	139,531	$8,205,878,000	$26,385,460	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	466	0.1%	197,634	$13,234,230,000	$28,399,635	$17,796	0.1%	$9,379	0.0%

As shown in Exhibit 24, the first year and annualized costs for IRAPs in the educational services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the educational services industry (65.3 percent). The first year costs are estimated to be 37.9 percent of the average receipts per firm and the annualized costs are estimated to be 20.0 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 24: Educational Services Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	22,232	26.7%	45,228	$1,042,922,000	$46,911	$17,796	37.9%	$9,379	20.0%
Firms with receipts of $100,000 to $499,999	32,128	38.6%	175,610	$7,838,923,000	$243,990	$17,796	7.3%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	9,530	11.4%	123,920	$6,717,924,000	$704,924	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	8,735	10.5%	216,317	$13,846,119,000	$1,585,131	$17,796	1.1%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	4,716	5.7%	216,842	$16,353,734,000	$3,467,713	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	1,966	2.4%	142,665	$11,510,807,000	$5,854,937	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	1,028	1.2%	96,347	$8,493,535,000	$8,262,194	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	1,113	1.3%	138,383	$12,679,800,000	$11,392,453	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	542	0.7%	87,214	$8,194,214,000	$15,118,476	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	388	0.5%	70,422	$7,566,005,000	$19,500,013	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	255	0.3%	61,634	$6,166,517,000	$24,182,420	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	202	0.2%	57,698	$5,824,708,000	$28,835,188	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	191	0.2%	61,907	$6,200,412,000	$32,462,890	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	251	0.3%	97,656	$9,903,360,000	$39,455,618	$17,796	0.0%	$9,379	0.0%

As shown in Exhibit 25, the first year and annualized costs for IRAPs in the health care and social assistance industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the health care and social assistance industry (56.4 percent). The first year costs are estimated to be 37.3 percent of the average receipts per firm and the annualized costs are estimated to be 19.7 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 6.6 percent of the average receipts per firm and the annualized costs are estimated to be 3.5 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 25: Health Care and Social Assistance Industry									
Small Business Size Standard: $8.0 million – $41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	110,259	17.3%	162,885	$5,260,895,000	$47,714	$17,796	37.3%	$9,379	19.7%
Firms with receipts of $100,000 to $499,999	249,219	39.1%	1,010,642	$67,642,299,000	$271,417	$17,796	6.6%	$9,379	3.5%
Firms with receipts of $500,000 to $999,999	128,577	20.2%	1,073,376	$90,967,720,000	$707,496	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	91,324	14.3%	1,576,609	$138,206,644,000	$1,513,366	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	28,520	4.5%	1,156,550	$98,200,090,000	$3,443,201	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	10,167	1.6%	729,810	$60,941,395,000	$5,994,039	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	5,380	0.8%	556,088	$45,627,101,000	$8,480,874	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	5,700	0.9%	785,047	$67,302,238,000	$11,807,410	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	2,953	0.5%	556,945	$48,758,779,000	$16,511,608	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	1,642	0.3%	384,059	$34,859,152,000	$21,229,691	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	1,139	0.2%	318,772	$29,550,252,000	$25,944,032	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	731	0.1%	244,490	$22,423,595,000	$30,675,233	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	579	0.1%	213,048	$20,384,881,000	$35,207,048	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	799	0.1%	329,241	$32,924,982,000	$41,207,737	$17,796	0.0%	$9,379	0.0%

As shown in Exhibit 26, the first year and annualized costs for IRAPs in the arts, entertainment, and recreation industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the arts, entertainment, and recreation industry (66.6 percent). The first year costs are estimated to be 37.0 percent of the average receipts per firm and the annualized costs are estimated to be 19.5 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.2 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 26: Arts, Entertainment, and Recreation Industry									
Small Business Size Standard: $8.0 million – $41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	29,796	26.1%	43,003	$1,434,271,000	$48,136	$17,796	37.0%	$9,379	19.5%
Firms with receipts of $100,000 to $499,999	46,205	40.5%	177,421	$11,476,438,000	$248,381	$17,796	7.2%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	16,220	14.2%	161,111	$11,394,483,000	$702,496	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	12,675	11.1%	260,098	$19,329,326,000	$1,524,996	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	4,776	4.2%	205,728	$16,246,680,000	$3,401,734	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	1,800	1.6%	126,508	$10,478,303,000	$5,821,279	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	854	0.7%	78,319	$6,855,951,000	$8,028,046	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	746	0.7%	94,755	$8,148,731,000	$10,923,232	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	373	0.3%	58,407	$5,452,457,000	$14,617,847	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	239	0.2%	46,528	$4,493,765,000	$18,802,364	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	169	0.1%	36,443	$3,701,048,000	$21,899,692	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	126	0.1%	34,942	$3,075,728,000	$24,410,540	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	83	0.1%	22,145	$2,382,282,000	$28,702,193	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	125	0.1%	45,444	$4,451,994,000	$35,615,952	$17,796	0.0%	$9,379	0.0%

As shown in Exhibit 27, the first year and annualized costs for IRAPs in the accommodation and food services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the accommodation and food services industry (61.3 percent). The first year costs are estimated to be 35.6 percent of the average receipts per firm and the annualized costs are estimated to be 18.8 percent of the average receipts per firm for firms with revenue below

$100,000. The first year costs are estimated to be 6.8 percent of the average receipts per firm and the annualized costs are estimated to be 3.6 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 27: Accommodation and Food Services Industry

Small Business Size Standard: $8.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	82,318	16.7%	148,453	$4,113,239,000	$49,968	$17,796	35.6%	$9,379	18.8%
Firms with receipts of $100,000 to $499,999	220,222	44.6%	1,215,171	$57,675,374,000	$261,897	$17,796	6.8%	$9,379	3.6%
Firms with receipts of $500,000 to $999,999	94,121	19.1%	1,317,249	$66,152,275,000	$702,843	$17,796	2.5%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	68,299	13.8%	1,935,085	$102,096,727,000	$1,494,850	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	18,078	3.7%	1,031,712	$59,715,760,000	$3,303,228	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	4,340	0.9%	417,047	$24,803,758,000	$5,715,152	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	1,946	0.4%	261,642	$15,733,566,000	$8,085,080	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	1,924	0.4%	369,182	$21,512,132,000	$11,180,942	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	916	0.2%	239,396	$14,017,239,000	$15,302,663	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	573	0.1%	198,703	$11,025,439,000	$19,241,604	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $25,000,000 to $29,999,999	419	0.1%	168,878	$9,690,933,000	$23,128,718	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	306	0.1%	150,087	$8,385,452,000	$27,403,438	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	216	0.0%	114,752	$6,677,701,000	$30,915,282	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	304	0.1%	188,758	$10,889,103,000	$35,819,418	$17,796	0.0%	$9,379	0.0%

As shown in Exhibit 28, the first year and annualized costs for IRAPs in the other services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under $500,000, and those firms constitute a substantial number of small entities in the other services industry (73.5 percent). The first year costs are estimated to be 35.8 percent of the average receipts per firm and the annualized costs are estimated to be 18.9 percent of the average receipts per firm for firms with revenue below $100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from $100,000 to $499,999.

Exhibit 28: Other Services Industry

Small Business Size Standard: $6.0 million – $41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below $100,000	185,026	27.8%	299,249	$9,186,611,000	$49,650	$17,796	35.8%	$9,379	18.9%
Firms with receipts of $100,000 to $499,999	304,158	45.7%	1,134,354	$74,567,484,000	$245,160	$17,796	7.3%	$9,379	3.8%
Firms with receipts of $500,000 to $999,999	89,577	13.5%	725,898	$62,488,143,000	$697,591	$17,796	2.6%	$9,379	1.3%
Firms with receipts of $1,000,000 to $2,499,999	56,956	8.6%	889,426	$86,073,957,000	$1,511,236	$17,796	1.2%	$9,379	0.6%
Firms with receipts of $2,500,000 to $4,999,999	16,652	2.5%	514,285	$56,387,710,000	$3,386,242	$17,796	0.5%	$9,379	0.3%
Firms with receipts of $5,000,000 to $7,499,999	5,126	0.8%	244,934	$29,769,491,000	$5,807,548	$17,796	0.3%	$9,379	0.2%
Firms with receipts of $7,500,000 to $9,999,999	2,355	0.4%	148,893	$19,090,059,000	$8,106,182	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $10,000,000 to $14,999,999	2,177	0.3%	167,628	$23,959,626,000	$11,005,800	$17,796	0.2%	$9,379	0.1%
Firms with receipts of $15,000,000 to $19,999,999	1,033	0.2%	104,192	$15,023,752,000	$14,543,806	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $20,000,000 to $24,999,999	612	0.1%	68,557	$11,139,647,000	$18,202,038	$17,796	0.1%	$9,379	0.1%
Firms with receipts of $25,000,000 to $29,999,999	407	0.1%	53,640	$8,404,852,000	$20,650,742	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $30,000,000 to $34,999,999	290	0.0%	40,754	$7,311,600,000	$25,212,414	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $35,000,000 to $39,999,999	210	0.0%	33,009	$5,511,004,000	$26,242,876	$17,796	0.1%	$9,379	0.0%
Firms with receipts of $40,000,000 to $49,999,999	358	0.1%	62,861	$10,986,360,000	$30,688,156	$17,796	0.1%	$9,379	0.0%

7. Alternatives to the Final Rule

The RFA directs agencies to assess the impacts that various regulatory alternatives would have on small entities and to consider ways to minimize those impacts. Accordingly, the Department considered a regulatory alternative related to the second cost component: Provision of performance data to the SRE. Under this alternative, IRAPs would need to provide performance data once every 5 years rather than annually. To estimate the reduction in costs under this alternative, the Department decreased from 25 hours to 5 hours (= 25 hours ÷ 5 years) the time burden for IRAPs to provide performance information to their SREs.

Exhibit 29 shows the estimated cost per IRAP for each year of the analysis period. The first year cost per IRAP is estimated at $15,608 at a discount rate of 7 percent. The annualized cost per IRAP is estimated at $7,038 at a discount rate of 7 percent.

Exhibit 29: Estimated Cost per Industry Program

Year	Rule Familiarization	Performance Data Collection	Written Training Plan	Written Apprenticeship Agreement	SRE's Fees	Total Cost	Number of Industry Programs	Cost per Industry Program
1	$237,632	$1,188,159	$19,010,544	$3,314,964	$10,150,000	$33,901,298	2,030	$16,700
2	$201,811	$2,197,216	$16,144,915	$4,229,179	$12,680,000	$35,453,122	3,754	$9,444
3	$141,057	$2,902,503	$11,284,584	$4,582,437	$13,533,000	$32,443,581	4,959	$6,542
4	$100,320	$3,404,105	$8,025,634	$4,853,448	$14,203,000	$30,586,507	5,816	$5,259
5	$58,062	$3,694,414	$4,644,941	$4,860,846	$14,112,000	$27,370,262	6,312	$4,336
6	$82,761	$3,792,159	$6,620,914	$5,174,760	$15,079,000	$30,749,594	6,479	$4,746
7	$81,942	$4,186,066	$6,555,360	$5,636,954	$16,404,000	$32,864,322	7,152	$4,595
8	$79,133	$4,565,925	$6,330,605	$6,066,512	$17,630,000	$34,672,174	7,801	$4,445
9	$77,611	$4,938,176	$6,208,862	$6,497,316	$18,863,000	$36,584,965	8,437	$4,336
10	$76,440	$5,304,574	$6,115,214	$6,923,964	$20,085,000	$38,505,193	9,063	$4,249
							First year cost, 7% discount rate	$15,608
							Annualized cost, 7% discount rate, 10 years	$7,038

The Department decided not to pursue this alternative because a longer reporting cycle would be inconsistent with the annual reporting cycles for other workforce investment programs, and would provide less useful information to the public. Transparency is vital to the success of IRAPs. An annual reporting cycle will provide stakeholders with the uniform information necessary to evaluate the outcomes of this new initiative. Moreover, an annual reporting cycle will provide IRAPs and SREs with valuable information that will enable them to assess the effectiveness of their programs and make improvements.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In accordance with the requirements of PRA the proposed regulation solicited comments on the information collections included therein. The Department also submitted an ICR to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review. OMB issued a notice of action asking the Departments to resubmit the ICR after considering public comments, at the final rule stage.

Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections, the comments that were submitted, and which are described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. As discussed throughout this final rule, the Department took into account such public comments in connection with making changes to the final rule, especially when analyzing the economic impact of the rule and developing the revised paperwork burden analysis summarized below.

Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application

As discussed above, E.O. 13801 directed the Department to determine how qualified entities may provide recognition to ''industry-recognized apprenticeship programs,'' and to ''establish guidelines or requirements that qualified third parties should or must follow to ensure that the apprenticeship programs they recognize meet quality standards.''

To obtain the information necessary for the Department to determine whether a prospective SRE has satisfied the criteria outlined in the final rule, the Department proposed the information collection titled ''Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application.''

Agency: DOL–ETA.

Title of Collection: Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application.

OMB Control Number: 1205–0536.

Affected Public: State and Local Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 3,794.

Total Estimated Number of Responses: 141,819.

Total Estimated Annual Time Burden: 285,310 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: 29 CFR 29.21(a), 29.21(b)(6), 29.21(c)(2), 29.22(a)(1), 29.22(a)(2), 29.22(a)(4)(ii), 29.22(a)(4)(vii), 29.22(a)(4)(ix), 29.22(a)(4)(x), 29.22(b), 29.22(c), 29.22(d), 29.22(f)(5), 29.22(h), 29.22(i), 29.22(j), 29.22(k), 29.22(l), 29.22(m), 29.22(n), and 29.22(o).

The PRA provides that 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 OMB under 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 and 1320.6(a).

Section 29.22(h) provides that SREs must annually report to the Administrator and make publicly available certain information the Department considers important for providing employers and prospective apprentices the details necessary to make informed decisions about IRAPs. Affected parties do not have to comply with the information collection requirements in § 29.22(h) until the Department publishes in the **Federal Register** the control numbers assigned by the OMB to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under PRA. The Department will publish a **Federal Register** notice requesting public comment on the collections required by § 29.22(h) and submit an ICR to the OMB for review and approval in accordance with PRA prior to requiring or accepting any data collections. A copy of that ICR, with applicable supporting documentation—including a description of the likely respondents, proposed format and frequency of responses, and estimated total burden—will be available on the *RegInfo.gov* website.

Interested parties may obtain a copy free of charge of the current and future ICRs submitted to the OMB on the *reginfo.gov* website at *http://www.reginfo.gov/public/do/PRAMain.* From the Information Collection Review tab, select Information Collection Review. Then select Department of Labor from the Currently Under Review dropdown menu and look up the Control Number. You may also request a free copy of an ICR by contacting the person named in the **ADDRESSES** section of this preamble.

D. Executive Order 13132: Federalism

As with the NPRM, the Department reviewed the final rule in accordance with E.O. 13132, Federalism, and has determined that it has does not have federalism implications because it has 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.

Two commenters questioned the Department's conclusion in the NPRM that the rule does not have federalism implications. One commenter cited a lack of clarity for how State prevailing wage laws would apply to apprentices in IRAPs as grounds for questioning the Department's conclusion on federalism. As discussed above in the section-by-section analysis for § 29.22(a)(4)(vii), the Department acknowledges the concerns raised by commenters and is confident, however, that the text of the Federal prevailing wage regulations at issue, 29 CFR 5.5(a)(4)(i), is sufficiently clear. These Federal prevailing wage regulations only apply to registered apprenticeship programs that are either registered by OA or an SAA. Additionally, the Department declines to opine on the applicability of State prevailing wage laws to IRAP apprentices because whether an IRAP apprentice would qualify as an apprentice under a State prevailing wage law depends on the specific State law at issue and the extent to which such laws track the Federal Davis-Bacon Act varies.

The other commenter asserted concerns about the Department's adherence to ''due process'' under NAA, interpreting the statute's requirement for the Secretary of Labor to ''cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship'' as requiring specific consultation with State Agencies to during the development of the NPRM. As discussed above in the Legal Authority section, NAA does not dictate the terms of how the Department consults with States, and it does not require that DOL consult or operate its apprenticeship initiatives through States. Therefore, Department maintains its conclusion that the rulemaking has no federalism implications, and no further agency action or analysis are required under E.O. 13132.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (*see* 2 U.S.C. 1532), requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed agency rule that may result in $100 million or more in expenditures (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector.

This final rule does not exceed the $100 million expenditure in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of title II of UMRA, therefore, do not apply, and the Department has not prepared a statement under UMRA.

F. Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed this final rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 29

Apprenticeship programs, Apprentice agreements and complaints, Apprenticeability criteria, Program standards, Registration and deregistration, Sponsor eligibility, State apprenticeship agency recognition and derecognition.

For the reasons stated in the preamble, the Department amends 29 CFR part 29 as follows:

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS; STANDARDS RECOGNITION ENTITIES OF INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS

■ 1. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

§§ 29.1 through 29.14 [Designated as Subpart A]

■ 2. Designate §§ 29.1 through 29.14 as Subpart A and add a subpart heading to read as follows:

Subpart A—Registered Apprenticeship Programs

■ 3. Amend § 29.1 by revising the section heading and paragraph (b) to read as follows:

§ 29.1 Purpose and scope for the Registered Apprenticeship Program.

* * * * *

(b) The purpose of this subpart is to set forth labor standards to safeguard the welfare of apprentices, promote apprenticeship opportunity, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. These labor standards, policies and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as an authorized agency for registering apprenticeship programs for certain Federal purposes; and matters relating thereto.

■ 4. Amend § 29.2 by adding introductory text and revising the definitions of ''Apprenticeship program,'' ''Registration agency,'' and ''Technical assistance'' to read as follows:

§ 29.2 Definitions.

For the purpose of this subpart:

* * * * *

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR part 29 subpart A, and part 30, including such matters as the requirement for a written apprenticeship agreement.

* * * * *

Registration agency means the Office of Apprenticeship or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR part 29 subpart A, and part 30; and quality assurance assessments.

* * * * *

Technical assistance means guidance provided by Registration Agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this subpart or guidance from the Office of Apprenticeship to a State Apprenticeship Agency on how to remedy nonconformity with this subpart.

* * * * *

■ 5. Amend § 29.3 by revising paragraph (b)(1), paragraph (g) introductory text, and paragraph (h) to read as follows:

§ 29.3 Eligibility and procedure for registration of an apprenticeship program.

* * * * *

(b) * * *

(1) It is in conformity with the requirements of this subpart and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4; and

* * * * *

(g) Applications for new programs that the Registration Agency determines meet the required standards for program registration must be given provisional approval for a period of 1 year. The Registration Agency must review all new programs for quality and for conformity with the requirements of this subpart at the end of the first year after registration. At that time:

* * * * *

(h) The Registration Agency must review all programs for quality and for conformity with the requirements of this subpart at the end of the first full training cycle. A satisfactory review of a provisionally approved program will result in conversion of provisional approval to permanent registration. Subsequent reviews must be conducted no less frequently than every 5 years. Programs not in operation or not conforming to the regulations must be recommended for deregistration procedures.

* * * * *

■ 6. Amend § 29.6 by revising paragraph (b)(2) to read as follows:

§ 29.6 Program performance standards.

* * * * *

(b) * * *

(2) Any additional tools and factors used by the Registration Agency in evaluating program performance must adhere to the goals and policies of the Department articulated in this subpart and in guidance issued by the Office of Apprenticeship.

* * * * *

■ 7. Amend § 29.10 by revising paragraph (a)(2) to read as follows:

§ 29.10 Hearings for deregistration.

(a) * * *

(2) A statement of the provisions of this subpart pursuant to which the hearing is to be held; and

* * * * *

■ 8. Amend § 29.11 by revising the introductory text to read as follows:

§ 29.11 Limitations.

Nothing in this subpart or in any apprenticeship agreement will operate to invalidate:

* * * * *

■ 9. Amend § 29.13 by revising paragraphs (a)(1), (b)(1), (c), (e) introductory text, and (e)(4) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

(a) * * *

(1) The State Apprenticeship Agency must submit a State apprenticeship law, whether instituted through statute, Executive Order, regulation, or other means, that conforms to the requirements of 29 CFR part 29 subpart A, and part 30;

* * * * *

(b) * * *

(1) Establish and maintain an administrative entity (the State Apprenticeship Agency) that is capable of performing the functions of a Registration Agency under 29 CFR part 29 subpart A;

* * * * *

(c) *Application for recognition.* A State Apprenticeship Agency desiring new or continued recognition as a Registration Agency must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section. A currently recognized State desiring continued recognition by the Office of Apprenticeship must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section within 2 years of the effective date of the final rule. The recognition of a currently recognized State shall continue for up to 2 years from the effective date of this regulation and during any extension period granted by the Administrator. An extension of time within which to comply with the requirements of this subpart may be granted by the Administrator for good cause upon written request by the State, but the Administrator shall not extend the time for submission of the documentation required by paragraph (a) of this section. Upon approval of the State Apprenticeship Agency's application for recognition and any subsequent modifications to this application as required under paragraph (b)(9) of this section, the Administrator shall so notify the State Apprenticeship Agency in writing.

* * * * *

(e) *Compliance.* The Office of Apprenticeship will monitor a State Registration Agency for compliance

with the recognition requirements of this subpart through:

* * * * *

(4) Determination whether, based on the review performed under paragraphs (e)(1), (2), and (3) of this section, the State Registration Agency is in compliance with part 29 subpart A. Notice to the State Registration Agency of the determination will be given within 45 days of receipt of proposed modifications to legislation, regulations, policies, and/or operational procedures required to be submitted under paragraphs (a)(1), (a)(5) and (b)(9) of this section.

* * * * *

■ 10. Amend § 29.14 by revising the introductory text and paragraphs (e)(1) and (i) to read as follows:

§ 29.14 Derecognition of State Apprenticeship Agencies.

The recognition for Federal purposes of a State Apprenticeship Agency may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of part 29 subpart A, and part 30. Derecognition proceedings for reasonable cause will be instituted in accordance with the following:

* * * * *

(e) * * *

(1) The Office of Apprenticeship may grant the request for registration on an interim basis. Continued recognition will be contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this subpart and of 29 CFR part 30.

* * * * *

(i) A State Apprenticeship Agency whose recognition has been withdrawn under this subpart may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled the requirements established in §§ 29.13(i) and 29.14(g) and (h) and is operating in conformity with the requirements of this subpart.

■ 11. Add Subpart B, Standards Recognition Entities of Industry-Recognized Apprenticeship Programs, to read as follows:

Subpart B—Standards Recognition Entities of Industry-Recognized Apprenticeship Programs

Sec.

§ 29.20 Standards Recognition Entities, Industry-Recognized Apprenticeship Programs, Administrator, and Apprentices.

For the purpose of this subpart, which establishes a new apprenticeship pathway distinct from the registered apprenticeship programs described in subpart A:

(a) A *Standards Recognition Entity (SRE)* of Industry-Recognized Apprenticeship Programs (IRAPs) is an entity that is qualified to recognize apprenticeship programs as IRAPs under § 29.21 and that has been recognized by the Department of Labor. The types of entities that can become SREs include:

(1) Trade, industry, and employer groups or associations;

(2) Corporations and other organized entities;

(3) Educational institutions, such as universities or community colleges;

(4) State and local government agencies or entities;

(5) Non-profit organizations;

(6) Unions;

(7) Joint labor-management organizations;

(8) Certification and accreditation bodies or entities for a profession or industry; or

(9) A consortium or partnership of entities such as those above.

(b) *IRAPs* are high-quality apprenticeship programs, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential. An IRAP is developed or delivered by entities such as trade and industry groups, corporations, non-profit organizations, educational institutions, unions, and joint labor-management organizations. An IRAP is an apprenticeship program that has been recognized as a high-quality program by an SRE pursuant to § 29.22(a)(4)(i) through (x).

(c) The *Administrator* is the Administrator of the Department of Labor's Office of Apprenticeship, or any person specifically designated by the Administrator.

(d) An *apprentice* is an individual training in an IRAP under an apprenticeship agreement.

§ 29.21 Becoming a Standards Recognition Entity.

(a) To apply to be recognized as an SRE, an entity (or consortium or partnership of entities) must complete and submit an application to the Administrator for recognition as an IRAP SRE. Such application must be in a form prescribed by the Administrator, which will require the applicant's written attestation that the information and documentation provided is true and correct. This application must include all policies and procedures required by this subpart or addressing requirements in this subpart, which will be reviewed by the Administrator when making a recognition determination.

(b) An entity is qualified to be recognized as an SRE if it demonstrates:

(1) It has the expertise to set competency-based standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which it seeks to be an SRE.

(i) The requirements in paragraph (b)(1) of this section may be met through an SRE's past or current standard-setting activities and need only engender new activity if necessary to comply with this rule.

(ii) [Reserved]

(2) It has the capacity and quality assurance processes and procedures sufficient to comply with § 29.22(a)(4), given the scope of the IRAPs to be recognized.

(3) It has the resources to operate as an SRE for a 5-year period. As part of its application, an entity must report any bankruptcies from the past 5 years.

(4) Its disclosure of any confirmed or potential partner who will be engaged in the recognition activities and describes their roles, including relationships with subsidiaries or other related entities that could reasonably impact its impartiality.

(5) It is not suspended or debarred from conducting business with the U.S. Federal Government.

(6) It mitigates—via any specific policies, processes, procedures, or structures—any actual or potential conflicts of interest, including, but not limited to, conflicts that may arise from the entity recognizing its own apprenticeship program(s) and conflicts relating to the entity's provision of services to actual or prospective IRAPs.

(7) It has the appropriate knowledge and resources to recognize IRAPs in the industry(ies) or occupational areas in the intended geographical area, that may be nationwide or limited to a region, State, or local area.

(8) It meets any other applicable requirements of this subpart.

(c) The Administrator will recognize an entity as an SRE if it is qualified under paragraph (b) of this section.

(1) An SRE will be recognized for 5 years, and must reapply at least 6 months before the date that its current recognition is set to expire if it seeks re-recognition.

(i) To reapply to continue serving as an SRE, an entity must complete and submit an updated application to the Administrator for re-recognition as an IRAP SRE that is in a form prescribed by the Administrator.

(ii) To determine whether re-recognition should be granted, the Administrator will evaluate the information provided by the SRE in the updated application and the data provided pursuant to § 29.22(h), to verify that the SRE's quality assurance processes and procedures were and continue to be sufficient to effect compliance with § 29.22(a)(4).

(2) An SRE must notify the Administrator and must provide all related material information if:

(i) It makes any major change that could affect the operations of the program, such as involvement in lawsuits that materially affect the SRE, changes in legal status, or any other change that materially affects the SRE's ability to function in its recognition capacity; or

(ii) It seeks to recognize apprenticeship programs in additional industries, occupational areas, or geographical areas.

(3) An SRE must submit changes as described in paragraph (c)(2)(ii) of this section to the Administrator for evaluation prior to the SRE implementing the changes. In light of the information received, the Administrator will evaluate whether the SRE remains qualified for recognition under paragraph (b) of this section, including its qualification to recognize programs in the new industries, occupational areas, or geographical areas identified under paragraph (c)(2)(ii) of this section.

(d) The requirements for denials of recognition are as follows:

(1) A denial of recognition must be in writing and must state the reason(s) for denial. The notice must tell the applicant what it needs to do differently before resubmitting its application.

(2) The notice must state that a request for administrative review may be made within 30 calendar days of receipt of the notice.

(3) The notice must explain that a request for administrative review must comply with the service requirements contained in 29 CFR part 18. The Administrator will refer any requests for administrative review to the Office of Administrative Law Judges to be addressed in accordance with § 29.29.

§ 29.22 Responsibilities and requirements of Standards Recognition Entities.

(a) An SRE must:

(1) Recognize or reject an apprenticeship program seeking recognition as an IRAP in a timely manner;

(2) Inform the Administrator within 30 calendar days when it has recognized, suspended, or derecognized an IRAP, and include the name and contact information of the program;

(3) Provide the Administrator any data or information the Administrator is expressly authorized to collect under this subpart; and

(4) Only recognize as IRAPs and maintain such recognition of apprenticeship programs that meet the following requirements:

(i) The program must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks.

(ii) The program has a written training plan, consistent with its SRE's requirements and standards as developed pursuant to the process set forth in § 29.21(b)(1). The written training plan, which must be provided to an apprentice prior to beginning an IRAP, must detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.

(iii) The program ensures that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program.

(iv) The program provides apprentices industry-recognized credential(s) during participation in or upon completion of the program.

(v) The program provides a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations and complies with any additional safety requirements of its SRE.

(vi) The program provides apprentices structured mentorship opportunities throughout the duration of the apprenticeship that involve ongoing, focused supervision and training by experienced instructors and employees, to ensure apprentices have additional guidance on the progress of their training and their employability.

(vii) The program ensures apprentices are paid at least the applicable Federal, State, or local minimum wage. The program must provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices' wages will increase. The program's charging of costs or expenses to apprentices must comply with all applicable Federal, State, or local wage laws and regulations, including but not limited to the Fair Labor Standards Act and its regulations. This rule does not purport to alter or supersede an employer's obligations under any such laws and regulations.

(viii) The program affirms its adherence to all applicable Federal, State, and local laws pertaining to Equal Employment Opportunity (EEO).

(ix) The program discloses to apprentices, before they agree to participate in the program, any costs or expenses that will be charged to them (such as costs related to tools or educational materials).

(x) The program maintains a written apprenticeship agreement for each apprentice that outlines the terms and conditions of the apprentice's employment and training. The apprenticeship agreement must be consistent with its SRE's requirements.

(b) An SRE must validate its IRAPs' compliance with paragraph (a)(4) of this section when it provides the Administrator with notice of recognition under paragraph (a)(2) of this section, and on an annual basis thereafter, and must at that time provide the Administrator a written attestation that its IRAPs meet the requirements of paragraph (a)(4) of this section and any other requirements of the SRE.

(c) An SRE must publicly disclose the credential(s) that apprentices will earn during their participation in or upon completion of an IRAP.

(d) An SRE must establish policies and procedures for recognizing, and validating compliance of, programs that ensure that SRE decisions are impartial, consistent, and based on objective and merit-based criteria; ensure that SRE decisions are confidential except as required or permitted by this subpart, or otherwise required by law; and are written in sufficient detail to reasonably achieve the foregoing criteria. An SRE must submit these policies and

procedures to the Administrator with its application.

(e) An SRE's recognition of an IRAP may last no longer than 5 years. An SRE may not re-recognize an IRAP without the IRAP seeking re-recognition.

(f) An SRE must remain in an ongoing quality-control relationship with the IRAPs it has recognized. The specific means and nature of the relationship between the IRAP and SRE will be defined by the SRE, provided the relationship:

(1) Does in fact result in reasonable and effective quality control that includes, as appropriate, consideration of apprentices' credential attainment, program completion, retention rates, and earnings;

(2) Does not prevent the IRAP from receiving recognition from another SRE;

(3) Does not conflict with this subpart or violate any applicable Federal, State, or local law;

(4) Involves periodic compliance reviews by the SRE of its IRAP to ensure compliance with the requirements of paragraph (a)(4) of this section and the SRE's requirements; and

(5) Includes policies and procedures for the suspension or derecognition of an IRAP that fails to comply with the requirements of paragraph (a)(4) of this section and its SRE's requirements.

(g) Participating as an SRE under this subpart does not make the SRE a joint employer with entities that develop or deliver IRAPs.

(h) Each year, an SRE must report to the Administrator, in a format prescribed by the Administrator, and make publicly available the following information on each IRAP it recognizes:

(1) Up-to-date contact information for each IRAP;

(2) The total number of new and continuing apprentices annually training in each IRAP under an apprenticeship agreement;

(3) The total number of apprentices who successfully completed the IRAP annually;

(4) The annual completion rate for apprentices. Annual completion rate must be calculated by comparing the number of apprentices in a designated apprenticeship cohort who successfully completed the IRAP requirements and attained an industry-recognized credential with the number of apprentices in that cohort who initially began training in the IRAP;

(5) The median length of time for IRAP completion;

(6) The post-apprenticeship employment retention rate, calculated 6 and 12 months after program completion;

(7) The industry-recognized credentials attained by apprentices in an IRAP, and the annual number of such credentials attained;

(8) The annualized average earnings of an IRAP's former apprentices, calculated over the 6 month period after IRAP completion;

(9) Training cost per apprentice; and

(10) Basic demographic information on participants.

(i) An SRE must have policies and procedures that require IRAPs' adherence to applicable Federal, State, and local laws pertaining to EEO, and must facilitate such adherence through the SRE's policies and procedures regarding potential harassment, intimidation, and retaliation (such as the provision of anti-harassment training, and a process for handling EEO and harassment complaints from apprentices); must have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations that may participate in IRAPs; and must assign responsibility to an individual to assist IRAPs with matters relating to this paragraph.

(j) An SRE must have policies and procedures for addressing complaints filed by apprentices, prospective apprentices, an apprentice's authorized representative, a personnel certification body, or an employer against each IRAP the SRE recognizes. An SRE must make publicly available the aggregated number of complaints pertaining to each IRAP in a format and frequency prescribed by the Administrator.

(k) An SRE must notify the public about the right of an apprentice, a prospective apprentice, the apprentice's authorized representative, a personnel certification body, or an employer, to file a complaint with the SRE against an IRAP the complainant is associated with, and the requirements for filing a complaint.

(l) An SRE must notify the public about the right to file a complaint against it with the Administrator as set forth in § 29.25.

(m) If an SRE has received notice of derecognition pursuant to § 29.27(c)(1)(ii) or (c)(3), the SRE must inform each IRAP it has recognized and the public of its derecognition.

(n) An SRE must publicly disclose any fees it charges to IRAPs.

(o) An SRE must ensure that records regarding each IRAP recognized, including whether the IRAP has met all applicable requirements of this subpart, are maintained for a minimum of 5 years.

(p) An SRE must follow any policy or procedure submitted to the Administrator or otherwise required by this subpart, and an SRE must notify the Administrator when it makes significant changes to its policies or procedures.

§ 29.23 Quality assurance.

(a) The Administrator may request and review materials from SREs, and may conduct periodic compliance assistance reviews of SREs to ascertain their conformity with the requirements of this subpart.

(b) SREs must provide requested materials to the Administrator, consistent with § 29.22(a)(3).

(c) The information that is described in this subpart may be utilized by the Administrator to discharge the recognition, review, suspension, and derecognition duties outlined in §§ 29.21(c)(1), 29.26, and 29.27.

§ 29.24 Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs.

The Administrator will make publicly available a list of recognized, suspended, and derecognized SREs and IRAPs.

§ 29.25 Complaints against Standards Recognition Entities.

(a) A complaint arising from an SRE's compliance with this subpart may be submitted by an apprentice, the apprentice's authorized representative, a personnel certification body, an employer, or an IRAP to the Administrator for review.

(b) The complaint must be in writing and must be submitted within 180 calendar days from the complainant's actual or constructive knowledge of the circumstances giving rise to the complaint. It must set forth the specific matter(s) complained of, together with relevant facts and circumstances.

(c) Complaints under this section are addressed exclusively through the review process outlined in § 29.26.

(d) Nothing in this section precludes a complainant from pursuing any remedy authorized under Federal, State, or local law.

§ 29.26 Review of a Standards Recognition Entity.

(a) The Administrator may initiate review of an SRE if it receives information indicating that:

(1) The SRE is not in substantial compliance with this subpart; or

(2) The SRE is no longer capable of continuing as an SRE.

(b) As part of the review, the Administrator must provide the SRE written notice of the review and an opportunity to provide information for the review. Such notice must include a statement of the basis for review, including potential areas in which the SRE is not in substantial compliance or

why the SRE may no longer be capable of continuing as an SRE and a detailed description of the information supporting review under paragraphs (a)(1) or (2) of this section, or both.

(c) Upon conclusion of the Administrator's review, the Administrator will give written notice to the SRE of its decision to either take no action against the SRE, or to suspend the SRE as provided under § 29.27.

§ 29.27 Suspension and derecognition of a Standards Recognition Entity.

The Administrator may suspend an SRE for 45 calendar days based on the Administrator's review and determination that any of the situations described in § 29.26(a)(1) or (2) exist.

(a) The Administrator must provide notice in writing and state that a request for administrative review may be made within 45 calendar days of receipt of the notice.

(b) The notice must set forth an explanation of the Administrator's decision, including identified areas in which the SRE is not in substantial compliance or an explanation why the SRE is no longer capable of continuing as an SRE, or both, and necessary remedial actions, and must explain that the Administrator will derecognize the SRE in 45 calendar days unless remedial action is taken or a request for administrative review is made.

(c) If, within the 45-day period, the SRE:

(1) Specifies its proposed remedial actions and commits itself to remedying the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, the Administrator will extend the 45-day period to allow a reasonable time for the SRE to implement remedial actions.

(i) If the Administrator subsequently determines that the SRE has remedied the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, the Administrator must notify the SRE, and the suspension will end.

(ii) If the Administrator subsequently determines that the SRE has not remedied the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, after the close of the 45-day period and any extensions previously allowed by the Administrator, the Administrator will derecognize the SRE and must notify the SRE in writing and specify the reasons for its determination. The Administrator must state that a request for administrative review may be made within 45 calendar days of receipt of the notice.

(2) Makes a request for administrative review, then the Administrator will refer the matter to the Office of Administrative Law Judges to be addressed in accordance with § 29.29.

(3) Does not act under paragraph (c)(1) or (2) of this section, the Administrator will derecognize the SRE.

(d) During the suspension:

(1) The SRE is barred from recognizing new programs.

(2) The Administrator will publish the SRE's suspension on the public list described in § 29.24.

§ 29.28 Derecognition's effect on Industry-Recognized Apprenticeship Programs.

(a) Following its SRE's derecognition, an IRAP will maintain its status until 1 year after the Administrator's decision derecognizing the IRAP's SRE becomes final, including any appeals. At the end of 1 year, the IRAP will lose its status unless it is already recognized by another SRE recognized under this subpart.

(b) Upon derecognizing an SRE, the Administrator will update the public list described in § 29.24 to reflect the derecognition, and the Administrator will notify the SRE's IRAP(s) of the derecognition.

§ 29.29 Requests for administrative review.

(a) Within 30 calendar days of the filing of a request for administrative review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

(b) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for review except that:

(1) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(2) Technical rules of evidence will not apply to hearings conducted under this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The Administrative Law Judge should submit proposed findings, a recommended decision, and a certified record of the proceedings to the Administrative Review Board, SRE, and Administrator within 90 calendar days after the close of the record.

(d) Within 20 calendar days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 calendar days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae.

(e) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must issue a decision in any case it accepts for review within 180 calendar days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

(f) The Administrator's decision must be upheld unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

§ 29.30 Scope of Industry-Recognized Apprenticeship Programs Recognition by Standards Recognition Entities.

(a) The Administrator will not recognize as SREs entities that intend to recognize as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

(b) SREs that obtain recognition from the Administrator are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

§ 29.31 Severability.

Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will

not affect any other provision of this subpart.

John Pallasch,

Assistant Secretary for Employment and Training.

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