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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2020–0015]

RIN 3245–AH34

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID–19) Emergency Declaration (COVID–19 Emergency Declaration) issued by President Trump on March 13, 2020. This interim final rule outlines the key provisions of SBA's implementation of sections 1102 and 1106 of the Act in formal guidance and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment Date: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0015 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. A more detailed discussion of sections 1102 and 1106 of the Act is found in section III below.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. The immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a full understanding of loan terms and conditions. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title 1 of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before May 15, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Temporary New Business Loan Program: Paycheck Protection Program

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses

affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The following outlines the key provisions of the PPP.

1. General

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of $349,000,000,000 to provide guaranteed loans under this new 7(a) program. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. For example, for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 ''What are SBA's lending criteria?.'' SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

2. What do borrowers need to know and do?

a. Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:

i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or

B. A tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099–MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

You must also submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099–MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

i. You are engaged in any activity that is illegal under Federal, state, or local law;

ii. You are a household employer (individuals who employ household employees such as nannies or housekeepers);

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or

iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100.

c. How do I determine if I am ineligible?

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at *https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs*.)

d. I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of $10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below.

e. How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

i. Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.

ii. Step 2: Subtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year.

iii. Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

iv. Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

v. Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any ''advance'' under an EIDL COVID–19 loan (because it does not have to be repaid).

The examples below illustrate this methodology.

i. Example 1—No employees make more than $100,000
Annual payroll: $120,000
Average monthly payroll: $10,000
Multiply by 2.5 = $25,000
Maximum loan amount is $25,000

ii. Example 2—Some employees make more than $100,000
Annual payroll: $1,500,000
Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
Average monthly qualifying payroll: $100,000
Multiply by 2.5 = $250,000
Maximim loan amount is $250,000

iii. Example 3—No employees make more than $100,000, outstanding EIDL loan of $10,000.
Annual payroll: $120,000
Average monthly payroll: $10,000
Multiply by 2.5 = $25,000
Add EIDL loan of $10,000 = $35,000
Maximum loan amount is $35,000

iv. Example 4—Some employees make more than $100,000, outstanding EIDL loan of $10,000
Annual payroll: $1,500,000
Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
Average monthly qualifying payroll: $100,000
Multiply by 2.5 = $250,000
Add EIDL loan of $10,000 = $260,000
Maximum loan amount is $260,000

f. What qualifies as ''payroll costs?''

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

g. Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

i. Any compensation of an employee whose principal place of residence is outside of the United States;

ii. The compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary;

iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and

iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Pub. L. 116–127).

h. Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.

i. What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent.

The Administrator, in consultation with the Secretary, determined that a one percent interest rate is appropriate. First, it provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus. Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities. For example, the FDIC's weekly national average rate for a 24-month CD deposit product for the week of March 30, 2020 is 42 basis points for non-jumbo and 44 basis points for jumbo (*https://www.fdic.gov/regulations/resources/rates/*). Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. For example, the yield on the Treasury two-year note is approximately 23 basis points. This higher yield combined with the fact that the loans are 100 percent guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP.

j. What will be the maturity date on a PPP loan?

The maturity is two years. While the Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness (described below), the Administrator, in consultation with the Secretary, determined that a two year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the two year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.

k. Can I apply for more than one PPP loan?

No. The Administrator, in consultation with the Secretary, determined that no eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount. While the Act does not expressly provide that each eligible borrower may only receive one PPP loan, the Administrator has determined, in consultation with the Secretary, that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan. This limitation will also help advance Congress' goal of keeping workers paid and employed across the United States.

l. Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes, e-signature or e-consents can be used regardless of the number of owners.

m. Is the PPP ''first-come, first-served?''

Yes.

n. When will I have to begin paying principal and interest on my PPP loan?

You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment. The Act authorizes the Administrator to defer loan payments for up to one year. The Administrator determined, in consultation with the Secretary, that a six-month deferment period is appropriate in light of the modest interest rate (one percent) on PPP loans and the loan forgiveness provisions contained in the Act.

o. Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgiveable purposes described below and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and

any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks/2.5 months = 56 days/76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

p. Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

q. What forms do I need and how do I submit an application?

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described above. The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

r. How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

i. payroll costs (as defined in the Act and in 2.f.);

ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

iii. mortgage interest payments (but not mortgage prepayments or principal payments);

iv. rent payments;

v. utility payments;

vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or

vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

However, at least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. As with the similar limitation on the forgiveness amount explained earlier, the Administrator, in consultation with the Secretary, has determined that 75 percent is an appropriate percentage that will align this element of the program with the loan amount, 75 percent of which is equivalent to eight weeks of payroll. This limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

s. What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

t. What certifications need to be made?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below: [1]

i. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099–MISC.

ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.

iii. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the Federal Government may hold me legally liable such as for charges of fraud. As explained above, not more than 25 percent of loan proceeds may be used for non-payroll costs.

iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

[1] A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

3. What do lenders need to know and do?

a. Who is eligible to make PPP loans?

i. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.

ii. The Act provides that the authority to make PPP loans can be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. Since SBA is authorized to make PPP loans up to $349 billion by June 30, 2020, the Adminstrator and the Secretary have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by the June 30, 2020 deadline.

iii. The following types of lenders have been determined to meet the criteria and are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action with their primary Federal regulator that addresses unsafe or unsound lending practices:

I. Any federally insured depository institution or any federally insured credit union;

II. Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C. 2002(a) that applies the requirements under the Bank Secrecy Act and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by this rule; and

III. Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial receivables and participation interests; has a formalized compliance program; applies the requirements under the BSA as a federally regulated financial institution, or the BSA requirements of an equivalent federally regulated financial institution; has been operating since at least February 15, 2019, and has originated, maintained, and serviced more than $50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, or is a service provider to any insured depository institution that has a contract to support such institution's lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency.

iv. Qualified institutions described in 3.a.iii.I. and II. will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506) unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action by their primary Federal regulator that addresses unsafe or unsound lending practices.

b. What do lenders have to do in terms of loan underwriting?

Each lender shall:

i. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;

ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;

iii. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and

iv. Follow applicable BSA requirements:

I. Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP. PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

II. Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Depending upon the comparable federally regulated institution, such a program may include a customer identification program (CIP), which includes identifying and verifying their PPP borrowers' identities (including *e.g.,* date of birth, address, and taxpayer identification number), and, if that PPP borrower is a company, following any applicable beneficial ownership information collection requirements. Alternatively, if available, entities may rely on the CIP of a federally insured depository institution or federally insured credit union with an established CIP as part of its AML program. In either instance, entities should also understand the nature and purpose of their PPP customer relationships to develop customer risk profiles. Such entities will also generally have to identify and report certain suspicious activity to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). If such entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at *FRC@fincen.gov.* In addition, FinCEN has created a COVID–19-specific contact channel, via a specific drop-down category, for entities to communicate to FinCEN COVID–19-related concerns while adhering to their BSA obligations. Entities that wish to communicate such COVID–19-related concerns to FinCEN should go to *www.FinCEN.gov,* click on ''Need Assistance,'' and select ''COVID19'' in the subject drop-down list.

Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the ''Paycheck Protection Application Form.'' Borrowers must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099–MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

c. Can lenders rely on borrower documentation for loan forgiveness?

Yes. The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The Administrator, in

consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

d. What fees will lenders be paid?

SBA will pay lenders fees for processing PPP loans in the following amounts:

i. Five (5) percent for loans of not more than $350,000;

ii. Three (3) percent for loans of more than $350,000 and less than $2,000,000; and

iii. One (1) percent for loans of at least $2,000,000.

e. Do lenders have to apply the ''credit elsewhere test''?

No. When evaluating an applicant's eligibility lenders will not be required to apply the ''credit elsewhere test'' (as set forth in section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636) and SBA regulations at 13 CFR 120.101)).

4. What do both borrowers and lenders need to know and do?

a. What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes including but not limited to:

i. The guarantee percentage is 100 percent.

ii. No collateral will be required.

iii. No personal guarantees will be required.

iv. The interest rate will be 100 basis points or one percent.

v. All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

b. Are there any fee waivers?

i. There will be no up-front guarantee fee payable to SBA by the Borrower;

ii. There will be no lender's annual service fee (''on-going guaranty fee'') payable to SBA;

iii. There will be no subsidy recoupment fee; and

iv. There will be no fee payable to SBA for any guarantee sold into the secondary market.

c. Who pays the fee to an agent who assists a borrower?

Agent fees will be paid by the lender out of the fees the lender receives from SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

i. One (1) percent for loans of not more than $350,000;

ii. 0.50 percent for loans of more than $350,000 and less than $2 million; and

iii. 0.25 percent for loans of at least $2 million.

The Act authorizes the Administrator to establish limits on agent fees. The Administrator, in consultation with the Secretary, determined that the agent fee limits set forth above are reasonable based upon the application req uirements and the fees that lenders receive for making PPP loans.

d. Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value. SBA will issue guidance regarding any advance purchase for loans sold in the secondary market.

e. Can SBA purchase some or all of the loan in advance?

Yes. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight week period after loan disbursement. At least 75 percent of the expected forgiveness amount shall be for payroll costs, as provided in 2.o. To submit a PPP loan or pool of PPP loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report shall include: the Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application; the Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation; a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable. The Administrator, in consultation with the Secretary, determined that seven weeks is the minimum period of time necessary for a lender to reasonably determine the expected forgiveness amount for a PPP loan or pool of PPP loans, since the PPP is a new program and the likelihood that many borrowers will be new clients of the lender. The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans. The Administrator will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.

5. Additional Information

All loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb–1 and bb–3, and SBA regulation at 13 CFR 113.3–1h, which provides that nothing in SBA nondiscrimination regulations shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities. SBA intends to promptly issue additional guidance with regard to religious liberty protections under this program.

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at *www.sba.gov.*

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

E.O. 12866 and E.O. 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will impose recordkeeping or reporting requirements under the Paperwork Reduction Act (''PRA''). SBA has obtained emergency approval under OMB Control Number 3245–0407 for the information collection (IC) required to implement the program described above. This IC consists of Form 2483 (Paycheck Protection Program Application Form), SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty), and SBA Form 3506 (CARES Act Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). The collection is approved for use until September 30, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Ac. Ch.1. p.9.* Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, Section 1114.

Jovita Carranza,

Administrator.

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BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. SBA–2020–0019]

RIN 3245–AH35

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the U.S. Small Business Administration (SBA) is publishing an interim final rule (the Initial Rule) announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). This interim final rule supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules applicable to SBA's implementation of sections 1102 and 1106 of the Act and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment Date: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0019 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. On April 2, 2020, SBA issued an interim final rule (the Initial Rule) announcing the implementation of sections 1102 and 1106 of the Act. A more detailed discussion of sections 1102 and 1106 of the Act is found in section III of the Initial Rule.

This interim final rule supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules applicable to SBA's implementation of sections 1102 and 1106 of the Act and requests public comment.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)). Specifically, small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. The immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a better understanding of loan terms and conditions. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title 1 of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted on or before May 15, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Affiliate Rules for Paycheck Protection Program

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. Additional information about the PPP is available in the Initial Rule.

1. Affiliation Rules Generally

Are affiliates considered together for purposes of determining eligibility?

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP.[1] Under SBA rules, entities may be considered affiliates based on factors including stock ownership, overlapping management,[2] and identity of interest. 13 CFR 121.301.

How do SBA's affiliation rules affect my eligibility and apply to me under the PPP?

An entity generally is eligible for the PPP if it, combined with its affiliates, is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), or (1) has 500 or fewer employees whose principal place of residence is in the United States or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, and (2) is a

[1] Section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv), as added by the Act, waives the affiliation rules contained in § 121.103 for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681). This interim final rule has no effect on these statutory waivers, which remain in full force and effect. As a result, the affiliation rules contained in section 121.301 also do not apply to these types of entities.

[2] In order to help potential borrowers identify other businesses with which they may be deemed to be affiliated under the common management standard, the Borrower Application Form, SBA Form 2483, released on April 2, 2020, requires applicants to list other businesses with which they have common management. The information supplied by the applicant in response to that information request should be used by applicants as they assess whether they have affiliates that should be included in their number of employees reported on SBA Form 2483.

tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business concern. Prior to the Act, the nonprofit organizations listed above were not eligible for SBA Business Loan Programs under section 7(a) of the Small Business Act; only for-profit small business concerns were eligible. The Act made such nonprofit organizations not only eligible for the PPP, but also subjected them to SBA's affiliation rules. Specifically, section 1102 of the Act provides that the provisions applicable to affiliations under 13 CFR 121.103 apply with respect to nonprofit organizations and veterans organizations in the same manner as with respect to small business concerns. However, the detailed affiliation standards contained in § 121.103 currently do not apply to PPP borrowers, because § 121.103(a)(8) provides that applicants in SBA's Business Loan Programs (which include the PPP) are subject to the affiliation rule contained in 13 CFR 121.301.

2. Faith-Based Organizations

This rule exempts otherwise qualified faith-based organizations from the SBA's affiliation rules, including those set forth in 13 CFR part 121, where the application of the affiliation rules would substantially burden those organizations' religious exercise. This exemption is required, or at a minimum authorized, by the Religious Freedom Restoration Act (RFRA) (Pub. L. 103–141), which provides that the ''[g]overnment shall not substantially burden a person's exercise of religion'' unless the government can ''demonstrate[] that application of the burden'' to the person is both ''in furtherance of a compelling governmental interest'' and ''the least restrictive means of furthering that compelling governmental interest.'' 42 U.S.C. 2000bb–1.

A substantial burden under RFRA includes both government action that compels a person to violate his sincere religious beliefs or suffer a penalty, *see, e.g., Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 726 (2014), and the imposition of a substantial burden through ''indirect'' measures. *Thomas* v. *Review Bd. of Ind. Emp. Sec. Div.,* 450 U.S. 707, 717–18 (1981). Notably, the government imposes a substantial burden on religious exercise when it ''conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief.'' *Id.* at 718. For example, in *Sherbert* v. *Verner,* 374 U.S. 398 (1963), a State denied the plaintiff unemployment benefits because she would not work on Saturday, the Sabbath of her faith. *Id.* at 400–01. Even though no ''sanctions directly compel[led]'' her to work on Saturday, the Supreme Court held that the State's denial of benefits ''puts the same kind of burden upon the free exercise of religion as would a fine imposed against [her] for her Saturday worship.'' *Id.* at 404. As the Court observed, the State's framework ''forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.'' *Id.* Consistent with these precedents, RFRA explicitly contemplates that ''the denial of government funding, benefits, or exemptions'' may violate its protections. 42 U.S.C. 2000bb–4.

SBA is aware of the existence of faith-based organizations that would qualify for relief under the CARES Act but for their affiliation with other entities as an aspect of their religious practice. Supreme Court precedent has long recognized that the organizational structure of faith-based entities may itself be a matter of significant religious concern and that faith-based organizations are therefore guaranteed the ''power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'' *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.,* 344 U.S. 94, 116 (1952). Moreover, an assessment of the extent to which questions concerning religious polity rest upon theological or other religious foundations presents particular difficulties, for the First Amendment ''forbids civil courts'' from ''the interpretation of particular church doctrines and the importance of those doctrines to the religion.'' *Presbyterian Church* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* 393 U.S. 440, 450 (1969). A number of faith-based organizations understand their affiliation with other religious entities as a part of their exercise of religion, as a mandate given the ''hierarchical or connectional'' structure of their church, *Jones* v. *Wolf,* 443 U.S. 595, 597 (1979), or as an expression of their sincere religious belief. *Cf.* 1 W. Cole Durham & Robert Smith, Religious Organizations and the Law section 8.19 (Westlaw rev. ed. 2017) (''Religious organizations, such as parishes or mission centers, normally tend to choose the civil-property-holding structures that most closely mirror their own ecclesiology or polity.''). Either affiliation decision falls within the definition of ''religious exercise'' that applies to RFRA, which ''includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'' *See* 42 U.S.C. 2000cc–5(7)(A); 2000bb–2(4) (''the term 'exercise of religion' means religious exercise, as defined in section 2000cc–5 of this title'').

As applied to these faith-based organizations, the affiliation rules would impose a substantial burden. The affiliation rules would deny an important benefit (participation in a program for which they would otherwise be eligible under the CARES Act) because of the exercise of sincere religious belief (affiliation with other religious entities).

The Administrator has also concluded that she does not have a compelling interest in denying emergency assistance to faith-based organizations that are facing the same economic hardship to which the CARES Act responded and who would be eligible for PPP but for their faith-based organizational and associational decisions. This conclusion is reinforced by the fact that the affiliation rules already contain numerous exemptions, *see generally* 13 CFR 121.103(b), ranging from ''[b]usiness concerns owned and controlled by Indian Tribes, Alaska Native Corporations, [and] Native Hawaiian Organizations,'' *id.* § 121.103(b)(2)(i) to ''member shareholders of a small agricultural cooperative.'' *Id.* § 121.103(b)(7). In light of these exemptions, it is difficult to maintain that denying relief to these faith-based organizations is necessary to further a compelling government interest, let alone the least restrictive means of doing so. *See Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah,* 508 U.S. 520, 547 (1993) (''[A] law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.'') (cleaned up); *Gonzales* v. *O Centro Espirita Beneficiente Uniao do Vegetal,* 546 U.S. 418, 433 (2006) (applying same principle under RFRA). SBA accordingly must exempt faith-based organizations that would otherwise be disqualified from the PPP based on features of those organizations' affiliations that are a matter of sincere religious exercise as defined in 42 U.S.C. 2000bb–2.

This action is also supported by 15 U.S.C. 634(b)(6), which authorizes the Administrator to ''make such rules and regulations as he deems necessary to

carry out the authority vested in him by or pursuant to this chapter.'' As relevant here, the CARES Act expanded eligibility for the covered loans during the covered period for nonprofit organizations that employ not more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator for the industry in which the nonprofit organization operates. 15 U.S.C. 636(a)(36)(D)(i). That expansion posed unique concerns for the Administrator, who is tasked with applying the ''provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, . . . with respect to a nonprofit organization and a veterans organizations in the same manner as with respect to a small business concern.'' *Id.* 636(a)(36)(D)(vi). Although these rules may easily be applied to faith-based organizations in many cases, their application to certain faith-based organizations presents significant challenges, in particular because of the large number of faith-based organizations who would now be eligible for the PPP but for their religious exercise.

As discussed above, carrying the affiliation rules over to all faith-based organizations without modification would raise concerns under RFRA. Moreover, application of the affiliation rules, which, for example, provide for assessment of whether one faith-based organization ''controls or has the power to control'' another organization, 13 CFR 121.103(a)(1), could involve SBA in questions of church governance concerning ''the allocation of power within a (hierarchical) church so as to decide . . . religious law (governing church polity),'' in violation of the First Amendment. *Serbian E. Orthodox Diocese for the U.S.A. & Canada* v. *Milivojevich,* 426 U.S. 696, 709 (1979) (internal quotation marks omitted)). Finally, affiliation rules developed in the context of for-profit enterprises present significant administrative difficulties where faith-based organizations are concerned. For example, ''the notion of corporate subsidiarity or affiliation in civil law is entirely foreign to the polity of religious organizations,'' and there is a significant risk that civil authorities will ''mischaracterize or misinterpret the polity of a religious body.'' 1 W. Cole Durham & Robert Smith, Religious Organizations and the Law sections 8.19, 8.21 (discussing examples of judicial mischaracterizations). Consistent with these concerns, it is also notable that other areas of federal law approach issues analogous to affiliation differently for religious organizations. *See, e.g.,* 26 U.S.C. 512 (b)(12).

For these reasons, in addition to the RFRA mandate, the Administrator has determined that it is appropriate to exercise the authority granted under 15 U.S.C. 634(b)(6) to exempt from application of SBA's affiliation rules faith-based organizations that would otherwise be disqualified from participation in PPP because of affiliations that are a part of their religious exercise.

Accordingly, the SBA's affiliation rules, including those set forth in 13 CFR part 121, do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any other person, group, organization, or entity that is based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form. A faith-based organization seeking loans under this program may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization, or entity is exempt from the affiliation rules under this provision, and SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization's determination.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at *www.sba.gov.*

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will impose recordkeeping or reporting requirements under the Paperwork Reduction Act (''PRA''). SBA has obtained emergency approval under OMB Control Number 3245–0407 for the information collection (IC) required to implement the program described above. This IC consists of Form 2483 (Paycheck Protection Program Application Form) and SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) SBA Form 3506 (CARES Act Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). The collection is approved for use until October 31, 2020.

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business

Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Ac. Ch.1. p.9.* Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Authority delegations (Government agencies), Intergovernmental relations, Investigations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 121 as set forth below:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. Amend § 121.103 by adding paragraph (b)(10) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(10)(i) The relationship of a faith-based organization to another organization is not considered an affiliation with the other organization under this subpart if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion. In addition, the eligibility criteria set forth in 15 U.S.C. 636(a)(36)(D) are satisfied for any faith-based organization having not more than 500 employees (including individuals employed on a full-time, part-time, or other basis) that pays Federal payroll taxes using its own Internal Revenue Service Employer Identification Number (EIN) or that would support a deduction under the second sentence of 26 U.S.C. 512(b)(12) if the organization generated unrelated business taxable income. For purposes of this paragraph (b)(10), the term ''faith-based organization'' includes, but is not limited to, any organization associated with a church or convention or association of churches within the meaning of 26 U.S.C. 414(e)(3)(D). The term ''organization'' has the meaning given in 26 U.S.C. 414(m)(6)(A). The terms ''church'' and ''convention or association of churches'' have the same meaning that they have in 26 U.S.C. 414.

(ii) No specific process or filing is necessary to claim the benefit of the exemption in paragraph (b)(10)(i) of this section. In applying for a loan under the Paycheck Protection Program (PPP), a faith-based organization may make all necessary certifications with respect to common ownership or management or other eligibility criteria based upon affiliation, if the organization would be an eligible borrower but for application of SBA affiliation rules and if the organization falls within the terms of the exemption described in paragraph (b)(10)(i) of this section. If a faith-based organization indicates any relationship that may pertain to affiliation, such as ownership of, ownership by, or common management with any other organization, on or in connection with a loan application, and if the faith-based organization applying for a loan falls within the terms of the exemption described in paragraph (b)(10)(i) of this section with respect to that relationship, the faith-based organization may indicate on a separate sheet that it is entitled to the exemption. That sheet may be identified as addendum A, and no further listing of the other organization or description of the relationship to that organization is required. See appendix A to this part for a sample ''Addendum A'', but the format need not be used as long as the substance is the same.

* * * * *

■ 3. Add appendix A to part 121 to read as follows:

Appendix A to Part 121—Paycheck Protection Program Sample Addendum A

[Sample]

ADDENDUM A

✓ The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because the Applicant has made a reasonable, good faith determination that the Applicant qualifies for a religious exemption under 13 CFR 121.103(b)(10), which says that ''[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization . . . if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.''

Jovita Carranza,

Administrator.

[FR Doc. 2020–07673 Filed 4–10–20; 4:15 pm]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–497]

Designation of Benzylfentanyl and 4-Anilinopiperidine, Precursor Chemicals Used in the Illicit Manufacture of Fentanyl, as List I Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is finalizing the designation of *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (also known as benzylfentanyl), including its salts, and *N*-phenylpiperidin-4-amine (also known as 4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP) (hereinafter referred to as 4-anilinopiperidine), including its amides, its carbamates, and its salts, as list I chemicals under the Controlled Substances Act (CSA). DEA proposed control of benzylfentanyl and 4-anilinopiperidine due to their use in clandestine laboratories to illicitly manufacture the schedule II controlled substance fentanyl. This rulemaking finalizes the control of benzylfentanyl and 4-anilinopiperidine as list I chemicals.

DATES: This rulemaking will become effective on May 15, 2020. Persons seeking registration must apply on or before May 15, 2020 to continue their business pending final action by DEA on their application.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: DEA is extremely concerned with the recent increase in the illicit manufacture and distribution of fentanyl. Therefore, on September 13, 2019, DEA published a Notice of Proposed Rulemaking (NPRM) to control the precursor chemicals benzylfentanyl and 4-anilinopiperdine as list I chemicals. 84 FR 48314. This rulemaking finalizes that NPRM.

This action subjects handlers of benzylfentanyl and 4-anilinopiperidine to the chemical regulatory provisions of the CSA and its implementing regulations. This rulemaking does not establish a threshold for domestic and international transactions of benzylfentanyl or 4-anilinopiperidine. As such, all transactions involving benzylfentanyl or 4-anilinopiperidine are regulated, regardless of transaction size or quantity, and are subject to control under the CSA. In addition, chemical mixtures containing benzylfentanyl or 4-anilinopiperidine are not exempt from regulatory requirements at any concentration. Therefore, all transactions of chemical mixtures containing any quantity of benzylfentanyl or 4-anilinopiperidine are regulated pursuant to the CSA.

Legal Authority

The CSA gives the Attorney General the authority to specify, by regulation, chemicals as list I or list II chemicals. 21 U.S.C. 802(34) and (35). A ''list I chemical'' is a chemical that is used in manufacturing a controlled substance in violation of Title II of the CSA and is important to the manufacture of the controlled substance. 21 U.S.C. 802(34). A ''list II chemical'' is a chemical (other than a list I chemical) that is used in manufacturing a controlled substance in violation of Title II of the CSA. 21 U.S.C. 802(35). The current list of all listed chemicals is published at 21 CFR 1310.02. Pursuant to 28 CFR 0.100(b), the Attorney General has delegated his authority to designate list I and list II chemicals to the Administrator of the Drug Enforcement Administration.

Background

DEA is extremely concerned with the increase in the illicit manufacture and distribution of fentanyl. Fentanyl is a synthetic opioid and was first synthesized in Belgium in the late 1950's. Fentanyl is controlled in schedule II of the CSA due to its high potential for abuse and dependence, and accepted medical use in treatment in the United States. Fentanyl was introduced into medical practice and is approved for medical practitioners in the United States to prescribe lawfully for anesthesia and analgesia. Due to its pharmacological effects, fentanyl can serve as a substitute for heroin, oxycodone, and other opioids in opioid dependent individuals.

The unlawful trafficking of fentanyl in the United States continues to pose an imminent hazard to the public safety. Since 2012, fentanyl has shown a dramatic increase in the illicit drug supply as a single substance, in mixtures with other illicit drugs (*i.e.,* heroin, cocaine, and methamphetamine), or in forms that mimic pharmaceutical preparations including prescription opiates and benzodiazepines.

DEA has noted a significant increase in overdoses and overdose fatalities from fentanyl in the United States in recent years. A recent report [1] from the Centers for Disease Control and Prevention (CDC) highlights this trend. According to this report, of the 41,430 drug overdose deaths occurring in the United States in 2011, 1,662 (4.0 percent) involved fentanyl.[2] Of the 63,632 drug overdose deaths in 2016, 18,335 (28.8 percent) involved fentanyl. This was the first time that fentanyl was reported in more drug related fatalities than heroin.

The increase of drug overdose deaths continued into 2017. According to the CDC,[3] there were 70,237 drug overdose deaths in the United States in 2017, an increase from the 63,632 overdose deaths recorded in 2016. Of the 70,237 overdose deaths in 2017, 47,600 (67.8 percent) involved an opioid. Deaths involving prescription opioids and heroin remained stable from 2016 to 2017; synthetic opioid overdose deaths (other than methadone), which include deaths involving fentanyl, increased 45.2 percent from 19,413 deaths in 2016 to 28,466 deaths in 2017.

The increase in overdose fatalities involving fentanyl coincides with a dramatic increase of law enforcement encounters of fentanyl. According to the National Forensic Laboratory Information System (NFLIS),[4] submissions to forensic laboratories that contained fentanyl increased exponentially beginning in 2012: 694 in 2012, 1,044 in 2013, 5,537 in 2014, 15,455 in 2015, 37,294 in 2016, 61,382 in 2017, and 70,453 in 2018.

Role of These Precursor Chemicals in the Synthesis of Fentanyl

Fentanyl is not a naturally occurring substance. As such, the manufacture of fentanyl requires it to be produced through synthetic organic chemistry. Synthetic organic chemistry is the process in which an organic molecule is created through a series of chemical reactions, which involve precursor

[1] Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011–2016. National Vital Statistics Reports; vol 67 no 9. Hyattsville, MD: National Center for Health Statistics, 2018.

[2] The reported data includes fentanyl, fentanyl metabolites, precursors, and analogs.

[3] Scholl L, Seth P, Kariisa M, Wilson N, Baldwin G. Drug and Opioid-Involved Overdose Deaths—United States, 2013–2017. MMWR Morb Mortal Wkly Rep 2019;67:1419–1427.

[4] The National Forensic Laboratory Information System (NFLIS) is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by Federal, State and local forensic laboratories in the United States. NFLIS data was queried on March 26, 2019.

chemicals. In the early 2000's, a synthetic process, commonly known as the Siegfried method, was utilized to manufacture fentanyl in several domestic and foreign clandestine laboratories. 72 FR 20039. At that time, DEA had determined that two primary synthesis routes (*i.e.,* the Janssen method and the Siegfried method) were being used to produce fentanyl clandestinely, although it believed the Janssen synthesis route to be difficult to perform and beyond the rudimentary skills of most clandestine laboratory operators. The Siegfried synthetic route involves two important intermediates, *N*-phenethyl-4-piperidone (NPP) and 4-anilino-*N*-phenethylpiperidine (ANPP). DEA controlled NPP on April 23, 2007, as a list I chemical through an interim rule (72 FR 20039), which was finalized on July 25, 2008. 73 FR 43355. ANPP was controlled as a schedule II immediate precursor to fentanyl on August 30, 2010. 75 FR 37295.

In 2017, the United Nations Commission on Narcotic Drugs placed NPP and ANPP in Table I of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention) in response to the international reintroduction of fentanyl on the illicit drug market. As such, member states of the United Nations were required to control these precursor chemicals at the national level. In addition, the People's Republic of China controlled NPP and ANPP on February 1, 2018.

Recent law enforcement information indicates that illicit manufacturers of fentanyl may utilize synthetic routes other than the Siegfried method in response to international controls placed on NPP and ANPP. The Janssen method, previously thought to be beyond the skills of most clandestine laboratory operators, is now used with the precursor chemical benzylfentanyl, and other synthetic routes use the precursor chemical 4-anilinopiperidine. DEA is not aware of any legitimate uses of benzylfentanyl or 4-anilinopiperidine other than in the synthesis of fentanyl.

Benzylfentanyl

The original published synthetic pathway to fentanyl, known as the Janssen method, does not involve NPP or ANPP as a chemical precursor. This synthetic pathway involves the important precursors, benzylfentanyl and norfentanyl. Benzylfentanyl is converted to *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl), the immediate precursor in this synthetic pathway, in one chemical reaction. Norfentanyl is then subjected to one simple chemical reaction to complete the synthesis of fentanyl.

According to DEA forensic laboratory data, the Janssen method was confirmed as the synthetic route used in 94 percent of 85 fentanyl drug exhibits that were evaluated to determine the synthetic route. These exhibits were seized in 2018. In addition, the number of law enforcement encounters of benzylfentanyl has increased in 2017 and 2018, which coincides with the international control that placed NPP and ANPP in Table I of the 1988 Convention in 2017.

According to NFLIS, there was one identification of benzylfentanyl in 2016; however, benzylfentanyl was identified in 195 reports in 2017 and 237 reports in 2018. Since DEA is not aware of any legitimate uses of benzylfentanyl other than potentially in the synthesis of fentanyl, it is believed that these law enforcement encounters indicate a change in the synthetic route to the Janssen method by some clandestine manufacturers in efforts to evade chemical regulations on NPP and ANPP.

DEA has determined that benzylfentanyl is commercially available from both domestic and foreign chemical suppliers. DEA is aware of at least five domestic suppliers and three foreign suppliers in China, two suppliers in Canada, and one supplier in the United Kingdom. Benzylfentanyl is attractive to illicit manufacturers due to the lack of chemical regulations on this substance, it is readily available from chemical suppliers, and it can be converted to the immediate precursor, norfentanyl, in a one-step chemical reaction.

4-Anilinopiperidine

In addition to the Janssen and Siegfried methods, clandestine manufacturers are using other methods to synthesize fentanyl. 4-Anilinopiperidine can serve as an alternative precursor chemical to NPP in the synthesis of ANPP, albeit through a different synthetic process. 4-Anilinopiperidine has been marketed as a replacement to ANPP as a precursor chemical used in the illicit manufacture of fentanyl by foreign chemical suppliers. This is believed to be in response to international controls placed on NPP and ANPP. Although marketed as a replacement for ANPP, DEA understands that 4-anilinopiperidine is not a direct replacement for ANPP in the synthesis of fentanyl. DEA is not aware of any legitimate uses of 4-anilinopiperidine other than potentially in the synthesis of fentanyl. In contrast to NPP, where two chemical reaction steps are required to synthesize ANPP, 4-anilinopiperidine can be converted to ANPP in a one-step chemical reaction. The resulting ANPP can then be used as the immediate precursor chemical in the illicit manufacture of the schedule II controlled substance, fentanyl. ANPP was controlled in schedule II of the CSA as of August 30, 2010 for this reason. 75 FR 37295 (June 29, 2010).

4-Anilinopiperidine has been imported and identified in law enforcement seizures in the United States. In addition to domestic encounters, DEA is aware of international encounters of 4-anilinopiperidine beginning as early as July 2018. The International Narcotics Control Board of the United Nations reported 32 international transactions of 4-anilinopiperidine through the International Operations on Novel Psychoactive Substances Communication System (IONICS) [5] reporting system. These identifications, totaling approximately 30 kg, were reported by Mexico as the destination country. In addition, 4-anilinopiperidine was identified at a clandestine laboratory located in Mexico, which was involved in the illicit manufacture of fentanyl.

These recent law enforcement encounters of 4-anilinopiperidine coincide with the placement of NPP and ANPP in Table I of the 1988 Convention, and the February 1, 2018, control of NPP and ANPP in the People's Republic of China. The international encounters of 4-anilinopiperidine at ports of entry in Mexico indicate a change in illicit fentanyl manufacturing methods in efforts to evade international controls on NPP and ANPP.

DEA determined that 4-anilinopiperidine is commercially available from both domestic and foreign chemical suppliers. DEA has identified 38 domestic suppliers and 28 foreign suppliers of 4-anilinopiperidine from Canada (3), China (11), Germany (3), Hong Kong (1), India (1), Latvia (1), Lithuania (1), Switzerland (2), and the United Kingdom (5). 4-Anilinopiperidine is attractive to illicit manufacturers due to the lack of chemical controls on this substance, it is readily available from chemical suppliers, and it can easily be converted to the schedule II immediate precursor, ANPP, which can subsequently be converted to fentanyl.

[5] IONICS is a free communication platform dedicated to real-time communication of incidents involving suspicious shipments, trafficking, manufacture or production of Novel Psychoactive Substances (NPS). IONICS reports were collected up to April 1, 2019.

Regulation of Benzylfentanyl, Including Its Salts and 4-Anilinopiperidine, Including Its Amides, Its Carbamates, and Its Salts, as List I Chemicals

The CSA, specifically 21 U.S.C. 802(34), 21 U.S.C. 802(35), and its implementing regulations at 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional precursor or essential chemicals as ''listed chemicals'' if they are used in the manufacture of controlled substances in violation of the CSA. Recent law enforcement encounters indicate benzylfentanyl and 4-anilinopiperidine are being used in the illicit manufacture of the schedule II controlled substance fentanyl.

On September 13, 2019, DEA published an NPRM proposing control of benzylfentanyl and 4-anilinopiperidine as list I chemicals due to their use in clandestine laboratories to illicitly manufacture the schedule II controlled substance fentanyl. This rulemaking finalizes the control of benzylfentanyl and 4-anilinopiperidine as list I chemicals because DEA finds that benzylfentanyl and 4-anilinopiperidine are used in the manufacture of the controlled substance fentanyl, and are important to the manufacture of the controlled substance fentanyl because they cannot be replaced by other chemicals in their respective synthetic pathways in the manufacture of fentanyl.

Comments Received

As part of the NPRM published on September 13, 2019 (84 FR 48314), DEA specifically solicited comment on any possible legitimate uses of benzylfentanyl and 4-anilinopiperidine unrelated to fentanyl production (including industrial uses) in order to assess the potential commercial impact of controlling benzylfentanyl and 4-anilinopiperidine. DEA had searched information in the public domain for legitimate uses of these two chemicals, and had not documented a legitimate commercial use for benzylfentanyl or 4-anilinopiperidine other than as intermediary chemicals in the production of fentanyl. DEA sought, however, to document any unpublicized use(s) and other proprietary use(s) of benzylfentanyl and 4-anilinopiperidine that are not in the public domain. Therefore, DEA solicited comment on the uses of benzylfentanyl and 4-anilinopiperidine in the legitimate marketplace.

DEA solicited input from all potentially affected parties regarding: (1) The types of legitimate industries using benzylfentanyl and 4-anilinopiperidine; (2) the legitimate uses of benzylfentanyl and 4-anilinopiperidine, if any; (3) the size of the domestic market for benzylfentanyl and 4-anilinopiperidine; (4) the number of manufacturers of benzylfentanyl and 4-anilinopiperidine; (5) the number of distributors of benzylfentanyl and 4-anilinopiperidine; (6) the level of import and export of benzylfentanyl and 4-anilinopiperidine; (7) the potential burden these proposed regulatory controls of benzylfentanyl and 4-anilinopiperidine may have on any legitimate commercial activities; (8) the potential number of individuals/firms that may be adversely affected by these proposed regulatory controls (particularly with respect to the impact on small businesses); and (9) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of benzylfentanyl and 4-anilinopiperidine by industry and others. DEA invited all interested parties to provide any information on any legitimate uses of benzylfentanyl and 4-anilinopiperidine in industry, commerce, academia, research and development, or other applications. DEA sought both quantitative and qualitative data. DEA did not receive any responses to these specific solicitations.

In response to the NPRM, DEA received four comments. Two commenters were in support of controlling benzylfentanyl and 4-anilinopiperidine as list I chemicals. One commenter expressed concern over a regulatory mechanism that would place benzylfentanyl and 4-anilinopiperidine in schedule I of the CSA. One commenter submitted a response that was outside the scope of the action.

Comment: One commenter stated that this rule will be an integral part of domestic regulation of illegal fentanyl by decreasing manufacture of illegal fentanyl. This commenter also expressed concern about the ease of obtaining, and importing illegal fentanyl and chemical precursors into the United States.

DEA response: DEA agrees that this rule is an important step in decreasing illicit fentanyl production and making it more difficult to obtain and import these chemical precursors into the United States. This rule provides law enforcement a tool to identify and investigate illicit fentanyl manufacturers. As list I chemicals, imports and exports of benzylfentanyl and 4-anilinopiperidine will be regulated per 21 CFR part 1313.

Comment: One commenter stated that benzylfentanyl and 4-anilinopiperidine must be regulated as list I chemicals to reduce illicit access to fentanyl. The commenter expressed concern about uncontrolled illicit production of fentanyl and the recent outcomes of fentanyl abuse in the United States.

DEA response: DEA agrees with the comment in support of controlling benzylfentanyl and 4-anilinopiperidine as list I chemicals. DEA is concerned with the abuse of illicitly manufactured fentanyl in the United States and believes this rule will help to control the illicit manufacture of fentanyl.

Comment: One commenter expressed concern about a regulatory mechanism that places benzylfentanyl and 4-anilinopiperidine in schedule I. The commenter proposed a separate regulatory avenue for precursors which submits them to scrutiny, study, and regulation in order to protect the public without resorting to the use of schedule I regulation. The commenter further stated that schedule I designations have a long history of hampering research and advancement of medicine in the United States.

DEA response: This rule does not place benzylfentanyl and 4-anilinopiperidine in schedule I of the CSA. The CSA currently provides a mechanism to regulate precursor chemicals separately, which is the authority utilized in this rule. 21 U.S.C. 802(34). Since benzylfentanyl and 4-anilinopiperidine are not subject to schedule I regulations, the comment is unrelated to this action. However, DEA supports and encourages legitimate research on schedule I controlled substances.

Comment: One commenter stated that controlling benzylfentanyl and 4-anilinopiperidine as list I chemicals is a bad idea and recommended keeping the government from micromanaging our economy and hobbling future production for emergencies. The commenter also stated that fentanyl gas can be used in hostage situations.

DEA response: DEA is concerned with the abuse of illicitly manufactured fentanyl in the United States and believes this rule will help to control the illicit manufacture of fentanyl. DEA believes that this rule will not have a significant impact on the economy or on legitimate manufacture of fentanyl. DEA also believes any potential cost as a result of this regulation is minimal. The comment regarding hostage situations is outside the scope of this rule.

Chemical Mixtures of Benzylfentanyl and 4-Anilinopiperidine

Under this rulemaking, chemical mixtures containing benzylfentanyl or 4-anilinopiperidine shall not be exempt from regulatory requirements at any concentration, unless an application for exemption of a chemical mixture is submitted by a benzylfentanyl or 4-anilinopiperidine manufacturer and the application is reviewed and accepted by DEA under 21 CFR 1310.13 (Exemption by Application Process). The control of chemical mixtures containing any amount of benzylfentanyl or 4-anilinopiperidine is necessary to prevent the illicit extraction, isolation, and use of benzylfentanyl or 4-anilinopiperidine to manufacture fentanyl. This rule modifies the Table of Concentration Limits in 21 CFR 1310.12(c) to reflect the fact that chemical mixtures containing any amount of benzylfentanyl or 4-anilinopiperidine are subject to the CSA chemical control provisions.

Exemption by Application Process

DEA has implemented an application process to exempt mixtures from the requirements of the CSA and its implementing regulations. 21 CFR 1310.13. Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical cannot be readily recovered (*i.e.,* it meets the conditions in 21 U.S.C. 802(39)(A)(vi)).

Requirements for Handling List I Chemicals

This final rule subjects benzylfentanyl and 4-anilinopiperidine to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. Upon the effective date of this final rule, persons handling benzylfentanyl or 4-anilinopiperidine, including regulated chemical mixtures containing benzylfentanyl or 4-anilinopiperidine, shall be required to comply with list I chemical regulations, including the following:

1. *Registration.* Any person who manufactures, distributes, imports, or exports benzylfentanyl or 4-anilinopiperidine, or proposes to engage in the manufacture, distribution, importation, or exportation of benzylfentanyl or 4-anilinopiperidine, must obtain a registration pursuant to 21 U.S.C. 822, 823, 957, and 958. Regulations describing registration for list I chemical handlers are set forth in 21 CFR part 1309.

Upon the effective date of this final rule, any person manufacturing, distributing, importing, or exporting benzylfentanyl or 4-anilinopiperidine, or a chemical mixture containing benzylfentanyl or 4-anilinopiperidine, will become subject to the registration requirement under the CSA. However, DEA recognizes that it is not possible for persons who are subject to the registration requirement to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, to allow continued legitimate commerce in benzylfentanyl and 4-anilinopiperidine, DEA is establishing in 21 CFR 1310.09, a temporary exemption from the registration requirement for persons desiring to engage in activities with benzylfentanyl or 4-anilinopiperidine, provided that DEA receives a properly completed application for registration or exemption of a chemical mixture on or before May 15, 2020. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration or application for exemption of a chemical mixture.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, would become effective on the effective date of this final rule. This is necessary because a delay in regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption for registration does not suspend applicable Federal criminal laws relating to benzylfentanyl or 4-anilinopiperidine, nor does it supersede State or local laws or regulations. All handlers of benzylfentanyl or 4-anilinopiperidine must comply with applicable State and local requirements in addition to the CSA regulatory controls.

2. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to benzylfentanyl and 4-anilinopiperidine pursuant to 21 U.S.C. 830 and in accordance with 21 CFR part 1310. Pursuant to 21 CFR 1310.04, a record must be kept for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a listed chemical must submit manufacturing, inventory, and use data on an annual basis. 21 CFR 1310.05(d). Existing standard industry reports containing the required information are acceptable, provided the information is separate or readily retrievable from the report.

3. *Importation and Exportation.* All importation and exportation of benzylfentanyl or 4-anilinopiperidine must be done in compliance with 21 U.S.C. 957, 958, and 971 and in accordance with 21 CFR part 1313.

4. *Security.* All applicants and registrants must provide effective controls against theft and diversion of list I chemicals in accordance with 21 CFR 1309.71–1309.73.

5. *Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where registrants or other regulated persons may lawfully hold, manufacture, distribute, or otherwise dispose of a list I chemical or where records relating to those activities are maintained, are controlled premises as defined in 21 U.S.C. 880(a) and 21 CFR 1316.02(c). The CSA allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316, subpart A. 21 U.S.C. 880.

6. *Liability.* Any activity involving benzylfentanyl or 4-anilinopiperidine not authorized by, or in violation of, the CSA, would be unlawful, and would subject the person to administrative, civil, and/or criminal action.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

This final rulemaking, which adds benzylfentanyl and 4-anilinopiperidine as list I chemicals, was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of

Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. DEA has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f).

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation.[6] In furtherance of this requirement, Executive Order 13771 requires that the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.[7] According to guidance provided by OMB, the requirements of Executive Order 13771 only apply to each new ''significant regulatory action that . . . imposes costs.''[8] This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This final rulemaking subjects benzylfentanyl and 4-anilinopiperidine to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. Benzylfentanyl and 4-anilinopiperidine are used in, and are important to, the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years.

DEA has searched information in the public domain for any legitimate uses of these two chemicals, and has not documented a use for benzylfentanyl or 4-anilinopiperidine other than as intermediary chemicals in the production of fentanyl. Based on the review of import and quota information for NPP, ANPP, and fentanyl, DEA believes the vast majority of, if not all, legitimate pharmaceutical fentanyl is produced via a synthetic route involving NPP and ANPP as intermediaries, not benzylfentanyl (and norfentanyl) or 4-anilinopiperidine. The quantities of NPP and ANPP indicated in import and quota documents generally correspond with the quantities of legitimate pharmaceutical fentanyl produced in the United States. Therefore, DEA concludes the vast majority of, if not all, benzylfentanyl or 4-anilinopiperidine is used for the manufacturing of illicit fentanyl.

DEA cannot rule out the possibility that minimal quantities of benzylfentanyl or 4-anilinopiperidine are used for the manufacturing of legitimate pharmaceutical fentanyl. However, if there are any quantities of benzylfentanyl or 4-anilinopiperidine used for the manufacturing of legitimate pharmaceutical fentanyl, the quantities are believed to be small and economically insignificant. DEA did not receive comment to the contrary.

DEA evaluated the costs and benefits of this action.

Costs

DEA believes the market for benzylfentanyl or 4-anilinopiperidine for the legitimate manufacturing of pharmaceutical fentanyl is minimal. As stated above, the only use for benzylfentanyl and 4-anilinopiperidine of which DEA is aware is as intermediaries for the manufacturing of fentanyl. Any manufacturer, distributor, importer, or exporter of benzylfentanyl or 4-anilinopiperidine for the production of legitimate pharmaceutical fentanyl, if they exist at all, will incur costs upon the effective date of this final rule. The primary costs associated with this rule would be the annual registration fees for scheduled drugs or list I chemicals ($3,047 for manufacturers and $1,523 for distributors, importers, and exporters). However, any manufacturer that uses benzylfentanyl or 4-anilinopiperidine for legitimate pharmaceutical fentanyl production would already be registered with DEA and have all security and other handling processes in place because of the controls already in place on fentanyl, resulting in minimal cost to those entities. While different forms of handling the scheduled substance versus the list I chemical (distribution of fentanyl vs exporting benzylfentanyl) could require a separate registration for the different handling of the substances, if an entity is already registered to handle, manufacture, import, or export a scheduled substance, the entity would not need an additional registration for the list I chemical, provided it is handling the list I chemical in the same manner that it is registered for with the scheduled substance, or as a coincident activity permitted by 21 CFR 1309.21. Even with the possibility of these additional registrations, DEA believes that the cost will be minimal.

DEA has identified 38 domestic suppliers of benzylfentanyl, 4-anilinopiperidine, or both. Only one is registered to handle list I chemicals, the remaining 37 are not registered with DEA to handle list I chemicals. It is difficult to estimate how much benzylfentanyl and 4-anilinopiperidine is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for NPP, ANPP, and fentanyl, where the quantities of NPP and ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, DEA believes any quantity of sales from these distributors for legitimate pharmaceutical fentanyl manufacturing is minimal. Upon the effective date of this final rule, suppliers for the legitimate use of benzylfentanyl or 4-anilinopiperidine are expected to choose the least-cost option, and stop selling the minimal quantities, if any, of benzylfentanyl or 4-anilinopiperidine, rather than incur the registration cost. Because DEA believes the quantities of benzylfentanyl or 4-anilinopiperidine supplied for the legitimate manufacturing of pharmaceutical fentanyl are minimal, DEA estimates that the cost of foregone sales is minimal; and thus, the cost of this rule is minimal. DEA requested public comment regarding this estimate; however, no public comment was received during the notice and comment period.

This analysis excludes consideration of any economic impact to those businesses that facilitate the manufacturing and distribution of benzylfentanyl or 4-anilinopiperidine for the production of manufacturing illicit fentanyl. As a law enforcement organization and as a matter of principle, DEA believes considering the economic utility of facilitating the manufacture of illicit fentanyl would be improper.

[6] Sec. 2(a).

[7] Sec. 2(c).

[8] OMB Guidance Implementing Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs'' (April 5, 2017).

Benefits

Controlling benzylfentanyl and 4-anilinopiperidine is expected to prevent, curtail, and limit the unlawful manufacture and distribution of the controlled substance, fentanyl. As list I chemicals, handling of benzylfentanyl and 4-anilinopiperidine requires registration with DEA and various controls and monitoring as required by the CSA. This rule is also expected to assist preventing the possible theft or diversion of benzylfentanyl and 4-anilinopiperidine from any legitimate firms. DEA also believes control is necessary to prevent unscrupulous chemists from synthesizing benzylfentanyl and 4-anilinopiperidine and selling it (as an unregulated material) through the internet and other channels, to individuals who may wish to acquire unregulated intermediary chemicals for the purpose of manufacturing illicit fentanyl.

In summary, DEA conducted a qualitative analysis of costs and benefits. DEA believes this action will minimize the diversion of benzylfentanyl and 4-anilinopiperidine. DEA believes the market for benzylfentanyl and 4-anilinopiperidine for the legitimate manufacturing of pharmaceutical fentanyl is minimal. Therefore, any potential cost as a result of this regulation is minimal.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. This 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.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. As discussed above, benzylfentanyl and 4-anilinopiperidine shall be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals upon the effective date of this rulemaking. Benzylfentanyl and 4-anilinopiperidine are used in, and are important to, the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years. DEA has not identified any legitimate industrial use for benzylfentanyl and 4-anilinopiperidine, other than their role as intermediary chemicals in the production of fentanyl. However, DEA believes the vast majority, if not all, of legitimate pharmaceutical fentanyl is produced via a synthetic route involving NPP and ANPP as intermediaries, not benzylfentanyl (and norfentanyl) or 4-anilinopiperidine. The review of import and quota information for fentanyl, ANPP, and NPP supports this belief. Therefore, DEA believes the vast majority, if not all, of benzylfentanyl or 4-anilinopiperidine is used for the illicit manufacturing of fentanyl. DEA did not receive comment to the contrary. The primary costs associated with this rule are the annual registration fees ($3,047 for manufacturers and $1,523 for distributors, importers, and exporters). Additionally, any manufacturer that uses benzylfentanyl or 4-anilinopiperidine for legitimate pharmaceutical fentanyl production would already be registered with DEA and have all security and other handling processes in place, resulting in minimal cost. DEA has identified 38 domestic suppliers of benzylfentanyl, 4-anilinopiperidine, or both, 37 of which are not registered with DEA to handle list I chemicals. All 37 non-registered domestic suppliers are affected, of which 35 (94.5%, based on Small Business Administration size standard for chemical distributors and Statistics of U.S. Business data) are estimated to be small entities. It is impossible to know how much benzylfentanyl or 4-anilinopiperidine is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for NPP, ANPP, and fentanyl, where the quantities of NPP and ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, DEA believes any quantity of sales from these distributors for legitimate pharmaceutical fentanyl manufacturing is minimal. DEA did not receive comment to the contrary. Therefore, DEA estimates the cost of this rule on any affected small entity is minimal. DEA did not receive public comment regarding this estimate. Based on these factors, DEA projects that this rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act

This action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1310

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1310 as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES; IMPORTATION AND EXPORTATION OF CERTAIN MACHINES

■ 1. The authority citation for 21 CFR part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. In § 1310.02 add paragraphs (a)(32) and (33) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(32)*N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts 8334
(33)*N*-phenylpiperidin-4-amine(4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), its amides, its carbamates, and its salts 8335

* * * * *

■ 3. In § 1310.04:
■ a. Redesignate paragraphs (g)(1)(viii) through (xi) as paragraphs (g)(1)(x) through (xiii), respectively;
■ b. Redesignate paragraph (g)(1)(vii) as paragraph (g)(1)(viii); and
■ c. Add new paragraphs (g)(1)(vii) and (ix).

The additions read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(vii) *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts

* * * * *

(ix) *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), its amides, its carbamates, and its salts

* * * * *

■ 4. In § 1310.09 add paragraphs (o) and (p) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(o)(1) Each person required under 21 U.S.C. 822 and 21 U.S.C. 957 to obtain a registration to manufacture, distribute, import, or export regulated *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts, including regulated chemical mixtures pursuant to § 1310.12, is temporarily exempted from the registration requirement, provided that DEA receives a proper application for registration or application for exemption for a chemical mixture containing benzylfentanyl pursuant to § 1310.13 on or before May 15, 2020. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture containing *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for those persons whose application for exemption is denied, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

(p)(1) Each person required under 21 U.S.C. 822 and 21 U.S.C. 957 to obtain a registration to manufacture, distribute, import, or export regulated *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine, 4–AP) and its amides, its carbamates, and its salts, including regulated chemical mixtures pursuant to § 1310.12, is temporarily exempted from the registration requirement, provided that DEA receives a proper application for registration or application for exemption for a chemical mixture containing 4-anilinopiperidine pursuant to § 1310.13 on or before May 15, 2020. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture containing *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP) and its amides, its carbamates, and its salts whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for those persons whose application for exemption is denied, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

■ 5. In § 1310.12, the Table of Concentration Limits in paragraph (c) is amended by adding entries for ''*N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl)'' and ''*N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP)'' in alphabetical order to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code No.	Concentration	Special conditions
* * *	*	*	*
N-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl), including its salts.	8334	Not exempt at any concentration ...	Chemical mixtures containing any amount of benzylfentanyl are not exempt.
N-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), including its amides, its carbamates, and its salts.	8335	Not exempt at any concentration ...	Chemical mixtures containing any amount of 4-anilinopiperidine are not exempt.
* * *	*	*	*

* * * * *

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–07064 Filed 4–14–20; 8:45 am]

BILLING CODE 4410–09–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

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

DATES: Effective May 1, 2020.

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

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

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

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

The May 2020 lump sum interest assumptions will be 0.50 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for April 2020, these assumptions represent an increase of 0.50 percent in the immediate rate and are otherwise unchanged.

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

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

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

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

List of Subjects in 29 CFR Part 4022

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

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

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, rate set 319 is added at the end of the table to read as follows:

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
319	5–1–20	6–1–20	0.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 319 is added at the end of the table to read as follows:

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
319	5–1–20	6–1–20	0.50	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2020–07763 Filed 4–14–20; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029–AC78

[Docket ID: OSM–2019–0015; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A00 20XS501520]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: Effective April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Kathleen Vello, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4550, Washington, DC 20240; Telephone (202) 208–1908. Email: *kvello@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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- C. Small Business Regulatory Enforcement Fairness Act
- D. Unfunded Mandates Reform Act
- E. Takings (Executive Order 12630)
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I. Background

A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Office of Surface Mining Reclamation and Enforcement's (OSMRE) regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. We are adjusting CMPs in six sections—30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14.

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (2015 Act) into law. The 2015 Act, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified as amended at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial ''catch-up'' adjustment. OSMRE published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties ''notwithstanding section 553 of [the Administrative Procedure Act].'' Therefore, the public procedure that the Administrative Procedure Act generally requires for rulemaking—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual CMP adjustments. *See also* December 16, 2019, Memorandum for the Heads of Executive Departments and

Agencies (M–20–05), from Russell T. Vought, Acting Director, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum).

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
30 CFR 723.14	1	$67	$68
	2	135	137
	3	202	206
	4	269	274
	5	336	342
	6	404	411
	7	471	479
	8	537	546
	9	605	616
	10	673	685
	11	739	752
	12	807	821
	13	873	888
	14	941	958
	15	1,010	1,028
	16	1,076	1,095
	17	1,143	1,163
	18	1,212	1,233
	19	1,278	1,301
	20	1,345	1,369
	21	1,413	1,438
	22	1,480	1,506
	23	1,547	1,574
	24	1,614	1,642
	25	1,681	1,711
	26	2,018	2,054
	27	2,354	2,396
	28	2,689	2,736
	29	2,898	2,949
	30	3,364	3,423
	31	3,699	3,764
	32	4,035	4,106
	33	4,372	4,449
	34	4,708	4,791
	35	5,044	5,133
	36	5,380	5,475
	37	5,718	5,819
	38	6,053	6,160
	39	6,389	6,502
	40	6,724	6,843
	41	7,063	7,188
	42	7,398	7,529
	43	7,734	7,870
	44	8,071	8,213
	45	8,407	8,555
	46	8,744	8,898
	47	9,079	9,239
	48	9,417	9,583
	49	9,752	9,924
	50	10,088	10,266
	51	10,423	10,607
	52	10,762	10,952
	53	11,098	11,294
	54	11,433	11,635
	55	11,771	11,979
	56	12,106	12,320
	57	12,442	12,661
	58	12,778	13,003
	59	13,116	13,347
	60	13,451	13,688
	61	13,787	14,030
	62	14,124	14,373
	63	14,461	14,716
	64	14,797	15,058
	65	15,132	15,399
	66	15,470	15,743
	67	15,805	16,084

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	68	16,141	16,426
	69	16,477	16,768
	70	16,815	17,112
30 CFR 723.15(b) (Assessment of separate violations for each day)		2,522	2,566
30 CFR 724.14(b) (Individual civil penalties)		16,815	17,112
30 CFR 845.14	1	67	68
	2	135	137
	3	202	206
	4	269	274
	5	336	342
	6	404	411
	7	471	479
	8	537	546
	9	605	616
	10	673	685
	11	739	752
	12	807	821
	13	873	888
	14	941	958
	15	1,010	1,028
	16	1,076	1,095
	17	1,143	1,163
	18	1,212	1,233
	19	1,278	1,301
	20	1,345	1,369
	21	1,413	1,438
	22	1,480	1,506
	23	1,547	1,574
	24	1,614	1,642
	25	1,681	1,711
	26	2,018	2,054
	27	2,354	2,396
	28	2,689	2,736
	29	2,898	2,949
	30	3,364	3,423
	31	3,699	3,764
	32	4,035	4,106
	33	4,372	4,449
	34	4,708	4,791
	35	5,044	5,133
	36	5,380	5,475
	37	5,718	5,819
	38	6,053	6,160
	39	6,389	6,502
	40	6,724	6,843
	41	7,063	7,188
	42	7,398	7,529
	43	7,734	7,870
	44	8,071	8,213
	45	8,407	8,555
	46	8,744	8,898
	47	9,079	9,239
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	54	11,433	11,635
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	59	13,116	13,347
	60	13,451	13,688
	61	13,787	14,030
	62	14,124	14,373
	63	14,461	14,716
	64	14,797	15,058
	65	15,132	15,399
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	67	15,805	16,084

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	68	16,141	16,426
	69	16,477	16,768
	70	16,815	17,112
30 CFR 845.15(b) (Assessment of separate violations for each day)		2,522	2,566
30 CFR 846.14(b) (Individual civil penalties)		16,815	17,112

In the chart above, there are no numbers listed in the ''Points'' column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the ''Current Penalty Dollar Amounts'' column; the adjusted amounts, which we are adopting in this rule, are shown in the ''Adjusted Penalty Dollar Amounts'' column.

B. Calculation of Adjustments

OMB issued guidance on the 2020 annual adjustments for inflation. *See* OMB Memorandum (December 16, 2019). The OMB Memorandum notes that the 1990 Act defines ''civil monetary penalty'' as ''any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law; or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by an agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts . . . .'' It further instructs that agencies ''are to adjust 'the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.' '' *See* December 16, 2019 OMB Memorandum. The 1990 Act, as amended by the 2015 Act, and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (the CPI–U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI–U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2020, not seasonally adjusted, is 1.01764 (the October 2019 CPI–U (257.346) divided by the October 2018 CPI–U (252.885) = 1.01764). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act, as amended by the 2015 Act, specifies that any resulting increases in CMPs must be rounded according to a stated rounding formula and that the increased CMPs apply only to violations that occur after the date the increase takes effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a $16,815 CMP. To adjust this amount, we multiply $16,815 by the 2020 inflation factor of 1.01764, resulting in a raw adjusted amount of $17,111.62. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of $17,112. Pursuant to the 2015 Act, the increases in this final rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

C. Effect of the Rule in Federal Program States and on Indian Lands

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Tribal lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). The increases in CMPs contained in this rule will apply to the following Federal program States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increase in CMPs also applies to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, *see In re Permanent Surface Mining Regulation Litigation,* No. 79–1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env't. Rep. Cas. (BNA) 1477, State regulatory programs are not required to mirror all of the penalty provisions of our regulations. Thus, this rule has no effect on CMPs in States with SMCRA primacy.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563, and 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum. Because this final rule exclusively implements the annual inflation adjustments, is consistent with the OMB Memorandum, and will have an annual impact of less than $100 million, it is not significant under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

Executive Order 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. Executive Order 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of Executive Order 12866. As mentioned

above, OIRA has determined that agency regulations exclusively implementing the annual adjustments are generally not significant regulatory actions under Executive Order 12866, provided they are consistent with the OMB Memorandum (*see* OMB Memorandum, M–20–05, at 3) and have an annual impact of less than $100 million. Because this final rule exclusively implements the annual adjustments, is consistent with the OMB Memorandum, and will have an annual impact less than $100 million, Executive Order 13771 does not apply to this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation ''notwithstanding section 553 [of the Administrative Procedure Act].'' Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

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

E. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information *see* 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)

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

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

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

(c) Use common, everyday words and clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

N. Administrative Procedure Act

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M–20–05, at 4.

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

PART 723—CIVIL PENALTIES

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 2. Revise the table in § 723.14 to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	68
2	137
3	206
4	274
5	342
6	411
7	479
8	546
9	616
10	685
11	752
12	821
13	888
14	958
15	1,028
16	1,095
17	1,163
18	1,233
19	1,301
20	1,369
21	1,438
22	1,506
23	1,574
24	1,642
25	1,711
26	2,054
27	2,396
28	2,736
29	2,949
30	3,423
31	3,764
32	4,106
33	4,449
34	4,791
35	5,133
36	5,475
37	5,819
38	6,160
39	6,502
40	6,843
41	7,188
42	7,529
43	7,870
44	8,213
45	8,555
46	8,898
47	9,239
48	9,583
49	9,924
50	10,266
51	10,607
52	10,952
53	11,294
54	11,635
55	11,979
56	12,320
57	12,661
58	13,003
59	13,347
60	13,688
61	14,030
62	14,373
63	14,716
64	15,058
65	15,399
66	15,743
67	16,084
68	16,426
69	16,768
70	17,112

■ 3. In § 723.15, revise introductory text of paragraph (b) to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than $2,566 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed $17,112 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Revise the table in § 845.14 to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	68
2	137
3	206
4	274
5	342
6	411
7	479
8	546
9	616
10	685
11	752
12	821
13	888
14	958
15	1,028
16	1,095
17	1,163
18	1,233
19	1,301
20	1,369
21	1,438
22	1,506
23	1,574
24	1,642
25	1,711
26	2,054
27	2,396
28	2,736
29	2,949
30	3,423
31	3,764
32	4,106
33	4,449
34	4,791

Points	Dollars
35	5,133
36	5,475
37	5,819
38	6,160
39	6,502
40	6,843
41	7,188
42	7,529
43	7,870
44	8,213
45	8,555
46	8,898
47	9,239
48	9,583
49	9,924
50	10,266
51	10,607
52	10,952
53	11,294
54	11,635
55	11,979
56	12,320
57	12,661
58	13,003
59	13,347
60	13,688
61	14,030
62	14,373
63	14,716
64	15,058
65	15,399
66	15,743
67	16,084
68	16,426
69	16,768
70	17,112

■ 8. In § 845.15, revise introductory text of paragraph (b) to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than $2,566 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

■ 9. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed $17,112 for each violation. * * *

[FR Doc. 2020–07390 Filed 4–14–20; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0503; FRL–10007–45–Region 4]

Air Plan Approvals; GA and NC; Prevention of Significant Deterioration Infrastructure Requirements for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving portions of the Georgia and North Carolina infrastructure State Implementation Plan (SIP) submissions for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) provided to EPA on September 24, 2018, and September 27, 2018, respectively. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP submission to establish that the state's SIP meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Specifically, EPA is taking final action to conditionally approve the portions of the Georgia and North Carolina infrastructure SIP submissions related to the prevention of significant deterioration (PSD) infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule will be effective May 15, 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 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: Nacosta C. Ward of 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. Ms. Ward can be reached by telephone at (404) 562–9140 or via electronic mail at *ward.nacosta@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 submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

As explained in a notice of proposed rulemaking (NPRM) published on February 11, 2020 (85 FR 7695), Georgia and North Carolina cite to several regulations[2][3] to demonstrate that their

[1] In 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] Georgia's September 24, 2018, infrastructure SIP submission cites the following rules to meet the PSD program requirements of 110(a)(2)(C): Georgia Rules for Air Quality Control 391–3–1-.02—''*Provisions. Amended,*'' including PSD requirements under Rule 391–3–1–.02(7)—''*Prevention of Significant Deterioration,*'' 391–3–1–

respective SIPs meet the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3),[4] and 110(a)(2)(J). Each of these requirements are met if the state's implementation plan includes a PSD program that meets current Federal requirements, however, Georgia's and North Carolina's SIP-approved PSD programs do not contain or reference the most recent version of 40 CFR part 51, appendix W, *Guideline on Air Quality Models*.[5] Therefore, on November 14, 2019, and December 16, 2019, GA EPD and NC DEQ, respectively, submitted commitment letters to EPA requesting conditional approval of the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) of the aforementioned infrastructure SIP revisions. In these letters, Georgia and North Carolina commit to satisfying the PSD program requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for the 2015 8-hour ozone NAAQS by revising their PSD regulations to reflect the most recent version of appendix W and submitting SIP revisions containing these revised rules within one year of final conditional approval.

If Georgia and North Carolina meet their respective commitments within one year of the final conditional approval, the PSD-related program requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) of the conditionally approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s). However, if Georgia or North Carolina fails to submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will provide notification of the disapproval of these requirements. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

In the NPRM published on February 11, 2020, EPA proposed to conditionally approve Georgia and North Carolina's SIP submissions provided on September 24, 2018, and September 27, 2018, 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 March 12, 2020. EPA received one comment in support of this action and did not receive any adverse comments.

II. Final Action

EPA is taking final action to conditionally approve the portions of Georgia's and North Carolina's September 24, 2018, and September 27, 2018, 2015 8-hour ozone infrastructure SIP submission, respectively, that address the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J). All other outstanding applicable infrastructure requirements for this SIP submission have been or will be addressed in separate rulemakings.

III. Statutory and Executive Order Reviews

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

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

The 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 June 15, 2020. Filing a

.03—''*Permits. Amended,*'' including 391–3–1–.03(1)—''*Construction (SIP) Permit,*'' and 391–3–1–.03—''*Permits. Amended,*'' including 391–3–1–.03(2)—''*Operating (SIP) Permit.*'' For the PSD program requirements of 110(a)(2)(D)(i)(II)—prong 3 and 110(a)(2)(J), Georgia cites Rule 391–3–1–.02(7)—''*Prevention of Significant Deterioration.*''

[3] North Carolina's September 27, 2018, infrastructure SIP submission cites the following rules to meet the PSD program requirements of 110(a)(2)(C): 15A North Carolina Administrative Code (NCAC) 2D .0500—''*Emission Control Standards*'' and 15A NCAC 2D .0530—''*Prevention of Significant Deterioration.*'' For the PSD program requirements of 110(a)(2)(D)(i)(II)—prong 3 and 110(a)(2)(J), North Carolina cites 15A NCAC 2D .0530—''*Prevention of Significant Deterioration.*''

[4] Section 110(a)(2)(D)(i)(II) contains a provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state, which is commonly referred to as ''prong 3.''

[5] EPA approved the most recent version of appendix W on January 17, 2017, at 82 FR 5182.

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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 17, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

Title 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. Add § 52.569 to read as follows:

§ 52.569 Conditional approval.

Georgia submitted a letter to EPA on November 14, 2019, with a commitment to address the State Implementation Plan deficiencies regarding the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. EPA conditionally approved these portions of Georgia's September 24, 2018 infrastructure SIP submission in an action published in the **Federal Register** on April 15, 2020. If Georgia fails to meet its commitment by April 15, 2021, the conditional approval will become a disapproval on that date and EPA will issue a notification to that effect.

Subpart II— North Carolina

■ 3. Add § 52.1769 to read as follows:

§ 52.1769 Conditional approval.

North Carolina submitted a letter to EPA on December 16, 2019, with a commitment to address the State Implementation Plan deficiencies regarding the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. EPA conditionally approved these portions of North Carolina's September 27, 2018 infrastructure SIP submission in an action published in the **Federal Register** on April 15, 2020. If North Carolina fails to meet its commitment by April 15, 2021, the conditional approval will become a disapproval on that date and EPA will issue a notification to that effect.

[FR Doc. 2020–06584 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0794; FRL–10007–26–OAR]

RIN 2060–AU48

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action establishing a subcategory of certain existing electric utility steam generating units (EGUs) firing eastern bituminous coal refuse (EBCR) for acid gas hazardous air pollutant (HAP) emissions that was noticed in a February 7, 2019, proposed rule titled ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review'' (2019 Proposal). After consideration of public comments, the EPA has determined that there is a need for such a subcategory under the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired EGUs, commonly known as the Mercury and Air Toxics Standards (MATS), and the Agency is establishing acid gas HAP emission standards applicable only to the new subcategory. The EPA's final decisions on the other two distinct actions in the 2019 Proposal (*i.e.,* reconsideration of the 2016 Supplemental Finding that it is appropriate and necessary to regulate EGUs under Clean Air Act (CAA) section 112 and the residual risk and technology review of MATS) will be announced in a separate final action.

DATES: This final rule is effective on April 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0794. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, Room Number 3334, WJC West Building, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mary Johnson, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; and email address: *johnson.mary@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact your EPA Regional representative as listed in 40 CFR 63.13 (General Provisions).

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ARIPPA Appalachian Region Independent Power Producers Association
CAA Clean Air Act
CEMS continuous emissions monitoring systems
CFR Code of Federal Regulations
CRA Congressional Review Act
DSI dry sorbent injection
EBCR eastern bituminous coal refuse
ECMPS Emissions Collection and Monitoring Plan System
EGU electric utility steam generating unit
EPA Environmental Protection Agency
FBC fluidized bed combustors

FGD flue gas desulfurization
HAP hazardous air pollutant(s)
HCl hydrochloric acid
Hg mercury
ICR Information Collection Request
lb pound
lb/MMBtu pounds per million British thermal units
lb/MWh pounds per megawatt-hour
MACT maximum achievable control technology
MATS Mercury and Air Toxics Standards
MMBtu million British thermal units
MW megawatt
MWh megawatt-hour
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PM particulate matter
$PM_{2.5}$ fine particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SDA spray dryer absorbers
SO_2 sulfur dioxide
tpy tons per year
UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows:

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I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Executive Summary

In the 2012 MATS rulemaking, the EPA established one subcategory of coal-fired EGUs for purposes of regulating acid gas HAP emissions. The Agency specifically rejected a request from some commenters for a separate acid gas HAP standard for all coal refuse-fired EGUs because we determined that the emissions of such HAP from some units combusting coal refuse were among the best performing sources for acid gas HAP as determined consistent with CAA section 112(d)(3). The EPA has reevaluated the data available when the 2012 MATS rule was established, in addition to new data generated since promulgation of that rule, and we now recognize that there are differences in the acid gas HAP emissions from EGUs firing EBCR as compared to EGUs firing other types of coal, including those firing types of coal refuse other than EBCR. Specifically, the EPA recognizes that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP emissions from EGUs firing those respective fuels. In the February 7, 2019 Proposal (84 FR 2670), the EPA explained that these differences in acid gas HAP emissions support the establishment of a subcategory for such sources and solicited comment on the need to establish a subcategory of certain existing EGUs firing EBCR for acid gas HAP emissions and on potential emissions standards for affected EGUs in that subcategory. After reviewing public comments and other available information, the EPA concludes that such a subcategory is warranted. Thus, this final action establishes a subcategory of certain existing EBCR-fired EGUs for emissions of hydrochloric acid (HCl) and sulfur dioxide (SO_2)—both of which serve as a surrogate for all acid gas HAP emitted from EGUs under MATS. Under CAA section 112(d)(1), the EPA has the discretion to ''. . . distinguish among classes, types, and sizes of sources within a category or subcategory in establishing . . . standards.'' Further, when separate subcategories are established, the minimum level of control, referred to as the ''maximum achievable control technology (MACT) floor,'' is determined separately for each subcategory.

The EPA has determined that emission limits reflecting a more stringent (*i.e.,* ''beyond-the-floor'') level of control than the MACT floor level of control are appropriate for the new subcategory. The SO_2 emission standard (set in pounds (lb) SO_2/million British thermal units (MMBtu)) that the EPA is promulgating here is an emission rate that the currently operating EBCR-fired EGUs have demonstrated an ability to achieve based on their emissions data and considering cost and non-air quality related environmental factors.[1] The EPA does not have corresponding emissions data for HCl[2] or output-based emissions of SO_2 (*i.e.,* lb SO_2/megawatt-hour (MWh)) and, therefore, the EPA has established the final beyond-the-floor standards for SO_2 (in lb/MWh) and for HCl (in both lb/MMBtu and lb/MWh) consistent with the percentage reduction in the SO_2 lb/MMBtu emissions rate between the MACT floor value and the beyond-the-floor value. This action establishes the following emission limits for the subcategory of existing EBCR-fired EGUs:[3]

HCl: 4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh
SO_2:[4] 6.0E–1 lb/MMBtu or 9.0 lb/MWh.

A further description of what the EPA is promulgating here, the rationale for the final decisions, and discussion of the key comments received regarding the need for such a subcategory and the acid gas HAP emission standards appropriate for that subcategory are provided in section III of this preamble.

B. Does this action apply to me?

Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

[1] For context, the 2012 final MATS emission standard for SO_2 is 2.0E–1 lb/MMBtu.

[2] For MATS, affected sources may report emissions of either SO_2 or HCl. Most MATS-affected EGUs report emissions of SO_2 because they already have the monitoring infrastructure to do so, since most already report SO_2 emissions under the EPA's Acid Rain Program.

[3] Continuous compliance with the emission limits is required to be demonstrated on a 30-boiler operating day rolling average basis.

[4] As is the requirement for all coal-fired EGUs subject to MATS, the alternate SO_2 limit may be used if the EGU has some form of flue gas desulfurization (FGD) system and SO_2 continuous emissions monitoring systems (CEMS) and both are installed and operated at all times.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS code [a]
Coal- and Oil-Fired EGUs	221112, 221122

[a] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. Specifically, entities that own and/or operate certain existing EBCR-fired EGUs subject to the NESHAP for Coal- and Oil-Fired EGUs (40 CFR part 63, subpart UUUUU) will be affected by this final action. To determine whether your facility is affected, you should examine the applicability criteria in the NESHAP for Coal- and Oil-Fired EGUs and the amendatory text of this final action. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/mats/regulatory-actions-final-mercury-and-air-toxics-standards-mats-power-plants.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

D. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (hereafter referred to as ''the D.C. Circuit,'' or ''the Court'') by June 15, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

The NESHAP for Coal- and Oil-Fired EGUs (commonly referred to as MATS) was proposed on May 3, 2011 (76 FR 24976), under title 40, part 63, subpart UUUUU. In that proposal, the EPA proposed a single acid gas HAP emission standard for all coal-fired power plants—using HCl as a surrogate for all acid gas HAP. The EPA also proposed an alternative equivalent emission standard for SO_2 as a surrogate for all the acid gas HAP for coal-fired EGUs with FGD systems and SO_2 CEMS installed and operational at all times. SO_2 is also an acidic gas—though not a HAP—and the controls used for SO_2 emission reduction are also effective at controlling the acid gas HAP emitted by EGUs. Further, most, if not all, affected EGUs already measure and report SO_2 emissions as a requirement of the EPA's Acid Rain Program, 40 CFR part 75.

The Appalachian Region Independent Power Producers Association (ARIPPA) [5] submitted comments on the 2011 MATS proposal arguing that the characteristics of all coal refuse made achievement of the standard too costly for its members and requested that the EPA create a subcategory for all EGUs burning coal refuse. The EPA determined that there was no basis to create such a subcategory and, on February 16, 2012 (77 FR 9304), finalized emission standards for both HCl and SO_2 that apply to all coal-fired EGUs, including the coal refuse-fired units subject to this final action. ARIPPA, along with other petitioners, challenged the EPA's determination in the D.C. Circuit, and the Court upheld the final rule. *White Stallion Energy Center, et. al.* v. *EPA,* 748 F.3d 1222, 1249–50 (D.C. Cir. 2014).

In addition to challenging the final rule, ARIPPA also petitioned the EPA for reconsideration, again requesting a subcategory for the acid gas standards for facilities combusting all types of coal refuse. The EPA denied the Petition for Reconsideration on grounds that ARIPPA had adequate opportunity to comment on the ability of coal refuse-fired facilities to comply with the final standard. Furthermore, the EPA determined that the ARIPPA petition did not present any new information to support a change in the previous determination regarding the appropriateness of a subcategory for the acid gas HAP standard. ARIPPA subsequently sought judicial review of the denial of the Petition for Reconsideration. *ARIPPA* v. *EPA,* No. 15–1180 (D.C. Cir.).[6] In petitioner's briefs, ARIPPA claimed that the EPA had misunderstood its reconsideration petition and pointed to a distinction between the control of acid gas HAP emissions from units burning anthracite coal refuse and those burning bituminous coal refuse. *See* Industry Pets. Br. at 35–36, *ARIPPA,* No. 15–1180 (D.C. Cir. filed December 6, 2016). The EPA disagrees with the assertion that the Agency misunderstood the basis for ARIPPA's reconsideration petition as we could not find a single statement in the rulemaking record that clearly or even vaguely requested a separate acid gas HAP limit based on the distinction between anthracite coal refuse and bituminous coal refuse. Nonetheless, the EPA has since looked at emissions data from these sources and observed that there are differences in emissions based on the type of coal refuse used, and, consequently, recognized the differences in the 2019 Proposal.[7] Specifically, the EPA recognized that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP

[5] ARIPPA is a non-profit trade association comprised of independent electric power producers, environmental remediators, and service providers located in Pennsylvania and West Virginia that use coal refuse as a primary fuel to generate electricity.

[6] ARIPPA's petition for review is currently being held in abeyance. *ARIPPA* v. *EPA,* No. 15–1180, Order, No. 1672985 (April 27, 2017).

[7] The analysis is summarized in a separate memorandum titled *HCl and SO_2 Emissions for Coal Refuse-Fired EGUs,* available in Docket ID No. EPA–HQ–OAR–2018–0794.

emissions from EGUs firing those respective fuels. The Agency also noted that the differences may impact the unit's ability to control those emissions. Additionally, the EPA recognized that there are differences between western bituminous coal refuse and subbituminous coal refuse as compared to EBCR and announced in the 2019 Proposal that it was considering establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. The proposal solicited comment on whether establishment of such a subcategory is needed and on the acid gas HAP emission standards that would be established if such a subcategory was created. 84 FR 2700–2703.

III. Summary of Final Action

After considering and evaluating comments and data provided in response to the solicitation of comment on establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP in its 2019 Proposal, the EPA is taking final action to establish a separate subcategory to address the issue. In this final action, the EPA is establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP and acid gas HAP emission standards that are applicable to the new subcategory. The final rule defines *Eastern bituminous coal refuse (EBCR)* to mean coal refuse generated from the mining of bituminous coal in Pennsylvania and West Virginia. The final rule defines *Unit designed for eastern bituminous coal refuse (EBCR) subcategory* to mean any existing (*i.e.,* construction was commenced on or before May 3, 2011) coal-fired EGU with a net summer capacity of no greater than 150 megawatts (MW) that is designed to burn and that is burning 75 percent or more (by heat input) *eastern bituminous coal refuse* on a 12-month rolling average basis. The 150 MW net summer capacity level selected by the EPA limits the universe of sources that are in the new subcategory to only those EGUs identified in Table 2 to this preamble. Net summer capacity is the maximum output that generating equipment can supply to system load at the time of summer peak demand (period of June 1 through September 30). The 75 percent or more heat input requirement selected by the EPA is consistent with the Federal Energy Regulatory Commission requirement that to be considered a qualifying facility under the Public Utility Regulatory Policies Act, as the EGUs in the new subcategory are, at least 75 percent of the heat content must come from coal refuse.

The existing EBCR-fired EGUs in the new subcategory being established in this action are listed in Table 2 of this preamble and the applicable HCl and SO_2 limits being finalized in this action are provided in Table 3 of this preamble. Four existing EBCR-fired EGUs at two facilities that were listed in the 2019 Proposal as being part of the new subcategory, if established, are no longer part of the subcategory. The EPA has learned that the Cambria facility shut down in June 2019, and the facility and surrounding property have been sold to a salvage company which plans to dismantle the facility over time.[8] The EPA has also learned that the Morgantown Energy facility will be transformed into a natural gas-fueled steam-only production facility, and the closure of the waste coal-fired boilers and complete transformation of the facility to steam-only production are expected to be completed by early to mid-2020.[9]

TABLE 2—EBCR-FIRED EGUS IN SUBCATEGORY

ORIS plant code [a]	EGU	State	Summer capacity (MW)	2016 average monthly generation (MWh) [b]
10143	Colver Power Project	PA	110	60,905
10151	Grant Town Power Plant Unit 1A	WV	40	28,010
10151	Grant Town Power Plant Unit 1B	WV	40	28,010
10603	Ebensburg Power	PA	50	16,258
50974	Scrubgrass Generating Company LP Unit 1	PA	42	17,377
50974	Scrubgrass Generating Company LP Unit 2	PA	42	17,377

[a] Unique plant identification code assigned by the Department of Energy's Energy Information Administration (EIA).
[b] 2016 annual generation is based on plant-level data reported on EIA Form 923, and annual totals are divided evenly to estimate 2016 average monthly generation. Unit-level estimates assume that generation is split evenly between all units at each plant.

TABLE 3—ACID GAS EMISSION LIMITATIONS FOR EBCR–FIRED EGUS SUBCATEGORY

Subcategory	Emission limit [a]	
	HCl	SO_2 [b]
Existing Eastern Bituminous Coal Refuse-Fired EGUs	4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh	6.0E–1 lb/MMBtu or 9.0 lb/MWh

[a] Units of emission limits:
lb/MMBtu = pounds pollutant per million British thermal units fuel input; and
lb/MWh = pounds pollutant per megawatt-hour electric output (gross).
[b] Alternate SO_2 limit may be used if the EGU has some form of FGD system and SO_2 CEMS installed.

Sources in the new subcategory must comply with the applicable HCl or SO_2 requirements no later than the effective date of this final rule. Sources must demonstrate that compliance has been achieved, by conducting the required performance tests and other activities as specified in 40 CFR part 60, subpart UUUUU, no later than 180 days after the compliance date. To demonstrate initial compliance using either an HCl or SO_2 CEMS, the initial performance test

[8] *See https://www.tribdem.com/news/cambria-cogen-plant-to-be-leveled-after-shutting-down-over/article_005a162c-2381-11ea-8c53-5b85339774fd.html.*

[9] *See https://www.nsenergybusiness.com/news/starwood-energy-terminates-eepa/.*

consists of 30-boiler operating days. If the CEMS is certified prior to the compliance date, the test begins with the first operating day on or after that date. If the CEMS is not certified prior to the compliance date, the test begins with the first operating day after certification testing is successfully completed. Continuous compliance with the newly established emission limits is required to be demonstrated on a 30-boiler operating day rolling average basis.

The EPA's final decisions regarding establishing a subcategory for certain existing EGUs that fire EBCR and the acid gas HAP standards applicable to the new subcategory are provided later in this section of this preamble. Specifically, the EPA's rationale for the final decisions and discussion relating to the key comments received regarding the need for such a subcategory and the attendant acid gas HAP emission standards are provided. A summary of all significant public comments regarding the EPA's consideration of establishing such a subcategory and the EPA's responses to those comments is available in the document titled *Summary of Public Comments and Responses Regarding Establishment of a Subcategory and Acid Gas HAP Emission Standards for Certain Existing Eastern Bituminous Coal Refuse-Fired EGUs* (response to comments document), Docket ID No. EPA–HQ–OAR–2018–0794. A ''track changes'' version of the regulatory language that incorporates the changes in this action is also available in the docket for this action.

A. Basis for Subcategory

Under CAA section 112(d)(1), the Administrator has discretion to ''* * * distinguish among classes, types, and sizes of sources within a category or subcategory in establishing * * *'' standards. Based on the EPA's better understanding of the differences in anthracite coal refuse and bituminous coal refuse, and the acid gas HAP emissions profile associated with each, the EPA has now determined that, contrary to its earlier position, it is appropriate to establish a new subcategory for certain units firing EBCR. Specifically, the EPA is establishing a new subcategory for certain units with a net summer capacity of 150 MW or lower that fire EBCR because there are differences between emissions of acid gas HAP from these units and larger units burning EBCR and units burning other types of coal, including other types of coal refuse. *See U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 656 (DC Cir. 2016) (finding that ''[s]ection 7412(d) gives the EPA discretion to create subcategories based on boiler type, and nothing in the statute forecloses the Agency from doing so based on the type of fuel a boiler was designed to burn.''). Units in this new subcategory of EGUs are smaller, were designed to burn EBCR, and were constructed in close proximity to legacy piles of EBCR for the primary purposes of reclaiming abandoned mining sites while reducing the environmental hazards attendant to such piles of coal refuse. The EPA cannot predict with certainty what the industry response would be absent the establishment of a new subcategory as discussed in greater detail elsewhere in this preamble and in a docketed memorandum on expected costs and benefits. Among those possible outcomes, many industry commenters and others have suggested that some—and maybe all—of the affected sources would shut down.[10] If that is the case, then the establishment of this new subcategory will allow those units to continue to achieve both of their purposes of reclaiming abandoned mining sites and preserving the environmental benefits of repurposing coal refuse, while also maintaining emissions of acid gas HAP at levels similar to current emissions levels.[11]

Immediately below and in the response to comments document, we discuss in more detail the basis for the new subcategory and address the significant comments on the new subcategory.

As stated in the 2019 Proposal, the EPA finds that the emissions of acid gas HAP from EGUs firing EBCR are distinct from acid gas HAP emissions from EGUs firing other types of coal—including other forms of coal refuse. Specifically, the EPA recognized in the 2019 Proposal that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP emissions from EGUs firing those respective fuels. Bituminous coals (and, thus, bituminous coal refuse) from the Appalachian and Interior Regions of the U.S. have higher sulfur and chlorine contents than anthracite or coals of all types from the Western Region of the U.S. (and, thus, anthracite coal refuse or western bituminous and subbituminous coal refuse), and these differences lead to differences in emissions of acid gas HAP. These differences between the types of coal refuse used by EGUs to generate electricity may also impact a unit's ability to control those emissions. All coal refuse fuels are fired in fluidized bed combustors (FBC) that use limestone injection to reduce SO_2 emissions and to increase heat transfer efficiency. The EPA has been informed that limestone injection technology is generally adequate to allow EGUs that are firing anthracite coal refuse and western coal refuse to meet the 2012 final MATS alternative surrogate emission standard of 2.0E–1 lb/MMBtu for SO_2.[12] This is because anthracite coals are naturally much lower in impurities (including sulfur and chlorine) and western coals (western bituminous coal and subbituminous coal) have lower sulfur and chlorine content and higher free alkalinity (which can act as a natural sorbent to neutralize acid gases produced in the combustion process). The same is not generally true for EGUs combusting EBCR. Because all existing EGUs firing anthracite coal refuse and western bituminous coal refuse are currently emitting SO_2 at rates that are below the 2012 final MATS emission standard for SO_2 and the existing EGU firing subbituminous coal refuse is currently emitting HCl at a rate that is below the 2012 final MATS emission standard for HCl, the EPA believes there is no need to broaden the subcategory to include those units.

The EBCR-fired EGUs that will be included in the new subcategory are also small units (all have capacities less than 120 MW and most are less than 100 MW). As contemplated in the 2019 Proposal, this final rule excludes the two EBCR-fired EGUs at the Seward Generating Station in Pennsylvania from the new subcategory. 84 FR 2702. Those units are the newest and, at 260 MW each, are, by far, the largest coal refuse-fired EGUs. The Seward units were also designed and constructed with downstream acid gas controls already incorporated, so they do not have the space limitations and other configurational challenges that may

[10] While the EPA cannot predict with certainty what the industry response would be in the absence of a new subcategory, commenters' claims that the units would shut down is plausible. Coal-fired power plants are currently facing tremendous competitive pressures. As a result, coal's share of total U.S. electricity generation has been declining for over a decade, while generation from natural gas and renewables has increased significantly. A large number of coal units—especially smaller ones like the EBCR-fired EGUs—have retired since 2010. As mentioned earlier, four of the ten units that were identified as affected by this action in the 2019 Proposal have now either retired or announced plans to convert to natural gas.

[11] EBCR-fired EGUs were designed to achieve a control level generally at or exceeding 90 percent SO_2 reduction (*see* EPA Docket ID Item Nos. EPA–HQ–OAR–2018–0794–1125, EPA–HQ–OAR–2018–0794–1154, and EPA–HQ–OAR–2018–0794–1187).

[12] *See* Table 2 to subpart UUUUU of 40 CFR part 63.

affect other smaller existing EBCR-fired EGUs attempting to retrofit air pollution controls. Retrofitting air pollution controls to an existing EGU can often be challenging due to lack of available space within the facility and the potential need to re-route the exhaust gas stream to accommodate such equipment configurational changes. Control equipment that results in pressure drop along the exhaust stream can challenge existing blowers. These challenges and space limitations can be considered in the design of a new facility. The Seward units were among the best performing EGUs—with respect to HCl emissions—when the EPA developed the final MATS emission standards and, based on MATS compliance reports for the Seward EGUs, currently emit HCl at well below the final MATS HCl standard of 2.0E–3 lb/MMBtu, applicable to coal-fired EGUs.[13]

In response to the 2019 Proposal's solicitation of comment, the EPA received comments both supporting and opposing the establishment of a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP.

Several commenters pointed out the environmental benefits provided by EBCR-fired EGUs in the coal regions where they are located. Specifically, commenters pointed out that removal of coal refuse piles reduces surface and groundwater pollution from acidic drainage and reduces uncontrolled emissions of air pollutants that are released from self-ignited internal smoldering of the coal refuse piles. In addition, commenters pointed out that the alkaline ash produced by EBCR-fired EGUs is used to reclaim mining-affected lands by returning them to a productive use. Commenters further noted that the Pennsylvania Department of Environmental Protection has standards governing such beneficial use of coal ash in mine land reclamation (Title 25 PA Code, Chapter 290).[14]

Several commenters asserted that the 2012 final MATS limits for acid gas HAP and their SO_2 surrogate are not achievable by EBCR-fired EGUs and do not reflect the design, functionality, and economics of those units. Commenters stated that while limestone injection into the unit's combustion zone controls SO_2 and HCl emissions to a certain extent, there are operational and design limitations on the EGUs' ability to provide an adequate amount of limestone to reduce SO_2 and HCl emissions beyond a certain point. Commenters further stated that the reduction of SO_2 and acid gases through increased injection of limestone is asymptotic, and significant additional limestone does not result in further significant acid gas emission reduction. Commenters explained that the configuration of the EGUs and their combustion zone physically limit the amount of material that the unit can hold, which impacts and limits the amount of coal refuse and limestone that can be injected into the unit. Commenters explained, for example, that increasing the amount of limestone injected to achieve the 2012 final MATS SO_2 emission limit could result in less coal refuse being fired. This would result in a corresponding reduction in steam production and electricity generation, making it uneconomic to operate in the current power market.

The EPA does not have detailed information regarding the specific amount of limestone that is injected into the EBCR-fired EGUs. However, the Agency acknowledges that it is current industry practice to inject limestone into the FBC in amounts based on an optimized calcium-to-sulfur (Ca:S) molar ratio. Therefore, the optimum limestone injection amount will vary with the sulfur content of the coal refuse being burned. Along with the coal (fuel) and limestone that are injected and utilized, the fluidized bed units also contain an inert bed material (*e.g.,* sand or other). There is a limit to the amount of solid material—*i.e.,* the sand, the coal refuse, coal ash, and limestone—that can be in the combustor. An increase in limestone injection may necessarily result in a decrease in coal refuse utilization. Utilization of the limestone for acid gas neutralization is dependent upon decomposition (calcination) of the limestone to lime and subsequent reaction of the lime with the acid gases via the following reactions:

$$CaCO_3 + \text{heat} \rightarrow CaO + CO_2$$
$$SO_2 + CaO \rightarrow CaSO_3$$
$$2HCl + CaO \rightarrow CaCl_2 + H_2O$$

The necessary calcination of the limestone and the desulfurization reactions occur within specific temperature ranges (typically around ~ 900 °Celsius or 1,650 °F) and the FBC operators must utilize sufficient fuel to maintain the boiler in the optimum temperature range. Lower temperatures result in insufficient calcination and lower boiler efficiency. Higher temperatures can result in materials sintering, which results in lower desulfurization capacity.

Commenters also noted concerns that a significant increase in limestone injection for control of SO_2 emissions could negatively impact the ability to beneficially use the combustion fly ash.[15] For example, for certain uses, the Pennsylvania Department of Environmental Protection *Guidelines for Beneficial Use of Coal Ash at Coal Mines*[16] warns that mixing of coal ash with conventional alkaline materials (*e.g.,* limestone, lime, hydrated lime) may increase the likelihood of the coal ash becoming cementitious and reduce the neutralizing ability of the coal ash and the conventional material. In such cases, the captured fly ash would have to be disposed of in a lined landfill rather than beneficially reused. Commenters also contended that EBCR-fired EGUs may have to consider switching from EBCR as the primary fuel to firing less EBCR along with a lower sulfur fuel as a means of reducing SO_2 emissions to meet the 2012 final MATS SO_2 emission limit. Commenters stated that such practice, in addition to being uneconomical, could reduce EBCR usage to below the minimum 75-percent coal refuse heat input requirement to be considered a qualifying facility under the Public Utility Regulatory Policies Act. Commenters claimed that both approaches described earlier (*i.e.,* increased limestone injection and fuel switching) undermine the environmental benefits realized by the EBCR-fired EGUs through clean-up of waste coal refuse sites.

One commenter stated that regardless of limestone addition and fuel switching, meeting the 2012 final MATS SO_2 limit would require additional control technology and likely result in permanent retirement of the facility. Several commenters pointed out that they are not aware of any retrofit installation of back-end scrubbing technology or a back-end dry sorbent injection (DSI) system for an EBCR-fired EGU. Commenters asserted that downstream acid gas controls cannot be considered technically or economically feasible for EBCR-fired EGUs and provided information regarding evaluation of such technologies.

[13] Ibid.

[14] *See https://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/CoalAshBeneficialUse.aspx.*

[15] The combustion ash is beneficially used on mine sites to fill pits, create or amend soil, and as a low-permeability or high alkalinity material. In Pennsylvania the regulations governing the beneficial use of coal ash are available at 25 PA Code Chapter 290. *See http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/CoalAshBeneficialUse.aspx.*

[16] Pennsylvania Department of Environmental Protection Bureau of Mining Programs; Document Number: 563–2112–228; *Guidelines for Beneficial Use of Coal Ash at Coal Mines;* Effective date: December 17, 2016.

Commenters claimed that adding on back-end control equipment would boost sulfur capture, but the capital and operating costs increases would not be supported by power sales revenues. Commenters further claimed that in addition to being cost prohibitive for the small EBCR units, control strategies such as wet FGD scrubbers and spray dryer absorbers (SDA) present installation difficulties given layout of the facilities, local topography, and needs of the systems to interface with existing EGU equipment.[17] Although commenters acknowledged that DSI systems do not present such technical challenges with deployment, they pointed out other problems associated with the alkaline sorbents (typically sodium- or calcium-based) injected in such systems. Several commenters stated that coal refuse-fired EGUs currently achieve extremely efficient mercury (Hg) control due, at least in part, to the relatively high levels of chlorine in coal refuse which can promote the oxidation of the Hg to the divalent form. This, coupled with the higher levels of unburned carbon in the fly ash, allows the Hg to be more readily captured in the downstream baghouse (*i.e.,* fabric filter particulate matter (PM) control device) and not emitted through the stack. Commenters explained that reducing the amount of chlorine (or HCl) in the flue gas prior to the oxidation reaction can have the effect of increasing Hg emissions from the facility. One commenter stated that their testing of both sodium- and calcium-based sorbents injected at the inlet of the baghouse (essentially in a DSI configuration) resulted in an increase in Hg emissions by a factor of 4 to 40 times resulting in levels exceeding the 2012 final MATS Hg emission limit.[18] Therefore, the commenter asserted that, even if technically feasible, the use of DSI could affect the unit's ability to meet other MATS emission limits. Several commenters stated that the potential for DSI technology to have a negative impact on the ability to use combustion ash for mine site reclamation and restoration activities would remove it as a viable alternative. Commenters explained that use of sodium-based sorbents (*e.g.,* trona or sodium bicarbonate) could alter the leaching characteristics of the ash such that it would no longer be of beneficial use and would have to be disposed of in a lined landfill. One commenter stated that testing at their facility confirmed such a change in the quality of the ash to the point that it was at risk of failing to satisfy leaching requirements of the standards for beneficial use in mine land reclamation. Commenters claimed that ash disposal costs, especially when considering the significant quantity of ash generated, would far exceed the revenue generated through the sale of electricity. Commenters also pointed out that significant environmental benefits provided by EBCR-fired EGUs would be eliminated if the ash cannot be beneficially used.

Several commenters asserted that there is no justification for establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. Commenters claimed that the EPA has not provided a valid technical basis for the subcategory, stating that while the EPA has said that eastern bituminous coal is distinguished by higher sulfur content and lesser content of free alkali, the EPA offers nothing to distinguish the EGUs it would subcategorize from other EGUs burning the same coals and subject to MATS. Commenters further claimed that there is no basis for a subcategory for EBCR-fired EGUs because some of those EGUs currently emit SO_2 at rates below the 2012 final MATS SO_2 limit and have shown that the current standards are achievable because there are technologies that are feasible. Commenters stated that the assessment of the need for a subcategory cannot reasonably be based on data for the period of January 2015 through June 2018, terminating before EGUs reported results of installed pollution controls. Commenters added that even if limestone injection alone is not adequate to meet the MATS limits, the fact that certain EGUs would need to install additional controls is not a valid basis for a subcategory. Commenters also added that the EPA may not subcategorize based on cost, even if some add-on controls would be particularly expensive, and the EPA may not alter the MACT floor because some sources may not be able to meet it. Commenters further stated that the EPA notes that the use of some sorbents may negatively impact the salability of fly ash, but commenters contend that losing the ability to sell the ash—a consequence for all EGUs using DSI, not just those using eastern bituminous coal-waste—does not suggest any basis in the class, type, or size of the EGUs at the six plants that might allow the EPA to set different standards for those EGUs. Commenters pointed to a plant within the proposed subcategory that they contend demonstrates that units can meet the MATS acid gas limits while still re-using their ash. Commenters refuted the EPA's assertion that use of DSI technology results in a considerable increase in Hg emissions and would require the use of additional Hg controls, and, further, stated that even if true, it provides no lawful basis for the subcategory. Commenters pointed to EBCR-fired EGUs that they contend not only can meet both the MATS acid gas and Hg limits, they can achieve such low emissions of Hg that they qualify for low-emitting EGU status (*i.e.,* their emissions are less than 10 percent of the MATS limit) without any Hg-specific controls. Commenters added that CAA section 112 does not permit the EPA to loosen emission limitations based on the EPA's desired control configuration.

The EPA disagrees with comments opposed to establishing a new subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. Under CAA section 112(d)(1), the Administrator has the discretion to " * * * distinguish among classes, types, and sizes of sources within a category or subcategory in establishing * * *" standards. The EPA generally establishes subcategories to address differences between units that make the nature of the HAP emissions different or if there are technical feasibility issues associated with different emission control approaches. Normally, the basis for subcategorizing (*e.g.,* type of unit) must be related to an effect on emissions, rather than some difference which does not affect emissions performance. EGUs are generally designed for a particular type of fuel, and the type of fuel being burned can impact the degree of combustion and the level and type of HAP emissions because the amount of fuel-borne HAP such as acid gases is primarily dependent upon the composition of the fuel. In addition, the type of fuel and attendant unit design can limit the availability and functionality of different types of controls, particularly for existing sources that must retrofit if add-on controls are required. Finally, the D.C. Circuit recently confirmed that the EPA may establish a subcategory based on the type of fuel a boiler is designed to burn. *See U.S. Sugar Corp.* v. *EPA,* 830 F.3d at 656. Consistent with the statute and case law, the EPA is establishing a subcategory based on the

[17] *See* EPA Docket ID Item Nos. EPA–HQ–OAR–2018–0794–1154 and EPA–HQ–OAR–2018–0794–1160 for additional discussion of commenters' claims of physical and configurational difficulties in installing downstream control technologies.

[18] This testing is described in materials provided to the EPA by ARIPPA during a March 13, 2013, meeting. The materials are available in the previous MATS rulemaking Docket ID Item No. EPA–HQ–OAR–2009–0234–20338 and in the current Docket ID No. EPA–HQ–OAR–2018–0794.

size (boiler 150 MW or less) and type (boiler designed to burn EBCR) to address the different acid gas HAP emissions from such sources.

To inform our consideration, the EPA reviewed EGU design, operating information, air emissions data compiled from the 2010 Information Collection Request (ICR) that was used by the EPA during development of the 2012 MATS final rule, and other available information for coal-fired EGUs in the source category. The EPA found that there are significant design and operational differences in coal-fired EGUs that are based on the expected source of fuel and the design of the unit that affect the levels of emissions of HCl and SO_2—both of which serve as a surrogate for all acid gas HAP emitted from coal-fired EGUs under MATS. These differences support our decision to establish a subcategory for existing EGUs that burn EBCR and have a net summer capacity of 150 MW or lower. Specifically, the emissions data for HCl and SO_2 show a distinguishable difference in performance exists between coal-fired units with a net summer capacity of no greater than 150 MW designed to burn EBCR and other coal-fired units, including units that burn coal refuse other than EBCR.[19] [20] Because the EBCR-fired units have different emission characteristics for acid gas HAP, the EPA has determined that units that are designed to burn EBCR, and actually burn at least 75-percent EBCR, are a different type of unit and should be subcategorized for acid gas HAP emissions.[21]

The determination that EBCR-fired EGUs have different emission characteristics for acid gas HAP is reasonably based on the same 2010 ICR dataset used to establish the bases of subcategories and standards in the 2012 MATS final rule. An examination of the data shows that there were no coal-fired units with a net summer capacity of 150 MW or less designed to burn EBCR among the top performing 12 percent of coal-fired units for emissions of HCl or SO_2, even though the EPA used 12 percent of the entire source category (130 units) to establish the acid gas HAP standard for coal-fired EGUs. There were, however, EGUs firing bituminous coal, subbituminous coal, and lignite among the top performing units for HCl and EGUs firing bituminous, subbituminous, lignite, and non-EBCR coal refuse among the top performers for SO_2. The EPA points out that the assessment of the need for a subcategory was not based on data for the period of January 2015 through June 2018 as suggested by commenters. As discussed in section III.B of this preamble, those data were used to determine the SO_2 lb/MMBtu emission rate for beyond-the-floor level of control. The EPA disagrees with commenters' assertions that the fact that some EBCR-fired EGUs have met the 2012 final MATS SO_2 limit means the new subcategory is unreasonable. The EPA is aware of EGUs at two plants [22] that have been able to meet the 2012 final MATS SO_2 limit. Historical SO_2 emissions data reported to the EPA's Emissions Collection and Monitoring Plan System (ECMPS) for those EGUs shows that those plants had lower SO_2 emissions than other EBCR-fired EGUs. Thus, the additional SO_2 emissions reductions required for those EGUs to meet the 2012 final MATS SO_2 limit are more likely to be achievable through means such as increased limestone injection and fuel switching without the limitations described by several commenters and summarized earlier in this section of the preamble. The EPA's understanding, however, is that the operational changes made to those EGUs with historically lower SO_2 emissions in order to meet the 2012 final MATS SO_2 limit result in less EBCR being disposed of and are not economically feasible in the long term. One facility has met the SO_2 limit by injecting more limestone and the other facility has met the limit by co-firing lower sulfur coal. Similarly, the ability of those same units to meet the 2012 final MATS acid gas HAP limit as well as the Hg limit or to meet the 2012 final MATS acid gas HAP limit while still re-using their ash does not mean a separate subcategory is unwarranted or unreasonable. The information in the record supports a conclusion that the existing EGUs in the new subcategory are different from a fuel and design perspective and it is reasonable to establish a new subcategory based on the size and type of unit. In addition, this new subcategory is also reasonable because the alternative is to maintain a standard that requires the sources to operate in a manner that undermines the purpose for which they were constructed and may be technologically infeasible for certain units in the subcategory. Specifically, the coal refuse-fired EGUs at issue were constructed at or near legacy piles of EBCR for the primary purposes of reducing the health and environmental hazards associated with the coal piles and using the resultant coal ash to reclaim abandoned mining sites. The commenters in support of the rule provided information indicating the reasons the new subcategory is warranted and how requiring compliance with the 2012 MATS limit for acid gas HAP would undermine the continued viability of the EBCR-fired EGUs to perform both of these functions.

For all these reasons, we do not agree that the commenters have raised any significant objections to the EPA's determination that it is reasonable and appropriate to establish a new subcategory for EBCR-fired EGUs. Accordingly, we are finalizing the new subcategory.

B. Subcategory Emission Standards

As noted in the 2019 Proposal, the EPA conducted an analysis to determine the numerical acid gas emission standards for the subcategory of certain existing EGUs that fire EBCR should such a subcategory be established.[23] The EPA explained that it determined the MACT floor and the beyond-the-floor (*i.e.,* more stringent than the MACT floor) levels of control for HCl and SO_2 emissions. The EPA further explained that the SO_2 lb/MMBtu emission rate for beyond-the-floor level of control was determined for each currently operating EBCR-fired EGU using monthly SO_2 data available in the EPA's ECMPS for the period of January 2015 through June 2018.[24] The EPA stated that if a beyond-the-floor (with floor at 1.0 lb/MMBtu) SO_2 emissions limit was established, it would likely be in the range of 0.60–0.70 lb/MMBtu; a limit that, on average, the currently operating EBCR-fired EGUs have demonstrated an ability to

[19] As discussed earlier in this section of this preamble, the subcategory being established in this final rule excludes the two EBCR-fired EGUs at the Seward Generating Station, which are 260 MW each, from the new subcategory.

[20] *See* the memorandum titled *HCl* and SO_2 Emissions for Coal Refuse-Fired EGUs, available in Docket ID No. EPA–HQ–OAR–2018–0794.

[21] For all other HAP from these two subcategories of coal-fired units, the data did not show any difference in the level of the HAP emissions and, therefore, we have determined that it is not reasonable to establish separate emissions limits for the other HAP.

[22] Neither of these two plants with EBCR-fired EGUs that have met the 2012 final MATS SO_2 limit are the Seward Generating Station discussed earlier in this section of this preamble.

[23] The analysis is summarized in a separate memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration,* available in Docket ID No. EPA–HQ–OAR–2018–0794.

[24] At the time of the 2019 Proposal's analysis, SO_2 data through June 2018 were available. Data that have become available only after the 2019 Proposal is not a necessary basis of our discussion of that Proposal or the EPA's final action here, but it generally corroborates the basis already available and noticed to the public in February 2019. New data that have since become available to the EPA are discussed later in this section of this preamble.

achieve based on their monthly emissions data for January 2015 through June 2018. The EPA explained that due to data limitations (*i.e.,* no HCl lb/MMBtu or lb/MWh emissions data have been submitted for the currently operating EBCR-fired EGUs, and SO_2 lb/MWh emissions data are available for only two of the currently operating EBCR-fired EGUs), this same beyond-the-floor methodology used to determine the beyond-the-floor standards for SO_2 in lb/MMBtu could not be used to evaluate beyond-the-floor standards for SO_2 in lb/MWh or for HCl in either lb/MMBtu or lb/MWh. The EPA, therefore, further explained that it determined that beyond-the-floor standards for those pollutants, if established, should reasonably be set based on the same percentage reduction as the SO_2 lb/MMBtu described earlier (*i.e.,* the 40-percent reduction in the emissions rate for SO_2 between the calculated MACT floor value of 1.0 lb/MMBtu and the beyond-the-floor value of 0.60 lb/MMBtu). The EPA solicited comment on the analysis conducted to determine the numerical acid gas emission standards and, on its methodology, and results. Table 4 of this preamble shows the results of the MACT floor and beyond-the-floor analyses as discussed in the 2019 Proposal.

TABLE 4—MACT FLOOR AND BEYOND-THE-FLOOR RESULTS FOR POTENTIAL EBCR-FIRED EGUS SUBCATEGORY

Subcategory	Parameter	HCl	SO_2
Existing Eastern Bituminous Coal Refuse-Fired EGUs	Number in MACT Floor	5	5
	99% UPL[a] of Top 5 (*i.e.,* MACT floor)	6.0E–2 lb/MMBtu	1.0 lb/MMBtu
		6.0E–1 lb/MWh	15 lb/MWh
	Beyond-the-floor Standard	4.0E–2 lb/MMBtu	6.0E–1 lb/MMBtu
		4.0E–1 lb/MWh	9.0 lb/MWh

[a] Upper prediction limit.

Immediately below and in the response to comments document, we discuss in more detail the basis for the acid gas HAP emission standards that are applicable to the new subcategory and address the significant comments on the standards for the new subcategory.

In response to the 2019 Proposal's solicitation of comment, the EPA received comments both supporting and opposing its analysis to determine the numerical acid gas emission standards for a subcategory of existing EBCR-fired EGUs. Several commenters agreed with the methodology that the EPA used to determine the MACT floor and beyond-the-floor levels of control for emissions of SO_2 and HCl. Commenters further stated that an SO_2 limit of 0.6 lb/MMBtu, as discussed in the 2019 Proposal, is reasonable, technologically and economically defensible, and would allow facilities to continue providing multimedia environmental benefits from coal refuse reclamation and remediation of mining-affected lands. Other commenters disagreed with the EPA's analyses of the MACT floor and beyond-the-floor levels of control and the resulting emission limits presented in the 2019 Proposal. Specifically, commenters disagreed with the data used in the analyses, claiming that it is not representative of the emissions reductions achieved in practice by the best-performing sources because it excludes time periods when controls were installed. In addition, commenters stated that the beyond-the-floor analysis fails to recognize that each plant in the subcategory already has acid gas controls sufficient to meet the current standard and, instead, assumes that such controls are infeasible. Further, commenters stated that the only relevant cost for purposes of any beyond-the-floor standard is the cost of operating (rather than installing) the control.

The EPA disagrees with those comments opposing the data used in the MACT floor and beyond-the-floor analyses and the resulting emission limits. The MACT floor analyses for HCl and SO_2 for the subcategory of EBCR-fired EGUs are reasonably based on the same 2010 ICR dataset and methodology used to determine MACT floor emission values for pollutants regulated under the 2012 MATS final rule. HCl and SO_2 emissions data for the EBCR-fired EGUs that were operating at the time of the 2012 MATS final rule were used to calculate separate existing source MACT floors for HCl in lb/MMBtu and lb/MWh and SO_2 in lb/MMBtu and lb/MWh. Thus, the MACT floor analysis and resulting floor values are consistent with how MACT floors for other HAP emissions standards were calculated and are representative of the HCl and SO_2 emissions reductions achieved in practice by the best-performing EBCR-fired EGUs at that time, irrespective of the means that the reductions were achieved.

The beyond-the-floor analysis and resulting beyond-the-floor emission limit for SO_2 lb/MMBtu are reasonably based on the extensive data available in the EPA's ECMPS for each currently operating EBCR-fired EGU. As described in the 2019 Proposal, an SO_2 emission limit of 0.6 lb/MMBtu is a limit that the currently operating EBCR-fired EGUs have demonstrated an ability to achieve based on their monthly emissions data for January 2015 through June 2018. Any means being used to control acid gases during that time period would be reflected in the average SO_2 lb/MMBtu emission rate for those EBCR-fired EGUs. Thus, the EPA's analysis does not exclude time periods when controls were installed. We note, however, that we are unaware of any EBCR-fired EGUs that have installed any downstream acid gas controls in addition to limestone injection into the FBC in response to the 2012 MATS rule. Further, the EPA has confirmed that extending the time horizon through March 2019 to include emissions data that have become available since the analysis for the 2019 Proposal would not result in changes to average SO_2 lb/MMBtu emission rates for the currently operating EBCR-fired EGUs nor to the SO_2 emission limit of 0.6 lb/MMBtu that, on average, those EGUs have achieved for that time period.[25]

Contrary to some comments, the beyond-the-floor analysis does recognize that each EBCR-fired EGU in the subcategory has controls to address acid gas emissions and, as explained earlier, average SO_2 lb/MMBtu emission rates reflect those controls. In addition, the 2019 Proposal, as well as section

[25] Including EBCR-fired EGUs' SO_2 emissions data for the time period of July 2018 through March 2019 results in minor changes to average SO_2 emissions values for some EBCR-fired EGUs but does not result in a change to the beyond-the-floor emission limit for SO_2 lb/MMBtu. Nevertheless, the more recent SO_2 data is included in an addendum to the 2019 Proposal's analysis, titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration,* available in Docket ID No. EPA–HQ–OAR–2018–0794.

III.A of this preamble, point out that all coal refuse fuels are fired in FBC that use limestone injection to minimize SO_2 emissions and to increase heat transfer efficiency. As discussed in section III.A of this preamble, commenters have pointed out, however, that there are limitations on the ability of existing EBCR-fired EGUs to control acid gas emissions to the level of the 2012 final MATS acid gas standard by increasing the amount of limestone injected. As such, the EPA disagrees with comments claiming that the current controls are sufficient to meet the 2012 final MATS acid gas standard and that, therefore, the only relevant cost for purposes of any beyond-the-floor standard is the cost of operating (rather than installing) the control. As also discussed in section III.A of this preamble, commenters have pointed out feasibility issues associated with installation and operation of various downstream acid gas control technologies in order to meet the 2012 final MATS acid gas standard. For those same reasons, the EPA determined that downstream acid gas control technologies such as scrubbers (either wet FGD scrubbers or SDA) or DSI systems are not beyond-the-floor options for acid gas HAP emissions from the subcategory of existing EBCR-fired EGUs.[26]

Based on a review of the public comments and other available information, the EPA is finalizing HCl and SO_2 emission limits reflecting beyond-the-floor level of control using the methodology described in the 2019 Proposal and earlier in this section of the preamble. Specifically, this action establishes the following emission limits for the new subcategory of existing EBCR-fired EGUs:

HCl: 4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh
SO_2:[27] 6.0E–1 lb/MMBtu or 9.0 lb/MWh

The SO_2 lb/MMBtu emissions limit is a limit that, on average, the currently operating EBCR-fired EGUs have achieved based on their monthly emissions data for January 2015 through June 2018.[28] Because the EPA does not have such HCl emissions data or SO_2 lb/MWh emissions data, beyond-the-floor standards for SO_2 in lb/MWh and for HCl in lb/MMBtu and lb/MWh are based on the percentage reduction in the SO_2 lb/MMBtu emissions rate between the MACT floor value and the beyond-the-floor value.

IV. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected sources?

Affected sources are EGUs that are in the *unit designed for eastern bituminous coal refuse (EBCR) subcategory,* as defined under this final action. Based on available information, there are six currently operating EBCR-fired EGUs that are in the newly established subcategory and subject to the newly established acid gas HAP emission standards. The six EGUs, located at three facilities in Pennsylvania and one facility in West Virginia, are listed in Table 2 of this preamble.

B. What are the air quality impacts?

Absent the subcategory finalized in this action, many affected EBCR-fired EGUs would likely discontinue operations. Although the new emission standards will allow higher acid gas HAP and SO_2 emissions from these facilities compared to the emission standards in the original 2012 MATS, emissions of other HAP will not change under this action. These higher allowable emissions may, however, be partially offset. In the absence of this rule, closure of the units would likely result in reduced remediation of abandoned mine lands (AMLs) and potentially increase the risk and impact of emissions from refuse piles. Refuse piles at AMLs are prone to spontaneous internal combustion (smoldering) which emits uncontrolled air pollutants including acid gases and other HAP, and with less remediation, the potential for greater emissions from smoldering increases. More detailed analysis of potential air impacts of this rule is presented in a docketed memorandum.[29]

C. What are the compliance cost impacts?

Relative to a baseline in which the subcategory is not finalized and the existing 2012 MATS acid gas HAP emissions limits are enforced, the new subcategory could reduce costs by eliminating the need for investment in additional compliance measures which have not yet been made by affected units. The magnitude of potential cost reductions is discussed in a docketed memorandum.[30]

D. What are the economic impacts?

The impact of the newly finalized subcategory of EBCR-fired EGUs for emissions of acid gas HAP on the broader electricity sector is likely to be minor due to the relatively small size of these facilities. Additionally, the risk of the affected EBCR-fired EGUs closing because of challenges in meeting MATS acid gas HAP limits is reduced by the new subcategory. As a result, the coal refuse reclamation services the units provide are more likely to be sustained in the future, potentially offsetting reclamation costs that may be otherwise incurred by the states of Pennsylvania and West Virginia. Additionally, because of the reduced risk of closure, the acid gas HAP subcategory finalized in this action could prevent labor market transitions for individuals who operate and perform support functions for these facilities. However, it may limit labor market opportunities that could result from AML reclamation by other means.

E. What are the forgone benefits?

Absent the subcategory finalized in this action, affected EBCR-fired EGUs would likely either discontinue operations or perform compliance measures to comply with the previous MATS acid gas HAP limits, which would have the effect of reducing acid gas HAP emissions. The newly finalized subcategory will likely increase emissions of SO_2 relative to a baseline in which the subcategory is not finalized; this in turn would form fine PM ($PM_{2.5}$) concentrations in the atmosphere and potentially adversely affect human health. The magnitude of those forgone co-benefits depends on the magnitude of the air quality impacts described earlier. Notably, most counties in Pennsylvania and bordering

[26] *See,* also, the memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration,* available in Docket ID No. EPA–HQ–OAR–2018–0794.

[27] As is the requirement for all coal-fired EGUs subject to MATS, the alternate SO_2 limit may be used if the EGU has some form of FGD system and SO_2 CEMS and both are installed and operated at all times. As specified in 40 CFR 63.10000(c)(1)(v) of the 2012 MATS final rule, limestone injection to an FBC unit is an ''FGD system'' that would allow the EBCR-fired EGUs to use the alternative SO_2 standard.

[28] As previously explained in this preamble, at the time of the 2019 Proposal's analysis, SO_2 data through June 2018 were available. Inclusion of data that has become available only after the 2019 Proposal does not result in a change to the beyond-the-floor emission limit for SO_2 lb/MMBtu. *See* the memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration,* available in Docket ID No. EPA–HQ–OAR–2018–0794.

[29] *See* the memorandum titled *Analysis of Potential Costs and Benefits for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants,* available in Docket ID No. EPA–HQ–OAR–2018–0794

[30] Ibid.

states attain the current $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), set at a level requisite to protect public health with an adequate margin of safety. The magnitude of potential forgone benefits is discussed in a docketed memorandum.[31]

In contrast, if plants continue to operate when they otherwise would not have absent this action, the continued remediation of AMLs could provide water quality co-benefits through reductions in toxic metal leaching and acid mine drainage. As noted earlier, removal of coal refuse piles reduces surface and groundwater pollution from acidic drainage and reduces uncontrolled emissions of air pollutants that are released from self-ignited internal smoldering of the coal refuse piles. In addition, commenters pointed out that the alkaline ash produced by EBCR-fired EGUs is used to reclaim mining-affected lands by returning them to a productive use.

Remediation of AMLs through the use of waste coal is supported by the state of Pennsylvania through policies such as tax credits and treatment of these units as renewable for purposes of the state's renewable portfolio standard. If these waste coal units are no longer able to operate, the state will need to find alternative means to remediate these sites leading to, at best, a delay in these benefits, if not a loss of these benefits altogether. These benefits are discussed qualitatively in greater detail in the docketed memorandum.

As noted earlier, while the EPA cannot predict with certainty what the industry response would be absent the establishment of a new subcategory, industry commenters have suggested that some—and maybe all—of the affected sources would shut down.[32] If that is the case, then the establishment of this new subcategory will allow those units to continue to achieve both of their purposes while also maintaining emissions of acid gas HAP at levels similar to current emissions levels.

While the EPA cannot predict with certainty what the industry response would be in the absence of a new subcategory, commenters' claim that the units would shut down is plausible. Coal-fired power plants are currently facing tremendous competitive pressures. As a result, coal's share of total U.S. electricity generation has been declining for over a decade, while generation from natural gas and renewables has increased significantly. A large number of coal units—especially smaller ones like the EBCR-fired EGUs—have retired since 2010. Indeed, as mentioned earlier, four of the ten units that were identified as affected by this action in the 2019 Proposal have now either retired or announced plans to convert to natural gas.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is an economically 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 has conducted an analysis of all reasonably anticipated costs and benefits arising out of this rule, including those arising out of co-benefits pursuant to Executive Orders 12866 and 13563. That analysis can be found in a separate memorandum titled *Analysis of Potential Costs and Benefits for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants,* that is available in the docket.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by revising the acid gas HAP emission standards for a new subcategory of certain existing EGUs that are currently subject to MATS and does not impose any additional regulatory requirements on the affected electric utility industry.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0567. This action does not impose an information collection burden because the regulatory changes resulting from this action do not affect the currently approved information collection requirements. Specifically, this action establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs that are currently subject to MATS and the new emission standards do not result in any changes to the recordkeeping or reporting requirements that those impacted EGUs are currently subject to.

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 is a deregulatory action, and the burden on all entities affected by this final rule, including small entities, is reduced compared to the 2012 MATS.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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 neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Specifically, this action establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs currently subject to MATS and located in Pennsylvania and West Virginia, states without any federally recognized tribal entities. Thus,

[31] Ibid.

[32] *See* EPA Docket ID Item Nos. EPA–HQ–OAR–2018–0794–1125 and EPA–HQ–OAR–2018–0794–1154.

Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. The EPA held consultations with the Blue Lake Rancheria and the Fond du Lac Band of Lake Superior Chippewa on April 2, 2019, and April 3, 2019, respectively. Neither tribe provided comments regarding the 2019 Proposal's solicitation of comment on establishing a subcategory of certain existing EGUs firing EBCR for acid gas HAP emissions.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. While children may experience forgone benefits as a result of this action, the potential forgone emission reductions (and related benefits) from the final amendments are small compared to the overall emission reductions (and related benefits) from the 2012 MATS.

Furthermore, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions. To the extent that states use other mechanisms in order to comply with the NAAQS, and still achieve the criteria pollution reductions that would have otherwise occurred, this action will not have a disproportionate adverse effect on children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the EPA concludes that this action is not likely to have any adverse energy effects because it establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs that are currently subject to MATS and does not impose any additional regulatory requirements on the affected electric utility industry.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). While these communities may experience forgone benefits as a result of this action, the potential forgone emission reductions (and related benefits) from the final action are small compared to the overall emission reductions (and related benefits) from the 2012 MATS.

Moreover, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and $PM_{2.5}$, and other mechanisms in the CAA. This action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

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. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding under the provisions of 5 U.S.C. 808(2). The EPA finds that there is good cause under the provisions of 5 U.S.C. 808(2) to make this final rule effective without full, prior Congressional review under 5 U.S.C. 801 and to make the rule effective on April 15, 2020. The EPA finds that it is unnecessary to delay the date this rule could be effective because the Agency has determined that the owners or operators of affected MATS sources do not need time to adjust to this final action. This final action establishes a subcategory of certain existing EGUs firing EBCR and acid gas HAP emission standards applicable only to the new subcategory. Sources in the new subcategory will be subject to an SO_2 emissions limit that, on average, the currently operating six EBCR-fired EGUs have demonstrated an ability to achieve but, otherwise, will not be subject to any new regulatory requirements.[33]

The EPA also finds that it is impracticable to delay the effective date of this rule. Three of the four facilities with EBCR-fired EGUs in the new subcategory are subject to EPA-issued Administrative Compliance Orders that provide interim SO_2 emission limits that terminate on April 15, 2020. Those facilities have asserted that they cannot meet the 2012 final MATS HCl emission standard, or the 2012 final MATS SO_2 acid gas HAP surrogate emission standard, while burning the coal refuse fuel for which their facilities were designed. By 11:59 p.m. on April 15, 2020, EBCR-fired EGUs at those facilities must achieve full compliance with MATS. Absent this final action's acid gas HAP emission standards for the new subcategory being effective by that date, EGUs at those three facilities would be subject to the 2012 final MATS acid gas HAP emission standards that they are not currently in compliance with, and, thus, in violation of their Orders. According to the facilities, if subject to the 2012 acid gas HAP emission standards, they would no longer be in a position to continue operating their EBCR-fired EGUs and, thus, provide the environmental benefits associated with removal of coal refuse piles and reclamation and remediation of mining-affected lands.

Accordingly, the EPA finds it would be unnecessary and impracticable to delay the effective date of this action and that there is good cause to dispense with the opportunity for a 60-day period of prior Congressional review and to publish this final rule with an effective date of April 15, 2020.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 63 as follows:

[33] Affected sources may report emissions of either SO_2 or HCl. Most MATS-affected EGUs report emissions of SO_2 because they already report SO_2 emissions under the EPA's Acid Rain Program.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

■ 2. Section 63.9982 is amended by revising paragraph (d) to read as follows:

§ 63.9982 What is the affected source of this subpart?

* * * * *

(d) An EGU is existing if it is not new or reconstructed. An existing electric steam generating unit that meets the applicability requirements after April 16, 2012, due to a change in process (*e.g.,* fuel or utilization) is considered to be an existing source under this subpart.

■ 3. Section 63.9984 is amended by revising paragraphs (b) and (f) and adding paragraph (g) to read as follows:

§ 63.9984 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing EGU, you must comply with this subpart no later than April 16, 2015, except as provided in paragraph (g) of this section.

* * * * *

(f) You must demonstrate that compliance has been achieved, by conducting the required performance tests and other activities, no later than 180 days after the applicable date in paragraph (a), (b), (c), (d), (e), or (g) of this section.

(g) If you own or operate an EGU that is in the *Unit designed for eastern bituminous coal refuse (EBCR) subcategory* as defined in § 63.10042, you must comply with the applicable hydrogen chloride (HCl) or sulfur dioxide (SO_2) requirements of this subpart no later than April 15, 2020.

■ 4. Section 63.9990 is amended by revising paragraph (a) to read as follows:

§ 63.9990 What are the subcategories of EGUs?

(a) Coal-fired EGUs are subcategorized as defined in paragraphs (a)(1) through (3) of this section and as defined in § 63.10042.

(1) EGUs designed for coal with a heating value greater than or equal to 8,300 Btu/lb,

(2) EGUs designed for low rank virgin coal, and

(3) EGUs designed for EBCR.

* * * * *

■ 5. Section 63.10042 is amended by adding definitions for ''Eastern bituminous coal refuse (EBCR),'' ''Net summer capacity,'' and ''Unit designed for eastern bituminous coal refuse (EBCR) subcategory'' in alphabetical order to read as follows:

§ 63.10042 What definitions apply to this subpart?

* * * * *

Eastern bituminous coal refuse (EBCR) means coal refuse generated from the mining of bituminous coal in Pennsylvania and West Virginia.

* * * * *

Net summer capacity means the maximum output, commonly expressed in megawatts (MW), that generating equipment can supply to system load, as demonstrated by a multi-hour test, at the time of summer peak demand (period of June 1 through September 30.) This output reflects a reduction in capacity due to electricity use for station service or auxiliaries.

* * * * *

Unit designed for eastern bituminous coal refuse (EBCR) subcategory means any existing (*i.e.,* construction was commenced on or before May 3, 2011) coal-fired EGU with a net summer capacity of no greater than 150 MW that is designed to burn and that is burning 75 percent or more (by heat input) eastern bituminous coal refuse on a 12-month rolling average basis.

* * * * *

■ 6. Table 2 to Subpart UUUUU of Part 63 is revised to read as follows:

Table 2 to Subpart UUUUU of Part 63—Emission Limits for Existing EGUs

As stated in § 63.9991, you must comply with the following applicable emission limits: [1]

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
1. Coal-fired unit not low rank virgin coal	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh [2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 3 dscm per run.
	Antimony (Sb)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Arsenic (As)	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr)	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Lead (Pb)	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn)	4.0E0 lb/TBtu or 5.0E–2 lb/GWh.	
	Nickel (Ni)	3.5E0 lb/TBtu or 4.0E–2 lb/GWh.	

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
	Selenium (Se)	5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	
	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh.	For Method 26A at appendix A–8 to part 60 of this chapter, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320 at appendix A to part 63 of this chapter, sample for a minimum of 1 hour.
	OR		
	Sulfur dioxide (SO_2)[4]	2.0E–1 lb/MMBtu or 1.5E0 lb/MWh.	SO_2 CEMS.
	c. Mercury (Hg)	1.2E0 lb/TBtu or 1.3E–2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B at appendix A–8 to part 60 of this chapter run or Hg CEMS or sorbent trap monitoring system only.
		OR	
		1.0E0 lb/TBtu or 1.1E–2 lb/GWh.	LEE Testing for 90 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
2. Coal-fired unit low rank virgin coal	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh[2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 3 dscm per run.
	Antimony (Sb)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Arsenic (As)	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr)	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Lead (Pb)	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn)	4.0E0 lb/TBtu or 5.0E–2 lb/GWh.	
	Nickel (Ni)	3.5E0 lb/TBtu or 4.0E–2 lb/GWh.	
	Selenium (Se)	5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	
	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26 at appendix A–8 to part 60 of this chapter, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 1 hour.
	OR		
	Sulfur dioxide (SO_2)[4]	2.0E–1 lb/MMBtu or 1.5E0 lb/MWh.	SO_2 CEMS.
	c. Mercury (Hg)	4.0E0 lb/TBtu or 4.0E–2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
3. IGCC unit	a. Filterable particulate matter (PM).	4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh[2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	6.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 2 dscm per run.
	Antimony (Sb)	1.4E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Arsenic (As)	1.5E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be)	1.0E–1 lb/TBtu or 1.0E–3 lb/GWh.	
	Cadmium (Cd)	1.5E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Chromium (Cr)	2.9E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co)	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Lead (Pb)	1.9E+2 lb/TBtu or 1.8E0 lb/GWh.	
	Manganese (Mn)	2.5E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Nickel (Ni)	6.5E0 lb/TBtu or 7.0E–2 lb/GWh.	
	Selenium (Se)	2.2E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	b. Hydrogen chloride (HCl)	5.0E–4 lb/MMBtu or 5.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 1 hour.
	c. Mercury (Hg)	2.5E0 lb/TBtu or 3.0E–2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
4. Liquid oil-fired unit—continental (excluding limited-use liquid oil-fired subcategory units).	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh[2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total HAP metals	8.0E–4 lb/MMBtu or 8.0E–3 lb/MWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 1 dscm per run.
	Antimony (Sb)	1.3E+1 lb/TBtu or 2.0E–1 lb/GWh.	
	Arsenic (As)	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Beryllium (Be)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Chromium (Cr)	5.5E0 lb/TBtu or 6.0E–2 lb/GWh.	
	Cobalt (Co)	2.1E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Lead (Pb)	8.1E0 lb/TBtu or 8.0E–2 lb/GWh.	
	Manganese (Mn)	2.2E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Nickel (Ni)	1.1E+2 lb/TBtu or 1.1E0 lb/GWh.	
	Selenium (Se)	3.3E0 lb/TBtu or 4.0E–2 lb/GWh.	
	Mercury (Hg)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	For Method 30B sample volume determination (Section 8.2.4), the estimated Hg concentration should nominally be $<\frac{1}{2}$ the standard.

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 1.0E–2 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 1 hour.
	c. Hydrogen fluoride (HF) ..	4.0E–4 lb/MMBtu or 4.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 1 hour.
5. Liquid oil-fired unit—non-continental (excluding limited-use liquid oil-fired subcategory units).	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh[2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total HAP metals	6.0E–4 lb/MMBtu or 7.0E–3 lb/MWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:	.....	Collect a minimum of 2 dscm per run.
	Antimony (Sb)	2.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Arsenic (As)	4.3E0 lb/TBtu or 8.0E–2 lb/GWh.	
	Beryllium (Be)	6.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr)	3.1E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Cobalt (Co)	1.1E+2 lb/TBtu or 1.4E0 lb/GWh.	
	Lead (Pb)	4.9E0 lb/TBtu or 8.0E–2 lb/GWh.	
	Manganese (Mn)	2.0E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Nickel (Ni)	4.7E+2 lb/TBtu or 4.1E0 lb/GWh.	
	Selenium (Se)	9.8E0 lb/TBtu or 2.0E–1 lb/GWh.	
	Mercury (Hg)	4.0E–2 lb/TBtu or 4.0E–4 lb/GWh.	For Method 30B sample volume determination (Section 8.2.4), the estimated Hg concentration should nominally be $<\frac{1}{2}$ the standard.
	b. Hydrogen chloride (HCl)	2.0E–4 lb/MMBtu or 2.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 2 hours.
	c. Hydrogen fluoride (HF) ..	6.0E–5 lb/MMBtu or 5.0E–4 lb/MWh.	For Method 26A, collect a minimum of 3 dscm per run. For ASTM D6348–03[3] or Method 320, sample for a minimum of 2 hours.
6. Solid oil-derived fuel-fired unit	a. Filterable particulate matter (PM).	8.0E–3 lb/MMBtu or 9.0E–2 lb/MWh[2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	4.0E–5 lb/MMBtu or 6.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:	.....	Collect a minimum of 3 dscm per run.
	Antimony (Sb)	8.0E–1 lb/TBtu or 7.0E–3 lb/GWh.	
	Arsenic (As)	3.0E–1 lb/TBtu or 5.0E–3 lb/GWh.	
	Beryllium (Be)	6.0E–2 lb/TBtu or 5.0E–4 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 4.0E–3 lb/GWh.	
	Chromium (Cr)	8.0E–1 lb/TBtu or 2.0E–2 lb/GWh.	
	Cobalt (Co)	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
	Lead (Pb)	8.0E–1 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn)	2.3E0 lb/TBtu or 4.0E–2 lb/GWh.	
	Nickel (Ni)	9.0E0 lb/TBtu or 2.0E–1 lb/GWh.	
	Selenium (Se)	1.2E0 lb/Tbtu or 2.0E–2 lb/GWh.	
	b. Hydrogen chloride (HCl)	5.0E–3 lb/MMBtu or 8.0E–2 lb/MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 [3] or Method 320, sample for a minimum of 1 hour.
	OR		
	Sulfur dioxide (SO_2) [4]	3.0E–1 lb/MMBtu or 2.0E0 lb/MWh.	SO_2 CEMS.
	c. Mercury (Hg)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
7. Eastern Bituminous Coal Refuse (EBCR)-fired unit.	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh [2].	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 3 dscm per run.
	Antimony (Sb)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Arsenic (As)	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be)	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd)	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr)	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co)	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Lead (Pb)	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn)	4.0E0 lb/TBtu or 5.0E–2 lb/GWh.	
	Nickel (Ni)	3.5E0 lb/TBtu or 4.0E–2 lb/GWh.	
	Selenium (Se)	5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	
	b. Hydrogen chloride (HCl)	4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh	For Method 26A at appendix A–8 to part 60 of this chapter, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 [3] or Method 320 at appendix A to part 63 of this chapter, sample for a minimum of 1 hour.
	OR		
	Sulfur dioxide (SO_2) [4]	6E–1 lb/MMBtu or 9E0 lb/MWh.	SO_2 CEMS.
	c. Mercury (Hg)	1.2E0 lb/TBtu or 1.3E–2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B at appendix A–8 to part 60 of this chapter run or Hg CEMS or sorbent trap monitoring system only.
		OR	

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (*e.g.,* specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
		1.0E0 lb/TBtu or 1.1E–2 lb/GWh.	LEE Testing for 90 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.

[1] For LEE emissions testing for total PM, total HAP metals, individual HAP metals, HCl, and HF, the required minimum sampling volume must be increased nominally by a factor of 2.
[2] Gross output.
[3] Incorporated by reference, *see* § 63.14.
[4] You may not use the alternate SO_2 limit if your EGU does not have some form of FGD system and SO_2 CEMS installed.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0417; FRL–10006–80–OAR]

RIN 2060–AT74

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Hydrochloric Acid (HCl) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, in this action we are finalizing amendments to add electronic reporting; address periods of startup, shutdown, and malfunction (SSM); and establish work practice standards for maintenance activities pursuant to the Clean Air Act (CAA). We are making no revisions to the numerical emission limits based on the risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will result in improved monitoring, compliance and implementation of the rule.

DATES: This final rule is effective on April 15, 2020.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0417. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–4991; and email address: *topham.nathan@epa.gov.* For specific information regarding the risk modeling methodology, contact Terri Hollingsworth, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5623; fax number: (919) 541–0840; and email address: *hollingsworth.terri@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CDX Central Data Exchange
Cl_2 chlorine
ERT Electronic Reporting Tool
HAP hazardous air pollutants(s)
HCl hydrochloric acid
HI hazard index
HQ hazard quotient
IARC International Agency for Research on Cancer
ICR Information Collection Request
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
RFA Regulatory Flexibility Act
RTR Risk and Technology Review
TOSHI target organ-specific hazard index
UMRA Unfunded Mandates Reform Act

Background information. On February 4, 2019, the EPA proposed the results of the RTR for the HCl NESHAP and proposed amendments to add electronic reporting and address periods of SSM. In the proposal, the EPA also solicited public comments regarding maintenance activities. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the *Summary of Public Comments and*

Responses for Risk and Technology Review for Hydrochloric Acid Production, in Docket ID No. EPA–HQ–OAR–2018–0417. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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E. What other changes have been made to the NESHAP?
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F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS [1] code
HCl production and fume silica production.	HCl Production.	325180

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/hydrochloric-acid-production-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by June 15, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that

emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 84 FR 1570, February 4, 2019.

B. What is the HCl Production source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the HCl Production NESHAP on April 17, 2003 (68 FR 19075). The standards are codified at 40 CFR part 63, subpart NNNNN. The HCl production industry consists of facilities that produce a liquid HCl product from a gas stream containing HCl through absorption.

The HCl production facility is the basic unit defined in the NESHAP. Specifically, the rule defines an HCl production facility as the collection of unit operations and equipment associated with the production of liquid HCl product. The production of liquid HCl product occurs through the absorption of gaseous HCl into either water or an aqueous HCl solution. The HCl production facility includes HCl storage tanks (as defined in 40 CFR 63.9075), HCl transfer operations that load the HCl product into a tank truck, rail car, ship, or barge, and equipment leaks. A plant site could have several separate and distinct HCl production facilities. The affected source includes all HCl production facilities at the same site. An HCl production facility begins at the point where a gaseous stream containing HCl enters an absorber and ends at the point where the liquid HCl product is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the plant site, or at the point the HCl product leaves the plant site via pipeline. The source category covered by this MACT standard currently includes 19 facilities.

The 2003 NESHAP established emissions limitations for existing and new process vents, storage tanks, transfer operations, and equipment leaks. The NESHAP includes numerical emissions limitations for process vents, HCl storage tanks, and HCl transfer operations as well as work practice standards for equipment leaks.

C. What changes did we propose for the HCl Production source category in our February 4, 2019, proposal?

On February 4, 2019, the EPA published a proposed rule in the **Federal Register** for the HCl Production NESHAP, 40 CFR part 63, subpart NNNNN, that took into consideration the RTR analyses and proposed no changes to the NESHAP based on our CAA section 112(f) and 112(d)(6) (RTR) reviews. In addition, we proposed to add electronic reporting and to remove exemptions for periods of SSM. Finally, we sought public comments on work practice standards for maintenance activities.

We proposed revisions to the SSM provisions of the standards to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the HCl Production source category and the EPA's decision that revisions to the NESHAP are not necessary under the risk review or technology review because the NESHAP protects public health with an ample margin of safety and protects against an adverse environmental effect. We did not identify any developments in practices, processes, or control technologies under the technology review that warrant revisions to the MACT standards for this source category. However, this action finalizes other changes to the NESHAP, including removal of exemptions for periods of SSM, and the addition of electronic reporting requirements. This action also reflects changes to the

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide 'an ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

February 2019 proposal in consideration of comments received during the public comment period related to work practice standards for maintenance activities described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the HCl Production source category?

This section describes the final actions regarding the HCl Production NESHAP that the EPA is taking pursuant to CAA section 112(f). The EPA proposed no changes to the NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks caused by emissions from HCl production are acceptable, and that the standards provide an ample margin of safety to protect public health and that more stringent standards are not necessary to prevent an adverse environmental effect.

The EPA is, therefore, not revising the standards under CAA section 112(f)(2) (for NESHAP 40 CFR part 63, subpart NNNNN) based on the residual risk review and is readopting the existing standards under CAA section 112(f)(2). See *Summary of Public Comments and Responses for the Risk and Technology Review for the Hydrochloric Acid Production Source Category,* available in the docket for this action, for discussion of key comments and responses regarding the residual risk review.

B. What are the final rule amendments based on the technology review for the HCl Production source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments pursuant to section 112(d)(2) and (3) for the HCl Production source category?

In the February 4, 2019, proposal, the Agency sought comments on maintenance provisions recommended by industry prior to proposal to address the anticipated removal of SSM exemptions from the NESHAP. A company that owns multiple HCl production facilities and a trade association representing HCl producers commented that removing the SSM exemption would create uncertainty regarding how emissions from intermittent planned maintenance activities would be regulated. Commenters stated that equipment is cleaned and cleared of chemicals prior to opening to the atmosphere for maintenance activities. The commenters recommended work practice standards in lieu of numerical emissions standards for maintenance activities due to the impracticality of capturing and measuring these emissions.

In this final rule, based on consideration of public comments, the EPA is adding work practice standards for maintenance vents to ensure emissions from these activities are subject to standards. As discussed in section IV.D of this preamble, we determined that it is impractical to measure the extremely small amounts of HCl and chlorine (Cl_2) that could be emitted after opening these ''maintenance vents'' to the atmosphere and that these emissions could be adequately addressed through work practice standards.

D. What are the final rule amendments addressing emissions during periods of SSM?

The Agency is finalizing, as proposed, changes to the HCl Production NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the EPA is establishing standards in this rule that apply at all times. Table 7 to Subpart NNNNN of Part 63 (General Provisions applicability table) is being revised to change several references related to requirements that apply during periods of SSM. The EPA eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. Other than the periods of maintenance activities described above which will be covered by work practice standards, the EPA determined that facilities in this source category can meet the applicable emission standards in the HCl Production NESHAP at all times, including periods of startup and shutdown. Also, as stated in our proposal, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). The legal rationale and detailed changes for SSM periods that are being finalized in this rule are set forth in the preamble to the proposed rule. See 84 FR 1584 through 1587 (February 4, 2019) and discussed below.

1. 40 CFR 63.9005 General Duty

We are finalizing, as proposed, revisions to the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. The EPA is adding general duty regulatory text at 40 CFR 63.9005(b) that reflects the general duty to minimize emissions during all periods of operation.

The EPA is also revising the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' This provision requires malfunctions to be corrected as quickly as practicable and minimize emissions consistent with safety and good air pollution control practices. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.9005(b).

2. SSM Plan

As proposed, the EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have the same incentive to plan for and achieve compliance as they do during periods of normal operation and, thus, planning requirements specific for SSM are no longer necessary.

3. Compliance with Standards

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in 40 CFR 63.6(f)(1) and held that the CAA requires a standard to apply continuously. Consistent with *Sierra*

Club, the EPA is revising standards in this rule to apply at all times.

4. 40 CFR 63.9020 Performance Testing

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead adding a performance testing requirement at 40 CFR 63.9020(a)(3). The performance testing requirements we are adding differ from the General Provisions performance testing provisions in several respects. Specifically, the new performance testing requirements do not include the language in 40 CFR 63.7(e)(1) restating the SSM exemption. However, we are including similar language that precludes startup and shutdown periods from being considered ''representative'' for purposes of performance testing. We are including language in 40 CFR 63.9020(a)(3), similar to that in 40 CFR 63.7(e)(1), providing that performance tests conducted under this subpart should not be conducted during malfunctions. This is because conditions during malfunctions are not representative of normal operating conditions. The EPA is adding language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available upon request by the Administrator such records ''as may be necessary to determine the condition of the performance test,'' but does not specifically require the information to be recorded. The regulatory text the EPA is adding in 40 CFR 63.9020(a)(3) includes the record requirements in 40 CFR 63.7(e)(1) and also makes explicit the requirement to record the information.

5. Monitoring

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of the removal of the SSM exemption and other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). We are revising the General Provisions table (Table 7) entry for 40 CFR 63.8(d)(3) by changing the ''yes'' in column 3 to a ''no.'' The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is adding to the rule at 40 CFR 63.9005(d)(5) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under § 63.8(d)(2).''

6. 40 CFR 63.9055 Recordkeeping

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recordkeeping provisions are no longer necessary because the EPA is finalizing, as proposed, that recordkeeping and reporting applicable to normal operations will apply during startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain recordkeeping for startup and shutdown periods separate from the requirement that applies during normal operation.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is adding such requirements to 40 CFR 63.9055. The regulatory text we are adding differs from that in the General Provisions; the General Provisions require the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is finalizing, as proposed, that this requirement applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also adding to 40 CFR 63.9055 a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard which the source failed to meet, and a description of the method used to estimate the emissions. Examples of such methods would include product loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is requiring that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when those actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable in 40 CFR 63.9055.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

7. 40 CFR 63.9050 Reporting

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for SSM events. To replace the General Provisions reporting requirement, the EPA is adding reporting requirements to 40 CFR 63.9050(c)(5). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as stand-alone reports. We are adding language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required in 40 CFR 63.9050. We are requiring that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is finalizing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

The amendments eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for SSM events when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a SSM event were not consistent with an SSM plan, because such plans will no longer be required.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' The EPA is finalizing, as proposed, that 40 CFR 63.10(c)(15) no longer applies. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is eliminating this requirement because SSM plans will no longer be required, and, therefore, 40 CFR 63.10(c)(15) will no longer be available to satisfy the requirements of 40 CFR 63.10(c)(10) through (12).

The EPA is also finalizing a revision to the performance testing requirements at 40 CFR 63.9020(a)(2) through (3). This final rule text states that each performance test must be conducted under normal operating conditions; and operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The final rules also require that operators maintain records to document that operating conditions during the test represent normal operations.

Section IV.C.3 of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

E. What other changes have been made to the NESHAP?

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. The revisions are briefly described in this section (refer to section IV.D of this preamble for further details).

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners or operators of facilities in the HCl Production source category submit electronic copies of certain required performance test results and reports, performance evaluation reports, compliance reports, and Notice of Compliance Status (NOCS) reports through the EPA's Central Data Exchange (CDX) website. Performance test and performance evaluation test reports are prepared using the EPA's Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility (*i.e.,* a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or a *force majeure* event in the time just prior to a report's due date), as well as the process to assert such a claim. In addition, we are finalizing all proposed revisions for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. No public comment has been received on the editorial corrections and clarifications, and these changes are being finalized as proposed. See 84 FR 1594 and 1596 (February 4, 2019).

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on April 15, 2020. Existing affected sources and new affected sources that commenced construction or reconstruction on or before February 4, 2019, must comply with the amendments no later than 180 days after April 15, 2020. Affected sources that commence construction or reconstruction after February 4, 2019, must comply with all requirements of 40 CFR part 63, subpart NNNNN, including the amendments being finalized, no later than the effective date of the final rule or upon startup, whichever is later. The EPA is finalizing four changes that affect ongoing compliance requirements for this subpart. First, we are changing the requirements for SSM by removing the provisions that provide an exemption from the requirements to meet the standard during SSM periods. Second, we are removing the requirement to develop and implement an SSM plan. Third, we are adding work practice standards for maintenance vents. Finally, we are adding a requirement that performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports be submitted electronically. From the assessment of the timeframe needed for implementing the entirety of the revised requirements, the EPA proposed a period of 180 days to be the most expeditious compliance period practicable. The EPA received public comments from owners of HCl production facilities requesting more than 180 days for electronic reporting requirements to go into effect. Thus, the compliance date of the final amendments for all existing sources and new sources that commenced construction or reconstruction on or before February 4, 2019, will be October 13, 2020 for all revisions other than the electronic reporting requirements, which will be April 16, 2021 or when final electronic reporting templates for subpart NNNNN are finalized, whichever is later. The compliance date of the final amendments for new sources that commence construction or reconstruction after February 4, 2019, will be April 15, 2020.

IV. What is the rationale for our final decisions and amendments for the HCl Production source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the HCl Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the HCl Production source category?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample

margin of safety, in the February 4, 2019, proposed rule for 40 CFR part 63, subpart NNNNN (84 FR 1582). The results of the risk assessment for the proposal are presented briefly in Table 2 of this preamble. More detail may be found in the residual risk technical support document, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2018 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR HYDROCHLORIC ACID PRODUCTION SOURCE CATEGORY

	Cancer MIR [1] (in 1 million)		Cancer incidence (cases per year)	Population with cancer risk of 1-in-1 million or more	Population with cancer risk of 10-in-1 million or more	Max chronic noncancer HI [2] actuals (and allowables)
	Based on actual emissions	Based on allowable emissions				
Source Category	0	0	0	0	0	0.2 (2)
Whole Facility	600	.....	0.09	980,000	130,000	6

[1] Maximum individual risk.
[2] Hazard index.

The results of the inhalation cancer risk assessment, as shown in Table 2 of this preamble, indicate there is no quantifiable cancer risk posed by the source category since the two HAP emitted from the HCl Production source category are not known or suspected carcinogens. Neither the EPA nor the International Agency for Research on Cancer (IARC) has evaluated the weight of evidence with respect to human carcinogenicity for Cl_2. However, IARC has determined that HCl is not classifiable as a human carcinogen. Likewise, the total estimated cancer incidence is 0 (zero) excess cancer cases per year and no people are estimated to have cancer risk associated with this source category. The maximum modeled chronic noncancer target-organ-specific hazard index (TOSHI) value for the source category based on actual emissions is estimated to be 0.2, driven by emissions of Cl_2 from process vents. The target organ affected is the respiratory system. The maximum modeled chronic noncancer TOSHI increases when based on allowable emissions, with a TOSHI as high as 2 (respiratory) driven by Cl_2 emissions from process vents at two facilities. Based on allowable emissions, 300 people are estimated to have a noncancer HI above 1 at these two facilities.

The screening and refined analyses for acute impacts were based on an estimate of peak hourly actual emissions. To estimate the peak hourly emission rates from the annual average rates, a default multiplier of 10 was used for emission points in the source category. The choice of a default multiplier of 10 is discussed in section III.C.3.c of this preamble. The results of the acute refined analysis indicate that the maximum off-facility-site acute hazard quotient (HQ) is 0.7, based on the reference exposure level value for HCl, and occurs at one facility.

No HAP known to be persistent and bio-accumulative in the environment (cadmium, dioxins, polycyclic organic matter, mercury, arsenic, and lead) are emitted from this source category. Therefore, a multi-pathway assessment is not warranted. The only environmental HAP emitted by facilities in this source category is HCl. Results of the analysis for HCl indicate that, based on actual emissions, the maximum annual off-site concentration is below all ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

All health risk factors were weighed, including those shown in Table 2 of this preamble, in our risk acceptability determination and the EPA proposed that the risks posed by the HCl Production source category are acceptable (see section IV.B.1 of proposal preamble, 84 FR 1570, February 4, 2019).

The EPA then considered whether 40 CFR part 63, subpart NNNNN, provides an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, and to prevent an adverse environmental effect. In considering whether standards are required to provide an ample margin of safety to protect public health, the same risk factors were considered as for the acceptability determination along with costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. As discussed in the proposal preamble (84 FR 1570, February 4, 2019), after considering all the factors mentioned above, the EPA proposed that additional emissions controls for the HCl Production source category are not required to provide an ample margin of safety to protect public health. The Agency also proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. See sections IV.B.2 and 3 of the proposal preamble, 84 FR 1570, February 4, 2019.

2. How did the risk review change for the HCl Production source category?

The EPA did not receive any public comments or data that caused the Agency to change our emissions estimates, risk assessment methods, or decisions regarding acceptability and ample margin of safety from those presented in the proposal. Therefore, the EPA did not rerun the risk modeling analyses. At proposal, we determined that risks due to the HCl Production source category are acceptable, no revisions are needed to provide an ample margin of safety, and more stringent standards are not necessary to prevent an adverse environmental effect. Upon consideration of the comments received, we are finalizing our determination that the current standards provide an ample margin of safety and it is not necessary to set a more stringent standard to prevent an adverse environmental effect. More details regarding the risk assessment can be found in the *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2019 Risk and Technology Review Final Rule,* available in the docket for this rulemaking.

3. What key comments did we receive on the risk review, and what are our responses?

The EPA received mixed public comments on the risk review, with some

commenters supportive of our methodology and proposed decisions while others disagreed. Examples from commenters on suggested changes to the EPA's risk assessment methodology included that the EPA should lower its presumptive limit of acceptability for cancer risks to below 100-in-1 million, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, it was determined that no changes were necessary. The comments and specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Review for the Hydrochloric Acid Production Source Category,* available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

As noted in the proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of ''approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). All health risk measures and factors in our risk acceptability determination are weighed, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

As noted above, the EPA did not receive any comments that resulted in a change to the risk estimates for the source category. After considering all comments regarding the EPA's risk review methodology and proposed decisions, the EPA has determined to finalize its proposed determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects. For the reasons explained in the proposed rule, in section IV.A.2 of this preamble, and in the EPA's Response to Comment document for this final rule, the EPA determines that the risks from the source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, the EPA is not revising the standards pursuant to CAA section 112(f)(2) based on the residual risk review, and the Agency is readopting the existing standards under CAA section 112(f)(2).

At proposal, the EPA sought public comments on the use of the updated ethylene oxide cancer risk value for regulatory purposes.[2] We received a number of comments related to this request and as stated in the proposal for the Miscellaneous Organic NESHAP RTR proposal, we are incorporating those comments into the record for that rulemaking and plan to respond to them in the final RTR rulemaking for that source category. See 84 FR 69187, December 17, 2019.[3] We also note that the Agency is taking action to address emissions of ethylene oxide in a number of ways as described in the proposal preamble. See 84 FR 1584, February 4, 2019.

B. Technology Review for the HCl Production Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the HCl Production source category?

Pursuant to CAA section 112(d)(6), the EPA proposed to conclude that no revisions to the current standards are necessary for the HCl Production source category. No developments were found in practices, processes, and control technologies that could be applied to HCl production facilities.

2. How did the technology review change for the HCl Production source category?

We have not changed any aspect of the technology review since the February 4, 2019, RTR proposal for the HCl Production source category.

3. What key comments did we receive on the technology review, and what are our responses?

The comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production,* which is available in the docket for this action.

4. What is the rationale for our final approach for the technology review?

Pursuant to CAA section 112(d)(6), we are finalizing the technology review as proposed. For the reasons explained in the proposed rule, we determined that there are no developments in practices, processes, or control technologies that warrant revisions to the standards. We evaluated all of the comments on the EPA's technology review and, for the reasons stated in our responses to those comments, we determined no changes to the review are needed.

C. Amendments Addressing Emissions During Periods of SSM

1. What amendments did we propose to address emissions during periods of SSM?

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 1584, February 4, 2019).

2. How did the SSM provisions change since proposal?

Since proposal, the SSM provisions have not changed.

3. What key comments did we receive on the SSM revisions and what are our responses?

The comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production,* which is available in the docket for this action.

4. What is the rationale for our final approach and final decisions to SSM-related requirements?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the preamble to the proposed rule (84 FR 1584, February 4, 2019) and our response to comment document, we are removing the provisions related to SSM that are not consistent with the requirement that the standards apply at all times, and are finalizing revised requirements for periods of SSM, as proposed.

[2] The EPA did so because the assessment of facility-wide risks, undertaken to provide context for the source category risk, indicated that the maximum facility-wide cancer MIR was 600-in-1 million, mainly driven by ethylene oxide emissions from a variety of industrial processes, none of which are part of this source category. See 84 FR 1583, February 4, 2019.

[3] The EPA held a public hearing on March 27, 2019, in Washington, DC, at which time a number of speakers spoke to the use of the updated ethylene oxide cancer risk value for regulatory purposes. A transcript of that hearing has been placed in the docket for this rulemaking and, as well, will be incorporated by reference in the docket for the rulemaking for the Miscellaneous Organic NESHAP RTR (Docket ID No. EPA–HQ–OAR–2018–0746).

D. Other Amendments

1. What other amendments did we propose for the HCl Production source category?

We proposed that owners or operators submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports through the EPA's CDX using the CEDRI. For initial notifications, initial startup reports, annual compliance certifications, and deviation reports, the proposed rule would require that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. We also proposed two broad circumstances in which we may provide extension to these requirements. We proposed at 40 CFR 63.9050(m) that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.9050(n) that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The Agency sought public comment on whether there was a need to address equipment that is opened during regular maintenance activities, in light of the proposed removal of the SSM exemptions, and if these maintenance activities should be addressed via work practice standards. See 84 FR 1589, February 4, 2019. Prior to the February 4, 2019, proposal, industry representatives expressed concerns about the regulatory status of certain equipment opened to the atmosphere during periods for maintenance, given that they believed the activities previously were exempted under the SSM provisions.

2. How did the other amendments for the HCl Production source category change since proposal?

We are finalizing as proposed the requirements for owners or operators to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports electronically. We also are finalizing, as proposed, the provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility.

After considering the public comments received regarding maintenance activities that occur during startup and shutdown, the EPA is finalizing a requirement for equipment designated as ''maintenance vents'' to be thoroughly purged of HCl and Cl_2 prior to opening that equipment to the atmosphere. We have added paragraph (f) to 40 CFR 63.9040 with requirements for equipment that owners/operators designate as a maintenance vent. Owners or operators must demonstrate that equipment served by a maintenance vent contains less than 20 pounds of residual HCl or Cl_2 prior to opening that equipment to the atmosphere.

3. What key comments did we receive on the other amendments for the HCl Production source category and what are our responses?

We received one comment providing input on the proposed requirement for owners and operators of HCl production facilities to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports.

Comment: One commenter stated that the EPA must not finalize the proposed electronic reporting extension provisions because the definition of a *force majeure* event is too broad, the provisions do not set a firm deadline to request an extension of the reporting deadline, and the decision to allow an extension is solely within the discretion of the Administrator. The commenter urged that the proposed provisions are unlawful and arbitrary because they would create a broad and vague mechanism that a facility owner or operator could use to evade binding emission standards by evading the binding compliance reporting deadlines set to assure compliance with those standards. The commenter further stated that the EPA should not import the concept of ''*force majeure*'' into any part of the CAA, as to do so is a variation of the prior malfunction exemptions that are unlawful under the CAA. The commenter also noted that the EPA has provided that there are no known issues with submission of ERT-formatted performance test and evaluation reports in CEDRI (per the Petroleum Refinery NESHAP), thus, there is no rational basis for providing the proposing reporting extensions. At a minimum, the commenter requested that the EPA set a new firm deadline to assure that the extension request allows only a temporary period when the facility need not report, such as a 10-day extension, rather than an open-ended extension without a deadline.

Response: The commenter states that the brief case-by-case extension of report submittal deadlines is a ''reporting exemption.'' This is not the case. The proposed provisions the commenter questions are in paragraphs 40 CFR 63.9050(m) and (n).

There is no exception or exemption to reporting, much less an exemption from compliance with the numerical emission standards, only a method for requesting an extension of the reporting deadline. Reporters are required to justify their request and identify a reporting date. There is no predetermined timeframe for the length of extension that can be granted, as this is something best determined by the Administrator (*i.e.,* the EPA Administrator or delegated authority as defined in 40 CFR 63.2) when reviewing the circumstances surrounding the request. Different circumstances may require a different length of extension for electronic reporting. For example, a tropical storm may delay electronic reporting for a day, but a Hurricane Katrina scale event may delay electronic reporting much longer, especially if the facility has no power, and, as such, the owner or operator has no ability to access electronically stored data or to submit reports electronically. The Administrator will be the most knowledgeable of the events leading to the request for extension and will assess whether an extension is appropriate, and, if so, a reasonable length for the extension. The Administrator may even request that the report be sent in hard copy until electronic reporting can be resumed. While no new fixed duration deadline is set, the regulation requires that the report be submitted electronically as soon as possible after the CEDRI outage or after the *force majeure* event resolves.

The concept of *force majeure* has been implemented by the EPA in this context since May 2007 within the CAA requirements through the performance test extensions provided in 40 CFR 60.8(a)(1) and 63.7(a)(4). Like the performance test extensions, the approval of a requested extension of an electronic reporting deadline is at the discretion of the Administrator.

The EPA disagrees that the ability to request a reporting extension ''would create a broad and vague mechanism'' that owners and operators ''could use to evade binding emissions standards'' or evade ''binding compliance reporting deadlines'' for emissions standards. While reporting is an important mechanism for the EPA and air agencies to assess whether owners and operators are in compliance with emissions standards, reporting obligations are separate from (*i.e.,* in addition to) requirements that an owner or operator be in compliance with an emissions standard. The commenter references

deadlines set forth in the CAA for demonstrating initial compliance following the effective date of emission standards, which differs from deadlines for submitting reports. There are no such deadlines stated in the CAA for report due dates, meaning the EPA has discretion to establish reporting schedules, and also discretion to allow a mechanism for extension of those schedules on a case-by-case basis. In fact, under the commenter's reasoning, if the statutory deadlines for compliance with standards were read to strictly apply to continuing reporting requirements, no such reporting could be required after 3 years from the promulgation of the standards. This would not be a reasonable result. Reporting deadlines are often different from compliance deadlines. Rules under 40 CFR part 60 and 63 typically allow months following an initial compliance deadline to conduct testing and submit reports, but compliance with standards is required upon the compliance date.

Additionally, the ability to request a reporting extension does not apply to a broad category of circumstances; on the contrary, the scope for submitting an extension request for an electronic report is very limited in that claims can only be made for an event outside of the owner's or operator's control that occurs in the 5 business days prior to the reporting deadline. The claim must then be approved by the Administrator, and in approving such a claim, the Administrator agrees that something outside the control of the owner or operator prevented the owner or operator from meeting its reporting obligation. In no circumstance does this electronic reporting extension allow for the owner or operator to be out of compliance with the underlying emissions standards. If the Administrator determines that a facility has not acted in good faith to reasonably report in a timely manner, the Administrator can reject the claim and find that the failure to report timely is a deviation from the regulation. CEDRI system outages are infrequent, but the EPA knows when they occur and whether a facility's claim is legitimate. *Force majeure* events (*e.g.,* natural disasters impacting a facility) are also usually well-known events.

Finally, the EPA disagrees that the existing statistics on the use of CEDRI and e-reporting precludes the need for a provision to account for an outage of the CEDRI system. Prudent management of electronic data systems builds in allowances for unexpected, non-routine delays, such as occurred on July 1, 2016, and October 20–23, 2017, and is consistent with the already-existing provisions afforded for unexpected, non-routine delays in performance testing [see 40 CFR 60.8(a)(1) and (2) and 40 CFR 63.7(a)(4)]. For both electronic reporting and performance testing, owners or operators are to conduct and complete their activities within a short window of time. The EPA believes it is prudent to allow owners or operators to make *force majeure* claims for situations beyond their reasonable control. The EPA also disagrees that incidental issues with questions on completing the form or the procedures for accessing CEDRI for which the CEDRI Helpdesk is available, are conditions that would be considered either *force majeure* or a CEDRI system outage. The existence of the Helpdesk for answering questions on procedures in submitting reports to CEDRI have no impact on the availability of CEDRI in such a circumstance. The purpose of these requests for extensions are to accommodate owners and operators in cases where they cannot successfully submit a report electronically for reasons that are beyond their control and occur during a short window of time prior to the reporting deadline. The extension is not automatic, and the Administrator retains the right to accept or reject the request. The language was added as part of the standard electronic reporting language based on numerous comments received on the proposal for the Electronic Reporting and Recordkeeping Requirements for the New Source Performance Standards (80 FR 15100, March 20, 2015). As such, we have determined that no changes to the electronic reporting requirements are necessary in the final rule.

Comment: Two commenters requested that the EPA address small and intermittent levels of HCl and Cl_2 emissions that could occur during maintenance activities. According to the commenters, these activities were previously not subject to the NESHAP due to the SSM exemptions included in the HCl Production NESHAP. The commenters state that lines and equipment used in this source category are routinely cleared and cleaned of chemicals. The frequency of these activities varies depending on the facility, but plants may be shut down annually for scheduled maintenance. The equipment is purged free of materials and washed with water, and in some cases, it is further purged with air to a control device. Even in these scenarios after washing and purging, when the equipment is opened to the atmosphere, there may be some small trace levels of HCl and/or Cl_2 that could be present and potentially emitted. The commenters claim that it would be significantly burdensome for every vent with these small amounts of HCl or Cl_2 emissions to be addressed by the rule's requirements for process vents. The commenters state that this could trigger costly controls, testing, monitoring, and recordkeeping/reporting obligations for trace emissions.

The commenters suggest two courses of action for the EPA to address emissions from maintenance activities and vents through which emissions occur during these periods. These suggestions are, (1) adding a definition for maintenance vent to the list of sources excluded from process vent standards, or (2) adding a work practice standard that applies to maintenance vents, similar to work practices added in other recent NESHAP amendments in which the SSM exemptions were removed.

The commenters state that removing the SSM exemption creates uncertainty regarding whether any emissions from a maintenance vent, regardless of magnitude, may become subject to the standard. The commenters also add that planned maintenance activities typically occur on an annual basis. The commenters state that they believe the best performing sources in the category drain and purge lines prior to performing maintenance activities. The commenters state that should the EPA choose to regulate emissions from these maintenance activities, setting a numerical emission limit would be impractical because the type and size of equipment being maintained differs between facilities. Furthermore, the commenters assert that measuring emissions from these maintenance activities would be impractical due to the small magnitude of emissions and their short duration.

Response: Upon consideration of the public comments submitted, the EPA is finalizing a definition for maintenance vents and work practice standards that minimize the potential for emissions from maintenance activities that occur during periods of startup or shutdown. We agree with the commenters that it is impractical to measure the small levels of HCl or Cl_2 that could be emitted from these pieces of equipment during intermittent maintenance activities. Furthermore, we agree with the commenters that cleaning and purging equipment to a control device prior to opening that equipment during maintenance activities represents the performance of the best performing sources in the industry.

Additional comments on the proposed electronic reporting requirements and other amendments

discussed in this section and our specific responses to those comments can be found in the memorandum titled *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production,* available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments to the HCl Production source category?

We considered the comments on the EPA's proposed amendments to require electronic reporting initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports. For the reasons explained in the proposed rule, and in our responses to those comments, we are establishing electronic reporting, as proposed. These amendments will increase the ease and efficiency of data submittal and improve data accessibility. More information concerning the proposed requirement for owners and operators of HCl production facilities to submit electronic copies of certain notifications and reports is in the preamble to the proposed rule (84 FR 1593, February 4, 2019) and the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production,* available in the docket for this action. Therefore, we are finalizing our approach for submission of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports as proposed. We are, however, allowing facilities up to 1 year from publication of the final rule or 1 year from finalization of the electronic reporting templates for owners/operators of HCl production facilities to use electronic reporting. Furthermore, after considering public comments, we are finalizing work practice standards for periods of maintenance activities.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are 19 HCl production facilities currently operating as major sources of HAP subject to the final amendments. A complete list of facilities that are currently subject to the MACT standards is available in the memorandum titled *Industry Characterization for the Hydrochloric Acid Production NESHAP Residual Risk and Technology Review Final,* available in Docket ID No. EPA–HQ–OAR–2018–0417.

B. What are the air quality impacts?

Because the EPA is not revising the emission limits, we do not anticipate any quantifiable air quality impacts as a result of these amendments. However, we determined that the final requirements, including the work practice standards for maintenance activities, are at least as stringent as the current rule requirements. The work practice standards include requirements for facilities to clear equipment of HCl and Cl_2 before it is opened to the atmosphere. These requirements will minimize emissions during these periods.

C. What are the cost impacts?

The cost impacts from these final amendments are net savings in costs to affected HCl production facilities due to revised recordkeeping and reporting requirements. One way to present cost estimates is in present value (PV terms). The PV for these proposed amendments is equal to an estimated cost savings of $55,341 at a discount rate of 3 percent and a cost savings of $44,911 at a discount rate of 7 percent, discounted to 2020. The equivalent annualized value, which is an annualized value consistent with the PV estimates, is equal to $7,649 at a discount rate of 3 percent and $7,029 at a discount rate of 7 percent (2016 dollars). The time period over which these estimates are calculated includes the 5-year period following promulgation of these amendments. These calculations are documented in the *Economic Impact Analysis for the Hydrochloric Acid Production RTR Final,* which is available in the docket for this rulemaking.

D. What are the economic impacts?

As noted earlier, we estimated a nationwide cost savings associated with the final requirements over the 5-year period following promulgation of these amendments. This cost savings will not yield adverse economic impacts to affected entities or markets. For further information on the economic impacts associated with the final requirements, see the memorandum, *Economic Impact Analysis for Hydrochloric Acid Production NESHAP RTR Final,* which is available in the docket for this action.

E. What are the benefits?

The EPA is not finalizing changes to emissions limits, and we estimate the final changes (*i.e.,* changes to SSM, monitoring, recordkeeping and reporting, and the addition work practices for maintenance activities) are not economically significant. Because these final amendments are not considered economically significant, as defined by Executive Order 12866 and because no emissions reductions were estimated, we did not estimate any benefits from reducing emissions.

F. What analysis of environmental justice did we conduct?

As discussed in the preamble to the proposed rule, to examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the HCl Production source category across different demographic groups within the populations living near facilities. When examining the risk levels of those exposed to emissions from HCl production facilities, we found that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The documentation for this decision is contained in section IV.A of the preamble to the proposed rule and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Hydrochloric Acid Production,* which is available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2020 Risk and Technology Review Final Rule,* available in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

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 the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2032.11. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing amendments that revise provisions pertaining to emissions during periods of SSM; add requirements for electronic reporting of certain notifications and reports and performance test results; and make other minor clarifications and corrections. This information will be collected to assure compliance with the HCl Production NESHAP.

Respondents/affected entities: Owners or operators of HCl production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart NNNNN).

Estimated number of respondents: 19 (assumes no new respondents over the next 3 years).

Frequency of response: Initially, occasionally, and annually.

Total estimated burden: 22,000 hours (per year) to comply with all of the requirements in the NESHAP. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,700,000 (per year), including $162,000 annualized capital or operation and maintenance costs, to comply with all of the requirements in the NESHAP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities among the 14 ultimate parent companies impacted by this proposed action given the Small Business Administration small business size definition for this industry (1,000 employees or greater for NAICS 325180), and no significant economic impact on any of these entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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. None of the HCl production facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. 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 the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble and the document, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. A thorough summary of the search conducted and results are included in the memorandum titled *Voluntary Consensus Standard Results for Hydrochloric Acid Production Residual Risk and Technology Review,*which is available in the docket for this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Hydrochloric Acid Production Facilities,* available in the docket for this action.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 12, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart NNNNN—National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

■ 2. Section 63.8985 is amended by revising paragraph (f) to read as follows:

§ 63.8985 Am I subject to this subpart?

* * * * *

(f) An HCl production facility is not subject to this subpart if all of the gaseous streams containing HCl and chlorine (Cl_2) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process for process purpose, prior to being discharged to the atmosphere.

■ 3. Section 63.9005 is amended by revising paragraphs (a) through (c) and (d)(4) through (6) to read as follows:

§ 63.9005 What are my general requirements for complying with this subpart?

(a) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must be in compliance with the emission limitations and work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction. After October 13, 2020, for each such source you must be in compliance with the emission limitations in this subpart at all times. For new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, you must be in compliance with the emissions limitations in this subpart at all times.

(b) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, at all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). For each such source, a startup, shutdown, and malfunction plan is not required after October 13, 2020. No startup, shutdown, and malfunction plan is required for any new or reconstructed source for which construction or reconstruction commenced after February 4, 2019.

(d) * * *

(4) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1) and (3), (c)(4)(ii), and (c)(7) and (8), and 63.9025. After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and (c)(7) and (8), and 63.9025.

(5) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d) except for the requirements related to startup, shutdown, and malfunction plans referenced in § 63.8(d)(3). The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(6) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1) and (e)(2)(i). After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c)(1) through (14) and (e)(1) and (e)(2)(i).

■ 4. Section 63.9020 is amended by revising paragraphs (a)(2) and (3) to read as follows:

§ 63.9020 What performance tests and other procedures must I use?

(a) * * *

(2) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must conduct each performance test under representative conditions according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 3. After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, you

must conduct each performance test under conditions representative of normal operations. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(3) You may not conduct performance tests during periods of startup, shutdown, or malfunction.

* * * * *

■ 5. Section 9025 is amended by revising paragraph (a)(3) to read as follows:

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) * * *

(3) For at least 75 percent of the operating hours in a 24-hour period, you must have valid data (as defined in your site-specific monitoring plan) for at least 4 equally spaced periods each hour.

* * * * *

■ 6. Section 63.9030 is amended by revising paragraph (c) to read as follows:

§ 63.9030 How do I demonstrate initial compliance with the emission limitations and work practice standards?

* * * * *

(c) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, you must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9045(f) and (g). After October 13, 2020 for such sources, and after April 15, 2020 for new or reconstructed sources which commence construction or reconstruction after February 4, 2019, you must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in §§ 63.9045(f) and (g) and 63.9050(d).

■ 7. Section 63.9040 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(e) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). After October 13, 2020 for such sources, and after April 15, 2020 for new and reconstructed sources which commence construction or reconstruction after February 4, 2019, the exemptions for periods of startup, shutdown, and malfunction in § 63.6(e) no longer apply.

(f) An owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup or shutdown, of equipment where equipment is emptied, depressurized, degassed or placed into service. The owner or operator does not need to designate a maintenance vent as a HCl process vent, HCl storage tank vent, or an HCl transfer operation. The owner or operator must comply with the applicable requirements in paragraphs (f)(1) and (2) of this section for each maintenance vent by October 13, 2020 or the date of startup for new and reconstructed sources, whichever is later, unless an extension is requested in accordance with the provisions in § 63.6(i).

(1) Prior to venting to the atmosphere, process liquids must be removed from the equipment as much as practical and the equipment must be washed with water or purged with air or otherwise depressurized to a control device, fuel gas system, or back to the process to remove the HCl and Cl_2 until the equipment served by the maintenance vent contains less than 20 pounds of HCl or Cl_2.

(2) For maintenance vents complying with the requirements in paragraph (f)(1) of this section, the owner or operator shall demonstrate the mass of HCl or Cl_2 in the equipment served by the maintenance vent is less than 20 pounds for each maintenance activity based on the equipment size and contents after considering any contents drained or purged from the equipment. Equipment size may be determined from equipment design specifications. Equipment contents may be determined using process knowledge. The owner or operator must maintain records for five years of the number of maintenance activities for which maintenance vent provisions are used during each reporting period.

■ 8. Section 63.9045 is amended by revising paragraph (f) to read as follows:

§ 63.9045 What notifications must I submit and when?

* * * * *

(f) You must submit the Notification of Compliance Status, including the performance test results, within 180 calendar days after the applicable compliance dates specified in § 63.8995.

* * * * *

■ 9. Section 63.9050 is amended by revising paragraph (a), (c)(4) and (5), (d) introductory text, and (f) introductory text and adding paragraphs (g) through (n) to read as follows:

§ 63.9050 What reports must I submit and when?

(a) You must submit a compliance report that includes the information in paragraphs (c) through (e) of this section, as applicable, as specified in table 6 to this subpart.

* * * * *

(c) * * *

(4) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, before October 13, 2020, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). A startup, shutdown, and malfunction plan and the information in § 63.10(d)(5)(i) is not required after October 13, 2020.

(5) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, if there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

* * * * *

(d) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (CMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(1) through (6) of this section and the following information in paragraphs (d)(1) through (9) of this section and § 63.10(e)(3)(vi). This includes periods of startup, shutdown, and malfunction.

* * * * *

(f) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, for each startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan you must submit an immediate startup, shutdown and malfunction report. Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (f)(1) and (2) of this section. An immediate startup, shutdown, and malfunction report is not required after October 13, 2020.

* * * * *

(g) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) *(https://cdx.epa.gov/)*. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* Submit the results of the performance test as an attachment in the ERT.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (g)(1) of this section.

(h) Within 60 days after the date of completing each CMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation as an attachment in the ERT.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (g)(1) of this section.

(i) You must submit to the Administrator compliance reports. Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(j) You must submit to the Administrator performance evaluations. Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(k) You must submit to the Administrator a Notification of Compliance Status. Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(l) If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via CEDRI. CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(m) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (m)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5

business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date, time and length of the outage;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(n) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of *force majeure* for failure to timely comply with the reporting requirement. To assert a claim of *force majeure,* you must meet the requirements outlined in paragraphs (n)(1) through (5) of this section.

(1) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

■ 10. Section 63.9055 is amended by revising paragraph (b)(1) and adding paragraphs (c) and (d) to read as follows:

§ 63.9055 What records must I keep?

* * * * *

(b) * * *

(1) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction for a period of 5 years. A startup, shutdown, and malfunction plan is not required after October 13, 2020.

* * * * *

(c) After October 13, 2020, you must keep records of each deviation specified in paragraphs (c)(1) through (3) of this section.

(1) For each deviation record the date, time, and duration of each deviation.

(2) For each deviation, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.9005(b), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 11. Table 1 to subpart NNNNN of part 63 is amended by revising entry 2.

* * * * *

TABLE 1 TO SUBPART NNNNN OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each . . .	You must meet the following emission limit and work practice standard
* * *	* * * *
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
* * *	* * * *

■ 12. Table 6 of subpart NNNNN of part 63 is revised to read as follows:

As stated in § 63.9050(a), you must submit a compliance report that includes the information in § 63.9050(c) through (e) as well as the information in the following table. For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, you must also submit startup, shutdown, and malfunction reports according to the requirements in § 63.9050(f) and the following table. A startup, shutdown, and malfunction plan is not required after October 13, 2020.

TABLE 6 TO SUBPART NNNNN OF PART 63—REQUIREMENTS FOR REPORTS

If . . .	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from any emission limitations that apply to you during the reporting period. Include this statement in the compliance report.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CMS were out-of-control during the reporting period. Include this statement in the compliance report.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.9050(d). Include this statement in the compliance report.
4. There were periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	Contains the information in § 63.9050(d). Include this statement in the compliance report.
5. There was a startup, shutdown, and malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, contains the information in § 63.9050(f). Include this statement in the compliance report. A startup, shutdown, and malfunction plan is not required after October 13, 2020.
6. There were periods when the procedures in the LDAR plan were not followed.	Contains the information in § 63.9050(c)(7). Include this statement in the compliance report.

■ 13. Table 7 to subpart NNNNN of part 63 is amended by:

■ a. Removing the entry for ''§ 63.6(e)(1)–(2)'';

■ b. Adding entries for ''§ 63.6(e)(1)(i)'', ''§ 63.6(e)(1)(ii)'', and ''§ 63.6(e)(1)(iii)–(e)(2)'' in numerical order;

■ c. Revising the entries for ''§ 63.6(e)(3)'', ''§ 63.6(f)(1)'', and ''§ 63.7(e)(1)'';

■ d. Removing the entry ''§ 63.8(c)(1)–(3)'';

■ e. Adding the entries for ''§ 63.8(c)(1)(i)'', ''§ 63.8(c)(1)(ii)'', ''§ 63.8(c)(1)(iii)'', and ''§ 63.8(c)(2)–(3)'' in numerical order;

■ f. Removing the entry for ''§ 63.8(d)–(e)'';

■ g. Adding entries for ''§ 63.8(d)(1)–(2)'', ''§ 63.8(d)(3)'', and ''§ 63.8(e)'' in numerical order;

■ h. Removing the entry ''§ 63.10(b)(2)(i)–(xi)'';

■ i. Adding entries for ''§ 63.10(b)(2)(i)–(ii)'', ''§ 63.10(b)(2)(iii)'', ''§ 63.10(b)(2)(iv)'', ''§ 63.10(b)(2)(v)'', ''§ 63.10(b)(2)(vi)'', and ''§ 63.10(b)(2)(vii)–(xi)'' in numerical order;

■ j. Removing the entry for ''§ 63.10(c)'';

■ k. Adding entries for ''§ 63.10(c)(1)–(14)'' and ''§ 63.10(c)(15'' in numerical order; and

■ l. Revising the entry for ''§ 63.10(d)(5)'';

The additions and revisions read as follows:

* * * * *

TABLE 7 TO SUBPART NNNNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to subpart NNNNN	Explanation
*	*	*	*
§ 63.6(e)(1)(i)	General Duty to minimize emissions.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	Subpart NNNNN requires affected units to meet emissions standards at all times. See § 63.9005(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to correct malfunctions ASAP.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.6(e)(1)(iii)–(e)(2)	Operation and maintenance requirements.	Yes	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plans.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.6(f)(1)	Compliance except during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
*	*	*	*
§ 63.7(e)(1)	Conditions for conducting performance tests.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9020(a) for performance testing requirements.

TABLE 7 TO SUBPART NNNNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to subpart NNNNN	Explanation
*	* *	* *	* *
§ 63.8(c)(1)(i)	General duty to minimize emissions and CMS operation.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.8(c)(1)(ii)	Continuous monitoring system O&M.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(1)(iii)	Requirement to develop Startup, Shutdown, and Malfunction Plan for CMS.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.8(c)(2)–(3)	Continuous monitoring system O&M.	Yes	Applies as modified by § 63.9005(d)
*	* *	* *	* *
§ 63.8(d)(1)–(2)	Quality control program and CMS performance evaluation.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(d)(3)	Written procedures for CMS	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9005(d)(5) for written procedures for CMS.
§ 63.8(e)	Performance evaluation of CMS.	Yes	Applies as modified by § 63.9005(d).
*	* *	* *	* *
§ 63.10(b)(2)(i)–(ii)	Records related to startup, shutdown, and malfunction periods.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See 63.9055 for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes	
§ 63.10(b)(2)(iv)	Actions taken to minimize emissions during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.10(b)(2)(v)	Actions taken to minimize emissions during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions.	Yes	
§ 63.10(b)(2)(vii)–(xi)	Records for performance tests and CMS.	Yes	
*	* *	* *	* *
§ 63.10(c)(1)–(14)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005 (d).
§ 63.10(c)(15)	Use of Startup, Shutdown, and Malfunction Plan.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
*	* *	* *	* *
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9050(c)(5) for malfunction reporting requirements.
*	* *	* *	* *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 127

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Updates to NPDES eRule Data Elements To Reflect MS4 General Permit Remand Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is updating specific data elements within the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule), published on October 22, 2015, that apply to regulated municipal separate storm sewer systems (MS4s). These changes are necessary given the promulgation of a separate rulemaking after publication of the NPDES eRule that modified the NPDES permit requirements for small MS4s. That rule, referred to as the MS4 General Permit Remand Rule, published on December 9, 2016, made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This final rule updates those data elements to be consistent with the current MS4 regulations, corrects related typographical errors, and makes other selected clarifications at the request of state NPDES permitting programs.

DATES: This final rule is effective on May 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2018–0293. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Office of Wastewater Management, Water Permits Division (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–0721; email address: *schaner.greg@epa.gov.* Refer also to the EPA's website for further information related to this final rule.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially regulated by this final action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and state governments	EPA or state NPDES stormwater permitting authorities	924110
Local governments	Operators of municipal separate storm sewer systems	924110
Military bases	Operators of small municipal separate storm sewer systems	928110
Highway, road, airport runways, and other thoroughfare systems owned or operated by the United States, by a State, city, town, borough, county, parish, district, association or other public body.	Operators of small municipal separate storm sewer systems	237310
Large hospital complexes	Operators of small municipal separate storm sewer systems	622110
Public colleges and universities	Operators of small municipal separate storm sewer systems	611310
Large prison complexes	Operators of small municipal separate storm sewer systems	922140

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 122.26 and 122.32, and the discussion in the preamble. 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.

B. What action is the Agency taking?

The EPA is finalizing a set of changes to the NPDES eRule that updates the data elements that apply to regulated MS4s. These changes are necessary because of a separate rulemaking that the EPA promulgated after publication of the NPDES eRule. That rulemaking, published on December 9, 2016, and referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), modified the NPDES permit requirements for small MS4s contained within the Phase II stormwater regulations. Promulgation of these Phase II regulatory changes made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This final rule updates those specific data elements to make them consistent with current stormwater Phase II regulations, corrects related typographical errors, and clarifies some other data elements at the request of state NPDES permitting authorities. The changes are limited to the correction of inaccuracies and the addition of requested clarifications, and do not increase reporting burden on regulated MS4 permittees.

C. What is the Agency's authority for taking this action?

This final rule modifies the NPDES eRule; therefore, the authorities for this action are derivative of the authorities for that action. The EPA promulgated the NPDES eRule on October 22, 2015 (80 FR 64064), pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.,* which added a new part to title 40 of the Code of Federal Regulations (CFR) (40 CFR part 127) and made changes to existing regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501.

These updates to the NPDES eRule are necessary because the EPA promulgated subsequent modifications to the Phase II stormwater permitting regulations for small MS4s, known as the MS4 Remand Rule. The authority for that rule is the Federal Water Pollution Control Act, 33

U.S.C. 1251 *et seq.,* including sections 402 and 501. The MS4 Remand Rule was published on December 9, 2016 (81 FR 89320) and was incorporated into the CFR at 40 CFR 122.28(d), and as modifications to 40 CFR 122.33 through 122.35.

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

These regulatory updates do not increase the regulatory burden associated with complying with the NPDES eRule, but rather correct inconsistencies between the language used in the data elements and the newly modified Phase II stormwater regulations, and make several clarifications suggested by state NPDES permitting authorities. The EPA anticipates no change in the overall cost burden to affected entities to comply with the NPDES eRule above what was projected as a result of promulgating the rule.

III. Background

Under the NPDES eRule (promulgated on October 22, 2015, see 80 FR 64064), NPDES permitting authorities and permittees must replace the paper-based system of reporting permit information and data with an electronic system. The rule also lists specific data elements that must be reported in the EPA's national NPDES data system, the Integrated Compliance Information System (ICIS)–NPDES. See 40 CFR part 127, appendix A. Permitting authorities and permittees are currently required to begin reporting electronically for permitted MS4s on December 21, 2020. (Note, however, that in a separate action, the EPA published a proposed rule on February 28, 2020 to change to this deadline from December 21, 2020 to December 21, 2023. See 85 FR 11909.)

Following the issuance of the NPDES eRule, the EPA promulgated changes to certain Phase II stormwater permitting requirements related to small MS4s. This rulemaking, referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), was published on December 9, 2016 (see 81 FR 89320), and became effective as of January 9, 2017. The Phase II rule changes address a decision by the U.S. Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al.* v. *EPA,* 344 F.3d 832 (9th Cir. 2003) (EDC decision). That court found that the EPA's regulations for obtaining coverage under a small MS4 general permit did not provide for adequate public notice, the opportunity to request a hearing, or permitting authority review to determine whether the best management practices (BMPs) selected by each MS4 in its stormwater management program (SWMP) meet the CWA requirements, including the requirement at CWA section 402(p)(3)(B)(iii) to ''reduce the discharge of pollutants to the maximum extent practicable.'' The Phase II rule changes addressed these issues by revising the procedures to be used to issue and administer small MS4 general permits, and by making it clear that the terms and conditions of the permit are enforceable, not the contents of the permittee-developed SWMP.

Because the description of the MS4-related data elements in appendix A of the NPDES eRule were based on the regulations in place prior to issuance of the MS4 Remand Rule, it is necessary to update the NPDES eRule to reflect these changes. If left unchanged, the eRule data elements would be inconsistent with the new requirements for small MS4 permits in the Phase II regulations. The EPA is taking this action now to ensure that such inconsistencies are fixed, and to correct a small number of typographical errors and other mistakes made in relevant parts of the appendix A data elements.

The EPA is also clarifying the MS4-related data elements to address suggestions by authorized NPDES programs that participated in the EPA-State Stormwater Technical Workgroup (Workgroup). The EPA convened the Workgroup to discuss the MS4 data elements listed in appendix A to 40 CFR part 127. This Workgroup met bi-weekly from November 2017 to July 2018 and included approximately 100 subject matter experts from the EPA Headquarters, seven EPA Regions, and 34 states. The EPA documented member recommendations in a memorandum entitled *Implementation Technical Paper No. 9: Data Requirements for NPDES Electronic Reporting Rule Stormwater Information* (EPA, October 2018), posted on the EPA's website at *https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers.* This technical paper provides more detail on electronic formatting and submission of data elements required through authorized NPDES program inspections and oversight, MS4 program compliance monitoring reports, NPDES permit applications, and NPDES general permit reports [*e.g.,* Notices of Intent (NOIs)]. The EPA plans to use this technical paper to develop electronic reporting tools and to update NPDES data sharing protocols and schemas, the EPA's NPDES data system (ICIS–NPDES), and the forthcoming NPDES Noncompliance Report (NNCR).

In a separate action, the EPA plans to propose changing the deadline for implementation of Phase 2 of the NPDES eRule from December 21, 2020, to December 21, 2023 (see § 127.16 Table 1). Phase 2 implementation includes general permits and program reports. The EPA also plans to propose new provisions to allow the EPA to approve alternative start dates for electronic reporting and data sharing of Phase 2 data.

IV. Response to Public Comment on the Proposed Rule

The EPA received one comment during the public comment period that suggested one edit and further clarifications related to the proposed updates to the data elements. The EPA made the requested change to the data elements and provided further clarification on the Agency's intentions regarding several of the proposed data elements. To view the EPA's specific responses to these comments, refer to the Response-to-Comment document, which can be found in the docket for this final rule.

V. Types of Changes To Correct Inconsistencies Between the NPDES eRule Data Elements and Small MS4 Permit Regulations

The changes needed to eliminate the inconsistencies between the NPDES eRule data elements and the post-MS4 Remand Rule regulations are limited, and because these inconsistencies were repeated frequently, they fall into several broad categories. The following describes the broad categories of inconsistencies that existed previously and the types of changes made in this final rule.

A. Clarifications Concerning the Proper Role of the NPDES Permit as the Correct Source of the MS4's Requirements

The MS4 Remand Rule modified the Phase II stormwater regulations by, among other things, clarifying that it is the permit that establishes the enforceable requirements for the MS4. By establishing procedures for the permitting authority to ensure that the permit contains all of the requirements to assess compliance, the MS4 Remand Rule also clarified that these requirements are not found in documents such as the MS4's Notice of Intent for coverage or its SWMP, unless the SWMP, or portions of it, has been formally incorporated as part of the permit following a review, approval, and public notice process. See related discussion in the MS4 Remand Rule preamble at 81 FR 89339 (December 9, 2016).

The MS4 data elements in Table 2 of the NPDES eRule's appendix A data elements were based on the pre-MS4

Remand Rule version of the Phase II regulations. Therefore, some of the language used for the original NPDES eRule data elements does not accurately reflect that the permit terms alone constitute the enforceable requirements of the permit. In order to ensure that reported information related to MS4s accurately reflects the regulations upon which they are based, the EPA clarifies the descriptions of the data elements where necessary to ensure that the requirements that are reported and tracked through electronic reporting are the terms and conditions of the permit.

The following is a summary of the changes that the EPA is making in order to correct the inconsistencies described above.

• *Corrections to data elements that referenced the permittee's intentions as opposed to the permit requirements.* Language in the previous appendix A data elements that described the permittee's intentions in implementing the ''minimum control measure'' components of its stormwater program were not consistent with the current Phase II regulations. For instance, the previous appendix A data element description for the public education and outreach minimum control measure was described as ''The one or more unique codes/descriptions that identifies educational materials the permittee *intends* to distribute or equivalent outreach activities . . .'' (emphasis added). Use of this data description made sense under the pre-MS4 Remand Rule regulations, where the MS4's compliance obligation was contained within the permittee's SWMP, the contents of which were also required to be summarized in the MS4's NOI, if the permitting authority elected to issue a general permit for eligible small MS4s.

The MS4 Remand Rule clarified, among other things, that the MS4's description of its compliance actions does not substitute for the terms and conditions in the permit. The revised Phase II regulations make it clear that the permittee's compliance is judged by whether it has met the requirements of the permit; the permittee's intention as reflected in its SWMP does not constitute the basis for permit compliance. Though, in the example above, this language accurately reflected existing regulatory requirements for the public education and outreach minimum control measure prior to the MS4 Remand Rule, its emphasis on the intention of the permittee, rather than the permit requirements, was inconsistent with the revised Phase II regulations.

The EPA's rule modifies the relevant language for each of the data elements that included this type of language to reflect that the permit establishes the enforceable requirements, not the SWMP or NOI. Using the public education and outreach example again, this final rule revises the data element description to read as follows: ''The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements . . .'' This modification clarifies that it is the specific ''permit elements'' related to the public education and outreach program that the regulations require the MS4 to report to the EPA. Another related, yet minor, change modifies the corresponding ''Data Name'' to reflect that it is not the details within the SWMP that define the permittee's compliance responsibilities. Therefore, instead of using ''MS4 Public Education Program'' as the data name, the name now refers to ''Public Education and Outreach Permit Requirements.'' These same changes are made to the data elements for the other five minimum control measures.

• *Corrections to data elements that referred to the MS4's ''measurable goals'' as opposed to its permit requirements.* Several of the data elements previously referred to the permittee's ''measurable goals,'' which is language that is no longer current after the EPA modified the Phase II regulations. Under the original Phase II regulations, small MS4s were required to submit information describing the ''specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions.'' See 64 FR 68763 (December 8, 1999). The submitted measurable goals were then used as the basis for the permittee's enforceable requirements, and the permittee was required to evaluate and submit annual reports on the progress made with respect to meeting these measurable goals. References to the MS4's measurable goals were largely removed from the Phase II regulations as part of the MS4 Remand Rule to more clearly convey that the terms and conditions in the relevant permit are enforceable, not the permittee's proposed measurable goals.

The EPA's final rule removes references in the previous MS4 data elements to measurable goals and replaces them with language that refers to the ''specific schedules or deadlines'' for complying with the relevant requirements of the permit. Another related, yet minor, change modifies the corresponding ''Data Name'' to remove language that made reference to measurable goals and substitutes it with the permit's relevant ''deadlines.''

• *Updates to the data element(s) associated with permit requirements established in addition to the minimum control measure requirements.* The final rule also updates the language used to describe MS4 terms and conditions that are included in the permit to address the modified Phase II regulatory language at 40 CFR 122.34(c) related to ''other applicable NPDES requirements.'' These changes include updates to the language used for the ''Data Name'' and ''Data Description.'' The final rule also corrects an error by adding a data element that was omitted from the previous Table 2 related to the deadlines associated with ''other applicable permit requirements.''

• *Additional clarifications to accurately characterize the source of data on permit requirements.* The final rule suggests a few additional changes to clarify that the source of data on an MS4's permit requirements is the permit itself, not the permit application or NOI. For instance, the previous title for one of the Table 2 sections for MS4 data elements was ''Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent.'' In order to clarify that the terms and conditions that the MS4 is responsible for meeting are found in the permit, the EPA modifies this title as follows: ''Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit.''

B. Other Conforming Changes To Ensure Consistency With the Current Phase II Regulations

• *Removing data element made unnecessary or obsolete by the modified Phase II regulations.* One of the previous data elements required information from permittees that is no longer required under the revised Phase II regulations. The data element titled *MS4 Permit Components Descriptions and Measurable Goals* is now deleted from Table 2 of appendix A in the section entitled ''Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports).'' The previous data element requested information on ''all of the permitted components and measurable goals that are included in the MS4 permit.'' This data element was redundant of the data element that in the final rule is now titled ''Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit,'' and for that reason has been removed.

• *Changes to conform data elements to current Phase II reporting requirements.* The following are changes made to data elements to reflect the

current Phase II reporting requirements for small MS4s under 40 CFR 122.34(d)(3). These data elements are all located in the section entitled ''Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports).''

1. Status of Compliance with Each Minimum Control Measure. The final rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(i). To reflect the fact that the Phase II regulations were changed to require the permittee to include in its report ''[t]he status of compliance with permit terms and conditions,'' conforming changes are made to the Data Name so that the revised Data Name is ''Status of Compliance with MS4 Permit Requirements.'' Similar changes are made to the Data Description to read as follows: ''The unique codes/descriptions that identify if the permittee has complied with the MS4 permit requirements.''

2. Results of Information Collected and Analyzed. The previous data elements inadvertently omitted information required to be reported under 40 CFR 122.34(d)(3)(ii). This provision required small MS4 permittees to include in their annual reports ''[r]esults of information collected and analyzed, including monitoring data, if any, during the reporting period.'' The final rule corrects this omission by adding a new data element to capture this information.

3. Progress and Summary of Results with Each Minimum Control Measure. The final rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(iii). To reflect the modified description of the information to be reported, namely ''[a] summary of the storm water activities the permittee proposes to undertake to comply with the permit during the next reporting cycle,'' conforming changes are made to the Data Name (*i.e.,* it is changed to ''Summary of Activities Undertaken to Comply with the MS4 Permit Requirements'') and to the Data Description (*i.e.,* it is changed to ''This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements.'').

4. Changes to MS4 Permittee's Components and Measurable Goals. The final rule modifies this data element to reflect the changes made to the description of information required to be reported at 40 CFR 122.34(d)(3)(iv). To reflect the changes in the regulations that require the permittee to include in its report ''[a]ny changes made during the reporting period to the permittee's storm water management program,'' conforming changes are made to the Data Name (*i.e.,* it is changed to ''Summary of Activities Undertaken to Comply with the MS4 Permit Requirements'') and to the Data Description (*i.e.,* it is changed to ''The one or more codes/descriptions that describe . . . any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.'').

• *Clarification related to data provided for small MS4 permittees under a Two-Step General Permit approach.* For permitting authorities that use a ''Two-Step General Permit'' under 40 CFR 122.28(d)(2) to provide permit coverage for small MS4s, there is flexibility regarding whether the permittee or the NPDES authority will be responsible for submitting data initially. NPDES authorities will likely choose to require the permittee to supply the initial information that characterizes what actions the MS4 proposes to take to address the permit requirements as a first step. Then, during the second step of the permitting process, the permitting authority will modify this information as necessary to reflect the final permit requirements. To allow or authorize this approach, the final rule includes the following text for many of the data elements in the ''MS4 NPDES Permit-Related Information'' section: ''This data element includes proposed activities that are submitted by small MS4s seeking coverage under a 'Two-Step General Permit.' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.''

Additionally, the EPA adds a note to the MS4 Permit-Related Information section of Table 2 that provides a basic explanation of how the Two-Step General Permit process is designed to work, and how the permit information for these types of permits is to be reported.

• *Clarification related to data provided for Phase I MS4 permittees and Phase II small MS4 permittees under a Comprehensive General Permit approach.* By comparison to the anticipated process that will be used by permitting authorities that issue Two-Step General Permits, where the permitting authority is issuing a Phase I individual permit or a Phase II comprehensive general permit, it is the EPA's expectation that the permitting authority will assume responsibility for providing the relevant information required by the data elements in appendix A, Table 2 related to ''Municipal Separate Storm Sewer System (MS4) NPDES Permit-Related Requirements'' (*e.g.,* public education and outreach permit requirements, and associated deadlines). For both of these types of MS4 permits, the terms and conditions are established in the first instance as part of the final permit by the permitting authority; therefore, the permitting authority is in the best position to be able to provide accurate information required by the MS4 NPDES Permit-Related Requirements data elements.

• *Updates to regulatory citations to reflect current Phase II regulations.* The final rule updates a number of the existing MS4 regulatory citations in Table 2 of appendix A in order to reflect changes made to the Phase II regulations, and, in a few instances, to correct erroneous citations that were previously included in the table. For instance, the previous table references 40 CFR 122.28(b)(2)(ii) for the supporting authority for the data elements associated with each of the minimum control measures. Because the modified Phase II regulations now include a section addressing small MS4 general permits, this citation is updated to refer to the correct section (*i.e.,* 40 CFR 122.28(d)). Elsewhere, the final rule adds references to 40 CFR 122.33(b) to more accurately reflect the current Phase II regulatory authority for requiring basic system information. The final rule also provides the updated reference to the correct annual reporting provision (*i.e.,* 40 CFR 122.34(d)(3)). Other examples include the addition of updated citations for Phase I MS4s, such as an updated citation to 40 CFR 122.26(d)(2)(iv)(A)(*6*), (d)(2)(iv)(B)(*5*), and (d)(2)(iv)(D)(*4*) to support the use of the data element for ''Deadlines Associated with Public Education and Outreach Permit Requirements'' for Phase I MS4s.

• *Corrections to previous description of the frequency of required small MS4 reporting.* The previous Table 1 imprecisely noted that small MS4s are required to report only in years two and four of permit coverage. While this was correct for small MS4s that have already been permitted for at least one permit term, if the permittee is in its first permit term, it is required to report annually for the entire permit term. The final rule corrects this inaccuracy. See 40 CFR 122.34(d)(3).

• *Clarification of the types of MS4 permit holders that can be chosen under the data element for MS4 Permit Class.* The final rule includes a minor update to the examples of MS4 permit types under the MS4 Permit Class data element, which better reflect the types of general permits that are described under the revised Phase II permitting regulations. The following examples replace the previous examples: Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit.

C. Other Clarifications Requested by NPDES Permitting Authorities

During meetings of the EPA-State Stormwater technical workgroup (see Section III), Regional and state subject matter experts suggested the need for additional clarification to the MS4 data elements. The clarifications that are included in the final rule are described as follows.

• *Revised description of the types of entities potentially covered under an MS4 permit.* The data description that accompanied the unique MS4 identifier data element did not reflect the fact that regulated small MS4s can also include so-called ''non-traditional MS4s,'' such as colleges or universities, military installations, transportation systems, and state and federal facilities. In order to more accurately describe the different types of MS4s that can be regulated, the final rule includes modified examples of the types of MS4 entities that are intended to be included, including those that are non-traditional MS4s.

A further clarification is added to better describe how the unique identifier can be used to apply to multiple MS4 entities covered under one permit by indicating, for example, that if one MS4 NPDES permit covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier. A minor change is also made to the Data Name to better describe the types of entities that may be regulated; the Data Name now reads as ''Unique MS4 Regulated Entity Identifier'' instead of ''Unique Identifier for Each Municipality Covered Under MS4 Permit.''

Additionally, to better match the existing regulations, the final rule replaces references throughout Table 2 to ''municipality'' with the word or phrase ''entity'' or ''MS4-regulated entity.''

• *Inclusion of a unique identifier for each permit requirement or set of permit requirements.* The final rule requires that each unique permit requirement or set of permit requirements be designated with a ''Unique MS4 Activity Identifier.'' This addition is intended to improve the accuracy of compliance reporting by linking permit requirements to a unique identifier. The EPA does not consider this additional identifier to constitute a change in reporting burden given that information on permit requirements is already required; this new element merely ensures that each individual permit requirement (referred to in appendix A as ''the one or more unique codes/descriptions that identify'' the permit requirement) can be recognized with its own unique number or other identifier. Additionally, the permitting authority can automate the creation of these data during development of the final permit terms and conditions.

• *Consolidation of data elements related to tracking implementation activities performed by other government entities.* The previous data elements required information to be submitted with the annual report on whether the MS4 permittee was relying on other government entities to satisfy any permit obligations, and to provide the status of their implementation activities. To assist the states in more accurately tracking these other government entities to the specific permit requirements for which they have assumed responsibility, the final rule moves the requirement to report on the MS4's reliance on other government entities to a different section of Table 2, namely the MS4 NPDES Permit-Related Information section. The Workgroup (see Background) indicated that this change would enable NPDES permitting authorities to obtain information on the MS4's reliance on other government entities in a way that will better enable them to ensure that reporting on the compliance status of these specific permit responsibilities will be accurate and more easily understood. By making this change, the EPA deletes two existing elements, which would already be addressed, namely the ''MS4 Reliance on Other Government Entities Status'' and ''MS4 Reliance on Other Government Entities Permit Component Status'' data elements.

• *Clarification of permit information required for storm sewer system map.* The final rule clarifies that, for previously permitted MS4 permittees, rather than requiring information on ''the status of the permittee's storm sewer system map'' associated with the Illicit Discharge Detection and Elimination permit requirement, a more direct way of conveying this information is to request the ''date of the most recent storm sewer system map.'' Additionally, the final rule clarifies that the requirement to show all ''MS4 outfalls'' on the storm sewer system map excludes private outfalls. This clarification is consistent with the regulatory definition of MS4, which is limited to stormwater conveyances ''owned or operated by a . . . public body'' at 40 CFR 122.26(b)(8)(i). Privately-owned conveyances and their associated outfalls do not fall within the definition of an MS4 because they are not ''owned or operated by a . . . public body.''

• *Relocation of MS4 industrial stormwater control data element.* The final rule moves the Phase I MS4 industrial stormwater control data element from its previous location in the ''Compliance Monitoring Activity'' section of Table 2 to the newly named MS4 NPDES Permit-Related Information section. This change is not substantive, but merely intended to better reflect the fact that this information is typically provided prior to permit coverage, much like the other information included in that same section.

Additionally, the final rule adds an accompanying data element for any permit deadlines associated with the industrial stormwater control requirements. The EPA does not consider this a new reporting burden, but rather a clarification that where the permit establishes specific deadlines for actions related to industrial stormwater control, compliance with these dates must be tracked.

• *Ability to submit further information regarding instances of noncompliance.* The data element requiring information on whether the permittee has complied with the MS4 permit requirements previously limited the information submitted to a ''Yes'' or ''No'' response. Members of the Workgroup recommended that MS4s be given the opportunity to provide further information for context if the MS4 reports that it has not complied with one or more permit requirements. To address this recommendation, the final rule clarifies that MS4s as necessary will be asked to provide information related to noncompliance.

• *Clarification of information required to be reported in the summary of activities to comply with the MS4 permit requirements.* The final rule clarifies that among the information that must be reported by the MS4 as part of its annual report is a summary of activities undertaken (1) as part of the industrial stormwater control program (for Phase I MS4s and select Phase II MS4s that have industrial stormwater requirements), and (2) to comply with

permit requirements during the next reporting period. This clarification does not constitute a new reporting burden since this information was already required to be reported; the text just makes the requirement clearer.

• *Clarification regarding how information on enforcement actions taken by Phase II MS4s is to be reported.* The final rule clarifies that Phase II MS4s are not required to distinguish between different types of enforcement action, as Phase I MS4s are required to do. In contrast with Phase I MS4s, Phase II MS4s may simply report any enforcement action taken as a ''Phase II MS4 Enforcement Action.'' The permitting authority may elect to provide this option as a system default so that MS4 permittees may simply select ''Phase II MS4 Enforcement Action'' to fulfill this requirement for the reporting period.

• *Clarification related to data elements that may not apply to non-traditional MS4s.* The final rule provides further clarification on the data elements that may not apply because non-traditional MS4s typically do not possess the requisite legal authority to enforce stormwater laws. A sentence is added to three data elements (*i.e.,* ''MS4 Enforcement Action Type,'' ''MS4 Enforcement Action Total by Type,'' and ''MS4 Enforcement Agency'') explaining that there may be different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) since they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.

• *Clarification regarding how to report the specific MS4 enforcement agency in the annual report.* The final rule provides alternate wording to better explain how MS4 permittees should specifically identify in the annual report the specific MS4 enforcement agency that was responsible for taking enforcement action during the reporting period. The final language explains that the permittee will select the MS4 enforcement agency from among the unique MS4 regulated entities identified during the permit application process for co-permittees applying for coverage under an individual permit, unless there is only one regulated entity.

V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0004. The final rule imposes no new information collection burdens beyond what has already been approved by OMB for the NPDES eRule published on October 22, 2015 (80 FR 64064). This final rule is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations and to correct various errors and omissions.

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 final rule imposes no new regulatory burdens on regulated entities in the NPDES program. The action is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations, to correct various errors and omissions, to make targeted clarifications by request of state NPDES permitting authorities. The EPA has therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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 final rule does not have tribal implications, as specified in Executive Order 13175. The EPA considered the potential impacts on tribes and concluded that there would be no substantial direct compliance costs or impact on tribes. Because the purpose of the final rule is to eliminate inconsistencies between regulations and application forms, improve permit documentation, transparency and oversight, provide clarifications to existing regulations, and delete outdated provisions, it is not expected to 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. Executive Order 13175 does not apply to this action and the EPA determined that tribal consultation is not necessary for this action.

The EPA notes that it consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing the final NPDES eRule, which this final rule modifies, to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in Section VIII.F of the final NPDES eRule preamble at 80 FR 64094.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

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 has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule offers the same environmental justice benefits that were described in the final NPDES eRule preamble in Section VIII.J. That final rule preamble states that ''[a]s described in the context of non-monetary benefits, discussed in Section VI and described below, the final rule would significantly increase transparency and access to crucial information that is relevant to the protection of the health and environment of minority, low income, and tribal populations.'' See 80 FR 64095.

L. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of Congress and to 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 127

Environmental protection, Electronic data processing, Municipal separate storm sewer systems, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 18, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 127 as follows:

PART 127—NPDES ELECTRONIC REPORTING

■ 1. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Amend appendix A as follows:

■ a. In Table 1, revising entry 6 and footnote 2;

■ b. In Table 2:

■ i. Revising the section entitled ''Basic Facility Information;''

■ ii. Under the heading ''Basic Permit Information,'' revising the entries for ''NPDES ID,'' ''Master General Permit Number,'' and ''NPDES Data Group Number;''

■ iii. Removing section entitled ''Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent'' and adding in its place the section entitled ''Municipal Separate Storm Sewer System (MS4) NPDES Permit-Related Information;'' and

■ iv. Revising the section entitled ''Compliance Monitoring Activity Information (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports)'' and notes 1, 2, and 3 to the table.

The revisions and additions read as follows:

Appendix A to Part 127—Minimum Set of NPDES Data

* * * * *

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS [1]

NPDES data group No. [2]	NPDES data group	Program area	Data provider	Minimum frequency [3]
*	*	*	*	*
6	Municipal Separate Storm Sewer System (MS4) Program Reports [40 CFR 122.34(d)(3) and 122.42(c)].	MS4	NPDES Permittee	Annual for first permit term; Year two and year four in subsequent permit terms (Small MS4), Annual (Medium and Large MS4).
*	*	*	*	*

[1] Entities regulated by a NPDES permit will comply with all reporting requirements in their respective NPDES permit.

[2] Use the ''NPDES Data Group Number'' in this table and the ''NPDES Data Group Number'' column in Table 2 of this appendix to identify the source of the required data entry. The EPA notes that electronic systems may use additional data to facilitate electronic reporting as well as management and reporting of electronic data. For example, NPDES permittees may be required to enter their NPDES permit number (''NPDES ID''—NPDES Data Group 1 and 2) into the applicable electronic reporting system in order to identify their permit and submit a Discharge Monitoring Report (DMR—NPDES Data Group 3). Additionally, NPDES regulated entities may be required to enter and submit data to update or correct erroneous data. For example, NPDES permittees may be required to enter new data regarding the Facility Individual First Name and Last Name (NPDES Data Group 1 and 2) with their DMR submission when there is a facility personnel change.

[3] The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in this table.

TABLE 2—REQUIRED NPDES DATA

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Basic Facility Information			
[**Note:** As indicated in the ''CWA, Regulatory, or Other Citation'' column, some of these data elements apply to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]			
Facility Type of Ownership	The unique code/description identifying the type of facility (*e.g.,* state government, municipal or water district, Federal facility, tribal facility). This data element is used by the EPA's national NPDES data system to identify the facility type (*e.g.,* POTW, Non-POTW, and Federal).	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Name	The name of the facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Address	The address of the physical facility location	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site City	The name of the city, town, village, or other locality, when identifiable, within which the boundaries (the majority of) the facility site is located. This is not always the same as the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site State	The U.S. Postal Service (USPS) abbreviation for the state or state equivalent for the U.S. where the facility is located.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) where the facility is located. This zip code matches the ''Facility Site City'' or the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Tribal Land Indicator.	The EPA Tribal Internal Identifier for every unit of land trust allotment (''tribal land'') within Indian Country (*i.e.,* Federally recognized American Indian and Alaska Native tribal entities). This unique number will identify whether the facility is on tribal land and the current name of the American Indian tribe or Alaskan Native entity. This unique number is different from the Bureau of Indian Affairs tribal code and does not change when a Tribe changes its name.	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Site Longitude	The measure of the angular distance on a meridian east or west of the prime meridian for the facility. The format for this data element is decimal degrees (*e.g.,* −77.029289) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: ''Post Office Box'' addresses and ''Rural Route'' addresses are generally not geocodable.)	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Site Latitude	The measure of the angular distance on a meridian north or south of the equator for the facility. The format for this data element is decimal degrees (*e.g.,* 38.893829) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: ''Post Office Box'' addresses and ''Rural Route'' addresses are generally not geocodable.)	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Contact Affiliation Type.	The affiliation of the contact with the facility (*e.g.,* ''Owner,'' ''Operator,'' or ''Main Contact''). This is a unique code/description that identifies the nature of the individual's affiliation to the facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact First Name.	The given name of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Last Name.	The surname of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Title	The title held by an individual in an organization affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Individual E-Mail Address.	The business e-mail address of the designated individual affiliated with this facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Facility Organization Formal Name.	The legal name of the person, firm, public organization, or other entity that operates the facility described in this application. This name may or may not be the same name as the facility. The operator of the facility is the legal entity that controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Basic Permit Information			
[**Note:** As indicated in the ''CWA, Regulatory, or Other Citation'' column, some of these data elements also apply to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where the EPA or the State is the Control Authority and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]			
NPDES ID	This is the unique number for the NPDES permit or control mechanism for NPDES regulated entities or Unpermitted ID for an unpermitted facility. This data element is used for compliance monitoring activities, violation determinations, and enforcement actions. This data element also applies to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where the POTW is the Control Authority.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1, 2, 3, 4, 5, 6, 7, 8, 9
Master General Permit Number.	The unique identifier of the master general permit, which is linked to a General Permit Covered Facility. This data element only applies to facilities regulated by a master general permit.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1, 2
*	* * * * * *		
NPDES Data Group Number.	This is the unique code/description that identifies the types of NPDES program data that are required to be reported by the facility. This corresponds to Table 1 in this appendix (*e.g.,* 3 = Discharge Monitoring Report [40 CFR 122.41(l)(4)]). This data element can be system generated. This data element will record each NPDES Data Group that the facility is required to submit. For example, when a POTW is required to submit a Discharge Monitoring Report, Sewage Sludge/Biosolids Annual Program Report, Pretreatment Program Report, and Sewer Overflow/Bypass Event Report, the values for this data element for this facility will be 3, 4, 7, and 9. The following general permit reports will have the following values for this data element: 2a = Notice of Intent to discharge (NOI); 2b = Notice of Termination (NOT); 2c = No Exposure Certification (NOE); and 2d = Low Erosivity Waiver or Other.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48 and CWA Section 308.	1
*	* * * * * *		
Municipal Separate Storm Sewer System (MS4) NPDES Permit-Related Information			
[**Note:** Small MS4s seeking coverage under a ''Two-Step General Permit'' issued pursuant to § 122.28(d)(2) are required to submit to the authorized NPDES program information on stormwater control activities they propose to take to address specific requirements. The authorized NPDES program will review this information and then establish, through a second permitting step, additional permit terms and conditions, as necessary to satisfy the MS4 permit standard, for each MS4. The authorized NPDES programs should use their best professional judgement to adequately identify the mandatory set of requirements using actual language from the permit, summarized versions of one or more permit requirements, or a mix of actual and summarized permit requirements. Any summary of permit requirements should provide a clear understanding of the one or more permit requirements. The requirements listed in this section will be used to facilitate electronic reporting of the MS4 Program Report.]			
MS4 Permit Class	The unique code/description that identifies the size and permit type of the MS4 permit holder (*e.g.,* Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit).	122.26, 122.28(b)(2)(ii), 122.33	1
Unique MS4 Regulated Entity Identifier.	The unique identifier for each entity covered under an MS4 permit (*e.g.,* village, city, county, incorporated town, unincorporated town, college or university, local school board, military installation, highways or other thoroughfares, federal facility, state facility, prison). Use of this identifier allows for better tracking of how the MS4 permit elements apply to each entity covered under the MS4 permit (*e.g.,* if one MS4 NPDES permit covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier). The authorized NPDES program will make the final determination on how to identify entities covered under an MS4 permit. This unique identifier must not change over time. Use of this unique identifier is similar to how the 'Permitted Feature Identifier' data element is used to distinguish between permitted features.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1
Unique MS4 Activity Identifier.	The unique identifier for each MS4 permit requirement or set of MS4 permit requirements. The general expectation is that each permit requirement or set of permit requirements will be uniquely identified with this data element. Additionally, the permitting authority can automate the creation of these data during development of the final permit terms and conditions.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1, 6

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements, including any educational materials the permittee is required to distribute or equivalent outreach activities the permittee must implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Deadlines Associated With Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's public education and outreach requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Public Involvement/Participation Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public involvement/participation program requirements, which must involve the public and comply with State, Tribal, and local public notice requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.21(f), 122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2
Deadlines Associated With Public Involvement/Participation Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's public involvement/participation requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2
Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions and dates that identify the permit elements associated with the Illicit Discharge Detection and Elimination requirements, including (at a minimum): (1) The date of the most recent storm sewer system map showing the location of all outfalls and names and locations of all waters of the U.S. that receive discharges from those outfalls; (2) the ordinance or other regulatory mechanism to prohibit non-stormwater discharges into the permittee's MS4; (3) the procedures and actions the permittee is required to take to enforce the prohibition of non-stormwater discharges to the permittee's MS4; (4) the procedures and actions the permittee must take to detect and address non-stormwater discharges, including illegal dumping, to the permittee's MS4; and (5) the procedures and actions the permittee must take to inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste. The term ''MS4 outfalls'' does not include private outfalls. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.21(f), 122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Deadlines Associated With Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's illicit discharge detection and elimination requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3) and (d)(3)(v).	1, 2
Construction Site Stormwater Runoff Control Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the construction site runoff control requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to require erosion and sediment controls, including sanctions to ensure compliance; (2) requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at the construction site that may cause adverse impacts to water quality; (3) procedures for site plan review that incorporate consideration of potential water quality impacts; (4) procedures for receipt and consideration of information submitted by the public; and (5) procedures for site inspection and enforcement of control measures. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.21(f), 122.26(d)(2)(iv)(D), 122.34(b)(4) and (d)(3)(v).	1, 2
Deadlines Associated with the Construction Site Stormwater Runoff Control Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv)(D), 122.34(b)(4) and (d)(3)(v).	1, 2
Post-Construction Stormwater Management in New Development and Redevelopment Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the Post Construction Stormwater Management in New Development and Redevelopment requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects; (2) the requirements to address stormwater runoff from new development and redevelopment projects that disturb a minimum of greater than or equal to one acre (including if the permittee requires on-site retention of stormwater); and (3) the requirements to ensure adequate long-term operation and maintenance of BMPs for controlling runoff from new development and redevelopment projects. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.21(f), 122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2
Deadlines Associated with the Post-Construction Stormwater Management in New Development and Redevelopment Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's post-construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Pollution Prevention/Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the Pollution Prevention/Good Housekeeping requirements including (at a minimum): Development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.21(f), 122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Deadlines Associated with the Pollution Prevention/Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's pollution prevention/good housekeeping requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify any other applicable permit requirements, such as those related to the assumptions and requirements of any available wasteload allocation prepared by a state and approved by the EPA. This data element is optional if there are no additional MS4 permit requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2
Deadlines Associated with the Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's other applicable permit requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in subpart B of this part.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2
MS4 Industrial Stormwater Control (for Phase I MS4s only).	The one or more unique codes/descriptions that identify how the Phase I MS4 permittee will comply with industrial stormwater control requirements, including (at a minimum): (1) Status of the ordinance or other regulatory mechanism to control the contribution of pollutants by stormwater discharges associated with industrial activity, including authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance, and including sanctions to ensure compliance; (2) status of the MS4 permittee industrial stormwater inventory, which identifies facilities with industrial activities and assesses the quality of the stormwater discharged from each facility with an industrial activity; (3) status of program to monitor and control pollutants in stormwater discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Toxics Release Inventory (TRI) reporting requirements (Emergency Planning and Community Right-To-Know Act Section 313), and industrial facilities that are contributing a substantial pollutant loading to the MS4; and (4) status of monitoring program for discharges associated with industrial facilities. This data element is optional for Phase II MS4s. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	6
Deadlines Associated with Industrial Stormwater Control.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's industrial stormwater control requirements. This data element is optional for Phase II MS4s. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	1

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
*	*	*	*
Compliance Monitoring Activity Information (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports) [**Note:** The MS4 permit may require one report for each unique governmental entity or one report per permit.]		
Status of Compliance with MS4 Permit Requirements.	The unique codes/descriptions that identify if the permittee has complied with the MS4 permit requirements. As necessary, the permittee will provide information related to noncompliance.	122.34(d)(3) and 122.42(c)	6
Results of Information Collected and Analyzed.	This is a text summary describing the results of information collected and analyzed, including monitoring data, if any, during the reporting period.	122.34(d)(3)(ii) and 122.42(c)	6
Summary of Activities Undertaken to Comply with the MS4 Permit Requirements.	This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements. This includes a text summary of a the MS4 program's industrial stormwater control activities during the reporting period (required for Phase I MS4s, optional for Phase II MS4s) as well as a summary of activities to be undertaken to comply with the MS4 permit requirements during the next reporting period.	122.34(d)(3)(iii) and 122.42(c)	6
Changes to MS4 Permittee's SWMP.	The one or more codes/descriptions that describe for each unique MS4 regulated entity any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.	122.34(d)(3)(iv) and 122.42(c)	6
MS4 Enforcement Action Type.	For each unique MS4 regulated entity covered by the MS4 NPDES permit, this data element identifies the one or more types of enforcement actions taken during the past reporting period (*e.g.,* notice of violations, stop work orders, administration orders, administrative fines, civil penalties, criminal actions). Phase II MS4s have the option to only report one type of enforcement action (''Phase II MS4 Enforcement Action'') taken during the reporting period (*i.e.,* the authorized NPDES program can system-generate this data element for Phase II MS4s). This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c)	6
MS4 Enforcement Actions Total by Type.	For each unique MS4 regulated entity covered under a Phase II MS4 permit and for each MS4 Enforcement Action Type, this data element identifies the total number of enforcement actions taken by the responsible MS4 Municipal Enforcement Agency by enforcement action type. Phase II MS4s have the option to only report this data element as the total number of enforcement actions taken during the reporting period. This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c)	6
MS4 Enforcement Agency	This will identify the unique MS4 regulated entity that is responsible for each type of enforcement action conducted in the reporting period. This column will be pre-populated and un-editable if there is only one regulated entity covered by the MS4 permit (*i.e.,* there are no co-permittees). The MS4 will provide a list of identifiers for all co-permittees during the NPDES permit application process (individual and general permit covered facilities). This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c)	6
*	*	*	*

Notes:

(1) The NPDES program authority may pre-populate these data elements and other data elements (*e.g.,* Federal Registry System ID) in the NPDES electronic reporting systems in order to create efficiencies and standardization. For example, the NPDES program authority may configure their electronic reporting system to automatically generate NPDES IDs for control mechanisms for new facilities reported on a Pretreatment Program Report [40 CFR 403.12(i)]. Additionally, the NPDES program authority may decide whether to allow NPDES regulated entities to override these pre-populated data.

(2) The data elements in this table conform to the EPA's policy regarding the application requirements for renewal or reissuance of NPDES permits for discharges from Phase I municipal separate storm sewer systems (published in the **Federal Register** on August 6, 1996).

(3) The data elements in this table are also supported by the Office Management and Budget-approved permit applications and forms for the NPDES program.

* * * * *

[FR Doc. 2020–06587 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 85, No. 73
Wednesday, April 15, 2020

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

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE–2020–BT–STD–0004]

Energy Conservation Program: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for comment concerning prioritization of rulemakings.

SUMMARY: The U.S. Department of Energy (DOE) is initiating an effort to elicit information from stakeholders and the interested public concerning the prioritization of rulemakings pursuant to the Department's updated and modernized rulemaking methodology titled, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment'' (Process Rule). This rule expands early opportunities for public input on the Appliance Program's priority setting of its rulemaking activities. The Department notes that this notice represents DOE's inaugural effort to implement its revised priority-setting process. DOE welcomes written comments as well as the submission of data and other relevant information from the public relevant to priority setting for all DOE energy conservation standard and test procedure rulemakings.

DATES: Written comments and information are requested and will be accepted on or before May 15, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0004, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email:* to *PrioritySetting2020STD0004@ee.doe.gov.* Include docket number EERE–2020–BT–STD–0004 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/docket?D=EERE-2020-BT-STD-;0004.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7432. Email: *Francine.Pinto@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Authority

In overview, the Department of Energy's Process Rule was developed to guide implementation of the Appliance Standards Program, which is conducted pursuant to Title III, Part B [1] of the Energy Policy and Conservation Act, as amended (EPCA or the Act) [2], Public Law 94–163 (42 U.S.C. 6291–6309, as codified), establishing the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. In addition, Part C [3] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which again sets

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

forth a variety of provisions designed to improve energy efficiency.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316). The statute sets forth the criteria, procedures and timeframes DOE must follow when establishing new or amended energy conservation standards for covered products (and at least certain types of equipment). The statute also sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products.

B. Background on the Process Rule

On July 15, 1996 DOE published a final rule titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.'' 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and became known colloquially as the ''Process Rule.'' The Process Rule was designed to provide guidance to stakeholders as to how DOE would implement its rulemaking responsibilities under EPCA for the Appliance Program.

While there have been many positive results from the Process Rule over time, DOE came to understand through the intervening years that the Appliance Program might benefit from additional improvements to the Process Rule. Accordingly, DOE decided to undertake an effort to modernize that provision. To accomplish this end, the Department published its revised Process Rule in the **Federal Register** on February 14, 2020. 85 FR 8626. DOE expects that its modernized Process Rule will increase transparency, foster public engagement, and achieve meaningful burden reduction, while at the same time continuing to meet the Department's statutory obligations under EPCA.

II. The Prioritization Process and Request for Comments

The modernized Process Rule provides that stakeholders will have the opportunity to provide input on the prioritization of rulemakings as DOE begins its preparation of the Spring Regulatory Agenda. Through the publication of a Request for Comment, as DOE is initiating here, stakeholders can offer input concerning which appliance rulemaking proceedings should be in particular action categories for the Spring Agenda—that is, active versus long-term—, as well as provide comment on the timing of such rulemakings relative to other competing priorities. If stakeholders believe that the Department is pursuing a rule that should not be prioritized as active, for example, the stakeholder comments should reflect such an opinion and inform the Department as to how such rule should be prioritized, if at all, with an explanation to explain its recommendation. At the same time, if stakeholders believe that DOE should act more quickly on a particular rulemaking, commenters should make such a point with as much specificity as possible to indicate a revised timeline with an explanation to explain its recommendation. In addition, if stakeholders believe a rulemaking should be initiated and prioritized that is not already underway, the Department would welcome that feedback.

In making its recommendations, stakeholders can utilize the regulatory text in the modernized Process Rule, section 4, entitled, Setting Priorities for Rulemaking Activity that sets forth the factors the Department considers in making its priority-setting decisions.[4]

Consequently, this comment process concerning the prioritization of all consumer product and commercial/industrial equipment rulemakings will allow stakeholders and the interested public to weigh in on the schedule for all ongoing and planned DOE energy conservation standard and test procedure rulemakings. It will also provide a mechanism for interested parties to make suggestions to DOE for the initiation of new rulemakings.

A. Description of How To Access and Use the Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions

In order for stakeholders to provide meaningful input on priority setting, there needs to be a base of information capable of serving as a common frame of reference upon which comments can be made. As noted in the modernized Process Rule, that database will be the previous year's Fall Unified Agenda of Regulatory and Deregulatory Actions (Fall Agenda). In this case, the 2019 Fall Agenda is the applicable database. The 2019 Fall Agenda shows the two basic categories of agency actions: (1) Active rulemakings and (2) long-term actions.

How the rules are ultimately categorized (active versus long-term actions) depends upon the date DOE enters into the Office of Management and Budget (OMB) RISC/Office of Information and Regulatory Affairs (OIRA) Consolidated Information System (ROCIS) for the next action in each timetable associated with a specific rule. Generally speaking, those rules with a ''next action'' that is scheduled more than a year away will be categorized as long-term actions; those rules having a ''next action'' within a year are generally categorized as active rules.

The steps to access the active rulemaking information are as follows:

(1) Go to *www.reginfo.gov.*

(2) To access the active rulemakings, go to the box titled, ''Unified Agenda and Regulatory Plan,'' and click on the line item that is titled, ''The Fall Agenda was published on 11/20/2019.''

(3) Go to ''Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions Active Regulatory Actions Listed by Agency.''

(4) Go to ''Select Agency'' and in the drop down menu select ''Department of Energy'' and click ''Submit.'' What will appear is the Agency Rule list for DOE's portion of the 2019 Fall Agenda. This is the list of all DOE active rulemakings. Rules of the Appliance Standards Program will be included with those DOE rules designated as ''DOE/EERE.'' This agency rule list shows the stage of each rulemaking (*i.e.,* pre-rule, notice of proposed rulemaking, or final rule), the title of the rule, and the regulatory identifier number (RIN). You will need to review the list for those rulemakings specific to the Appliance Program.

Once stakeholders have accessed the list of DOE active rulemakings, they can review the information about each rule, including the timetable that will be displayed. The timetable itself, which is most critical to this priority-setting review, will list all the actions already

[4] Section 4 reads as follows:

Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;

(4) Incremental DOE resources required to complete the rulemaking process;

(5) Other relevant regulatory actions affecting the products/equipment;

(6) Stakeholder recommendations;

(7) Evidence of energy efficiency gains in the market absent new or revised standards;

(8) Status of required changes to test procedures; and

(9) Other relevant factors.

taken on that particular rule, as well as the ''next action DOE is planning to take,'' along with a projected date for that action. The ''next action'' is the last entry on the timetable. By reviewing the timetables, stakeholders should have enough information to be able to comment on how each particular rule should be prioritized.

The steps to access the long-term actions information are as follows:

(1) Go to *www.reginfo.gov.*

(2) To access the long-term actions, go to the box titled, ''Unified Agenda and Regulatory Plan,'' and click on the line item that is titled, ''The Fall Agenda was published on 11/20/2019.''

(3) Click on the line item, ''Current Long Term Actions'' for a list of such actions.

(4) Under the title ''Agenda Agency Regulatory Entries for Long-Term Actions,'' go to ''Select Agency'' and in the drop down menu select ''Department of Energy'' and click ''Submit.'' What will appear is the Agency Rule list for DOE's portion of the 2019 Fall Agenda. This is the list of all DOE long-term actions. You will need to review the list for those rulemakings specific to the Appliance Program.

Once stakeholders have accessed the list of long-term actions, as with the active rulemakings, stakeholders will find information describing each rule, as well as the timetable for that rule. By looking at the timetable and reviewing the DOE projections on each specific rule—that is—the next action, stakeholders can provide comments on how the long-term actions should be prioritized and the timing of such actions.

B. Request for Comments

As noted previously, the Department is seeking information that will shed light on how it should best prioritize and sequence its rulemaking activities for the Department's Appliance Program. By this notice and consistent with its recently published final, modernized Process Rule, DOE requests that stakeholders and the interested public review the timetables for all active and long-term appliance rules and comment upon both the timing and categorization of these rules. The Department is also interested in any other rulemaking activities that DOE should initiate and prioritize in the upcoming Spring Agenda. Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not specifically be identified elsewhere in this document.

III. Submission of Comments

DOE invites all interested parties to submit in writing by May 15, 2020, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of the priority-setting process for all upcoming energy conservation standards and test procedure rules. Such comments and information will aid in the development of the rulemaking schedule that will next appear in DOE's Spring Regulatory Agenda.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on February 14, 2020.

Alexander N. Fitzsimmons,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2020–07721 Filed 4–14–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2018–0068]

RIN No. 2105–AE63

Traveling by Air With Service Animals

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Denial of request for extension of comment period.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is denying the requests to extend the comment period on the Department's Notice of Proposed Rulemaking (NPRM) on Traveling by Air with Service Animals. The NPRM was published in the **Federal Register** on February 5, 2020.

DATES: The closing date for comments on the NPRM published February 5, 2020 (85 FR 06448) on Traveling by Air with Service Animals is April 6, 2020.

ADDRESSES: You may review the requests to extend the public comment period and other comments received under Docket Number OST 2018–0068 through the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maegan Johnson, Senior Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, 20590, 202–366–9342, 202–366–7152 (fax), *maegan.johnson@dot.gov* (email). You may also contact Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, 20590, 202–366–9342, 202–366–7152 (fax), *blane.workie@dot.gov.*

SUPPLEMENTARY INFORMATION: On January 22, 2020, the Department announced the issuance of the NPRM on Traveling by Air with Service Animals and placed a copy of the NPRM on the Department's website at *https://www.transportation.gov/airconsumer/latest-news* and on the Federal eRulemaking Portal at *http://www.regulations.gov.* On February 5, 2020, the NPRM was published in the **Federal Register** and interested parties were asked to provide comments on or before April 6, 2020. The NPRM also stated that late-filed comments will be considered to the extent practicable.

By written request, dated March 30, 2020, U.S. Support Animals asked the Department to extend the comment period on the NPRM by an additional 90 days to July 6, 2020. U.S. Support Animals asserts that numerous individuals with concerns about the NPRM have not yet commented because they have been focusing on altering their everyday routines in response to the Coronavirus Disease 2019 (COVID–19) public health emergency. Additionally, on April 2, 2020, the American Association of Airport Executives and Airports Council International—North America jointly requested a 30-day extension of the comment period, stating that the industry is consumed with responding to the COVID–19 public health emergency and that airports need this additional time to provide meaningful and substantive feedback on the Department's proposed rule.

The Department has carefully considered the requests to extend the comment period on the NPRM, beyond the published 60-day comment period, which is longer than the generally prescribed length of the comment period for significant regulations under the Department's rules at 49 CFR 5.13(i)(3). While the Department recognizes that COVID–19 has disrupted the lives of many Americans, the Department finds that the strong interest in the timely issuance of this priority rulemaking outweighs the need to provide the public with additional time to comment. The Department also notes that it has already received thousands of comments on the NPRM since its publication, including a steady stream of comments from the public while the country is responding to the COVID–19 public health emergency. For the reasons stated above, and given that the Department intends to consider late-filed comments to the extent practicable as indicated in the NPRM, the requests to extend the comment period on the Traveling by Air with Service Animals NPRM are denied.

Issued this 6th day of April 2020, in Washington, DC under authority delegated in 49 CFR 1.27(n).

Christina G. Aizcorbe,

Deputy General Counsel.

[FR Doc. 2020–07802 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Regulatory Review Schedule

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing, systematic review of all Federal Trade Commission rules and guides, the Commission announces a modified ten-year regulatory review schedule. No Commission determination on the need for, or the substance of, the rules and guides listed below should be inferred from this notice.

DATES: April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Further details about particular rules or guides may be obtained from the contact person listed below for the rule or guide. For information about this document, please contact Jock Chung, (202) 326–2984, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To ensure that its rules and industry guides remain relevant and are not unduly burdensome, the Commission reviews them on a ten-year schedule. Each year the Commission publishes its review schedule, with adjustments made in response to public input, changes in the marketplace, and resource demands.

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need for the rule or guide, as well as the rule's or guide's costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

The Commission posts information about its review schedule on its website [1] to facilitate comment. This website contains an updated review schedule, a list of rules and guides previously eliminated in the regulatory review process, and the Commission's regulatory review plan.

Modified Ten-Year Schedule for Review of FTC Rules and Guides

For 2020, the Commission intends to initiate a review of, and solicit public comments on, the following rules:

(1) *Prohibitions on Market Manipulation Rule, 16 CFR part 317.* Agency Contact: Peter Richman, (202) 326–2563, Federal Trade Commission, Bureau of Competition, Mergers III Division, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(2) *Health Breach Notification Rule, 16 CFR part 318.* Agency Contact: Elisa Jillson, (202) 326–3001, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(3) *Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432.* Agency Contact: Jock Chung, (202) 326–2984, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(4) *Duties of Creditors Regarding Risk-Based Pricing, 16 CFR part 640.* Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(5) *Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 CFR part 641.* Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(6) *Prescreen Opt-Out Notice, 16 CFR part 642.* Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(7) *Duties of Furnishers of Information to Consumer Reporting Agencies, 16 CFR part 660.* Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(8) *Affiliate Marketing, 16 CFR part 680.* Agency Contact: Katherine White, (202) 326–2878, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(9) *Model Forms and Disclosures, 16 CFR part 698.* Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(10) *[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules, 16 CFR part 801.* Agency Contact: Robert L. Jones, (202) 326–2740, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(11) *[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules, 16 CFR part 802.* Agency Contact: Robert L. Jones, (202) 326–2740, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW, Washington, DC 20580.

(12) *[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules, 16 CFR part 803.* Agency Contact: Robert L. Jones, (202) 326–2740, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW, Washington, DC 20580.

The Commission is currently reviewing 13 of the 62 rules and guides within its jurisdiction. During 2019, it completed a review of 16 CFR 433, Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule]. A copy of the Commission's modified regulatory review schedule, indicating initiation dates for reviews through 2030, is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

Appendix

REGULATORY REVIEW MODIFIED TEN–YEAR SCHEDULE

16 CFR part	Topic	Year to initiate review
24	Guides for Select Leather and Imitation Leather Products	Currently Under Review.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	Currently Under Review.
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule].	Currently Under Review.
310	Telemarketing Sales Rule	Currently Under Review.
312	Children's Online Privacy Protection Rule	Currently Under Review.
313	Privacy of Consumer Financial Information	Currently Under Review.
314	Standards for Safeguarding Customer Information	Currently Under Review.
315	Contact Lens Rule	Currently Under Review.
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods	Currently Under Review.
436	Disclosure Requirements and Prohibitions Concerning Franchising	Currently Under Review.
453	Funeral Industry Practices	Currently Under Review.
456	Ophthalmic Practice Rules (Eyeglass Rule)	Currently Under Review.
681	Identity Theft [Red Flag] Rules	Currently Under Review.
317	Prohibition of Energy Market Manipulation Rule	2020.

[1] *http://www.ftc.gov/enforcement/rules/regulatory-review.*

REGULATORY REVIEW MODIFIED TEN–YEAR SCHEDULE—Continued

16 CFR part	Topic	Year to initiate review
318	Health Breach Notification Rule	2020.
432	Power Output Claims for Amplifiers Utilized in Home Entertainment Products	2020.
640	Duties of Creditors Regarding Risk-Based Pricing	2020.
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.
698	Model Forms and Disclosures	2020.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2020.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.
437	Business Opportunity Rule	2021.
233	Guides Against Deceptive Pricing	2022.
238	Guides Against Bait Advertising	2022.
251	Guide Concerning Use of the Word "Free" and Similar Representations	2022.
260	Guides for the Use of Environmental Marketing Claims	2022.
254	Guides for Private Vocational and Distance Education Schools	2023.
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2023.
429	Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	2023.
20	Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry	2024.
240	Guides for Advertising Allowances and Other Merchandising Payments and Services [Fred Meyer Guides].	2024.
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2024.
301	Rules and Regulations under Fur Products Labeling Act	2024.
303	Rules and Regulations under the Textile Fiber Products Identification Act	2024.
425	Use of Prenotification Negative Option Plans	2024.
435	Mail, Internet, or Telephone Order Merchandise	2024.
424	Retail Food Store Advertising and Marketing Practices [Unavailability Rule]	2024.
239	Guides for the Advertising of Warranties and Guarantees	2025.
306	Automotive Fuel Ratings, Certification and Posting	2025.
305	Energy Labeling Rule	2025.
444	Credit Practices	2025.
500	Regulations under Section 4 of the Fair Packaging and Labeling Act	2025.
501	Exemptions from Requirements and Prohibitions under Part 500	2025.
502	Regulations under Section 5(c) of the Fair Packaging and Labeling Act	2025.
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act]	2025.
700	Interpretations of Magnuson-Moss Warranty Act	2025.
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2025.
702	Pre-Sale Availability of Written Warranty Terms	2025.
703	Informal Dispute Settlement Procedures	2025.
304	Rules and Regulations under the Hobby Protection Act	2026.
455	Used Motor Vehicle Trade Regulation Rule	2026.
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2027.
682	Disposal of Consumer Report Information and Records	2027.
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2028.
311	Test Procedures and Labeling Standards for Recycled Oil	2028.
460	Labeling and Advertising of Home Insulation	2028.
316	CAN–SPAM Rule	2029.
433	Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule]	2029.

[FR Doc. 2020–07757 Filed 4–14–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. FDA–2008–P–0086]

Cheeses and Related Cheese Products; Proposal To Permit the Use of Ultrafiltered Milk; Reopening the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the proposed rule, published in the **Federal Register** of October 19, 2005, entitled ''Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk.'' The proposed rule would amend our regulations to provide for the use of fluid ultrafiltered (UF) milk in the manufacture of standardized cheeses and related cheese products. FDA is reopening the comment period to update comments and to receive any new information.

DATES: FDA is reopening the comment period on the proposed rule published on October 19, 2005 (70 FR 60751), for

which we had reopened the comment period as recently as December 30, 2019 (84 FR 71834). The reopened comment period ended on March 30, 2020. Through this document, we are reopening the comment period again. Submit either electronic or written comments by August 13, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 13, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 13, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2008–P–0086 for ''Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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.*

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: Jessie Zhao, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 2005, we proposed to amend our regulations to provide for the use of fluid UF milk in the manufacture of standardized cheeses and related cheese products. Specifically, the proposed rule, if finalized, for standardized cheeses and related cheese products, would: (1) Amend the definitions of ''milk'' and ''nonfat milk'' in § 133.3 (21 CFR 133.3) to provide for ultrafiltration of milk and nonfat milk and (2) define ultrafiltered milk and ultrafiltered nonfat milk in § 133.3 as raw or pasteurized milk or nonfat milk that is passed over one or more semipermeable membranes to partially remove water, lactose, minerals, and water-soluble vitamins without altering the casein-to-whey protein ratio of the milk or nonfat milk and resulting in a liquid product. FDA also proposed that the name of such treated milk be ''ultrafiltered milk'' or ''ultrafiltered nonfat milk,'' as appropriate. Consequently, when this type of milk is used, it would be declared in the ingredient statement of the finished food as ''ultrafiltered milk'' or ''ultrafiltered nonfat milk.''

This proposal was issued in response to citizen petitions from the American Dairy Products Institute and the National Cheese Institute, the Grocery Manufacturers of America, Inc., and the National Food Processors Association. Interested persons were originally given until January 17, 2006, to comment. We subsequently reopened the comment period to seek further comment on two specific issues raised by the comments concerning the proposed ingredient declaration (72 FR 70251, December 11, 2007); the reopened comment period was scheduled to end on February 11, 2008. In the **Federal Register** of February 11, 2008 (73 FR 7692), we extended the comment period until April 11, 2008.

In the **Federal Register** of August 14, 2017 (82 FR 37815), we announced the availability of a guidance for industry entitled ''Ultrafiltered Milk in the Production of Standardized Cheeses and Related Cheese Products.'' In the guidance, we notified manufacturers who wish to use UF milk or UF nonfat milk in the production of standardized cheeses and related cheese products of our intent to exercise enforcement discretion regarding the use of fluid UF milk and fluid UF nonfat milk in the production of standardized cheeses and related cheese products, provided that the physical, chemical, and organoleptic properties of the cheese or cheese product are not affected. We also stated our intent to exercise enforcement discretion with respect to the labeling of

fluid UF milk and fluid UF nonfat milk in recognition of the costs and logistics involved in label changes; however, we encouraged industry to identify these ingredients as ''ultrafiltered milk'' and ''ultrafiltered nonfat milk'' to the extent feasible and appropriate. We further explained that we intend to exercise enforcement discretion until we have completed a rulemaking process amending our regulations with respect to the issues covered by the guidance or announced our determination not to proceed with such a rulemaking.

In the **Federal Register** of December 30, 2019, we announced another reopening of the comment period to receive information and further comment on current industry practices regarding the use of fluid UF milk and fluid UF nonfat milk in the manufacture of standardized cheeses and related cheese products, and the declaration of fluid UF milk and fluid UF nonfat milk when used as ingredients in standardized cheeses and related cheese products. The reopened comment period ended on March 30, 2020.

Following publication of the December 30, 2019, document reopening the comment period for the proposed rule, we received requests to allow interested persons additional time to comment. In conjunction with the requests, we are providing an additional 120 days for persons to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues. Therefore, we are reopening the comment period until August 13, 2020.

Dated: April 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07749 Filed 4–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[Docket No. DOD–2019–OS–0076]

RIN 0790–AJ95

Voluntary Education Programs

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule; amendment.

SUMMARY: To ensure equity of student counseling options available to educational institutions, the Department of Defense (DoD) is proposing to amend its Voluntary Education Programs regulation to cite current law and to remove the requirement that an educational institution must have a DoD installation student population of at least 20 military students before it can be authorized access on a DoD installation that is not overseas.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Gary Schaub, 703–614–6414.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Rule

The Office of the Under Secretary of Defense for Personnel and Readiness provides policy and oversight of DoD's Voluntary Education (VolEd) Program, including the Tuition Assistance (TA) program. The VolEd program is authorized in 10 U.S.C. 2006a and 2007, and DoD policy is in DoD Instruction 1322.25, ''Voluntary Education Programs'' (last updated on July 7, 2014 and available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132225p.pdf*). The requirements for educational institutions, that each institution must sign, are provided in the companion DoD VolEd Partnership Memorandum of Understanding (MOU) (available in DoD Instruction 1322.25, Appendix to Enclosure 3; further information available at *https://www.dodmou.com/*). For the purposes of this part, an educational institution is defined as ''a college, university, or other institution of higher education.''

In accordance with the current regulation and DoD MOU, educational institutions must have a domestic DoD installation student population of at least 20 military students to request permission for access to a DoD installation that is not overseas. The policy does not apply to overseas DoD installations. Numerous institutions, using both private and public forums, have contacted the Office of the Deputy Assistant Secretary of Defense for Force Education and Training to communicate their concern over this policy inequity. The specific inequity is that currently all participating educational institutions do not have face-to-face counseling access. DoD determined that action was needed to rectify this policy inequity so that DoD policy is consistent and equitable, regardless of the type of educational institution or student population size.

Currently, 1,339 institutions of the approximately 2,700 DoD MOU educational institutions have between 1 and 19 students, meaning that they have no options for face-to-face counseling on military installations. Most institutions operating under this MOU manage their student counseling by virtual means. Removal of the 20-student requirement will ensure equity of student counseling options for all DoD MOU educational institutions. Adding a face-to-face option could change institutional processes to reflect travel or setting up local offices. However, any such process change would be entirely optional on the part of the educational institution. Acknowledging that the size of the military installation may directly impact the number of students enrolled with a given educational institution, this change will also ensure that educational institutions have the opportunity to provide equal services to all Service members, including those assigned to smaller or more remote military installations.

Accordingly, this rule proposes to amend 32 CFR part 68 (last updated on May 15, 2014 at 79 FR 27737) to remove the 20 student requirement and allow educational institutions to provide academic services at DoD installations, regardless of the number of military students enrolled at that installation.

The number of additional schools availing themselves of on-base access as a result of the proposed change is predicted to be small, as more than 80 percent of Service members receiving TA attend the 25 largest DoD MOU schools, many of which are already afforded access to military installations under the current rule. This policy change ensures that every DoD MOU educational institution is treated

equally. Installation Commanders will still retain access authority for their installation based on capacity and their available resources.

Summary of Major Provisions

DoD determined that the requirement of having a student population of at least 20 military students before an educational institution can be authorized access on a DoD installation that is not overseas should be removed in order to provide consistent treatment of educational institutions, increased availability to students, convenience and fairness to Service members, and mission tempo of the servicing DoD installation and/or education office. Each educational institution must sign a DoD VolEd Partnership MOU. Eliminating the 20-student base access requirement will afford each of these educational institutions the same opportunity to provide academic counseling and student support services, regardless of the number of military students enrolled in their programs.

Additionally, this rule proposes amendments to the Authority citations for the part to include 10 U.S.C. 2006a, as section 2006a became effective as law on August 1, 2014, after the May 2014 publication of the current version of this rule.

Legal Authority for This Program

The current rule implements the legal requirements of 10 U.S.C. 2005 and 2007 for DoD's VolEd Programs. The citation of 10 U.S.C. 2006a is also incorporated with this amendment. Below, we summarize each legal authority.

10 U.S.C. 2005—Authorizes the Secretary concerned to associate a service agreement with the provision of advanced education assistance to a Service member and to subject a Service member to repayment if the service agreement is not satisfied.

10 U.S.C. 2006a—Establishes criteria restricting the types of educational programs that DoD educational assistance may be used for and authorizes the Secretary to waive these requirements in certain circumstances.

10 U.S.C. 2007—Authorizes the Secretary of Defense to provide advanced education assistance and pay tuition for off-duty training or education of eligible members of the Armed Forces.

Regulatory History

The current rule was published in the **Federal Register** (FR) (79 FR 27732) on May 15, 2014, after a proposed rule was published in the FR (78 FR 49382) on August 14, 2013, for a 45-day public comment period. The rule implements DoD's VolEd Programs to provide Service members with opportunities to enhance their academic achievement (*i.e.,* earn a degree or certificate) during their off-duty time, which in turn, improves job performance and promotion potential. The rule also addresses uniform TA, counseling, and support services policy. Funding for VolEd Programs, including the DoD TA program, is authorized by law (10 U.S.C. 2007) and is subject to the availability of funds from each Military Department.

The original rule for DoD's VolEd Program was published in the FR (77 FR 72941) on December 6, 2012, after a proposed rule was published in the FR (75 FR 47504) August 6, 2010, for a 45-day public comment period. Executive Order (E.O.) 13607, ''Establishing Principles of Excellence for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members'', signed April 27, 2012 (available at *https://www.govinfo.gov/content/pkg/FR-2012-05-02/pdf/2012-10715.pdf*), directs the Departments of Defense, Veterans Affairs, and Education to establish Principles of Excellence to apply to educational institutions receiving funding from Federal military and veterans educational benefits programs, including benefits programs provided by the Post-9/11 GI Bill and the TA Program. A March 2011 Government Accountability Office report on the DoD TA program recommended DoD take steps to enhance its oversight of schools receiving TA funds. (Available at *http://www.gao.gov/new.items/d11300.pdf*). As a result, a DoD standardized MOU requirement was included in the rule. A MOU between DoD and an educational institution is required before participating in DoD VolEd Programs, including TA. The MOU outlines the Department's relationship with education providers to ensure that interactions with Service members are consistent with statute and applicable E.O.s. Additionally, the rule incorporates principles consistent with E.O. 13607.

Regulatory Analysis

We developed this rule amendment after considering numerous statutes and E.O.s related to rulemaking. Below, we summarize our analyses based on these statutes or E.O.s.

Regulatory Planning and Review

Executive Orders 12866, 13563, and 13771

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule amendment has been designated a ''non-significant action,'' and, accordingly, has not been reviewed by the Office of Management and Budget (OMB).

E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' This rule amendment is exempt from these requirements because it has been deemed not significant by OMB. The existing rule has costs to both the public and DoD; however, this rule amendment does not impact the costs already determined.

Costs

Although the current rule had costs of $100 million or more, this proposed rule amendment does not incur any additional cost, as this proposed rule is removing the minimum student requirement at domestic military bases of 20 military students and eliminating the possible disadvantage to military students for not receiving face-to-face academic counseling, certain educational courses, and other support services on the military installations. Neither action will increase or create a cost burden to the public.

Benefits

The rule benefits educational institutions with a population of fewer than 20 military students as it allows them to provide face-to-face academic counseling and administrative support to its students at a DoD installation, regardless of the number of its military students enrolled at that installation. This is a convenience to both educational institution and military students. Students will not have the

added cost of having to leave their military installation, spending money for gas and travel to meet with their academic advisors. Additionally, there may be cost savings to the educational institutions, as the use of military facilities will preclude the need to secure and potentially pay for adequate facilities off the military installation.

Alternatives

We have identified two alternatives:

1. No action—The current rule would stand and only schools with 20 or more military students would be permitted to access the DoD installation to counsel their military students, thus sustaining an identified policy inequity. This action would not benefit the public because educational institutions would be denied access to meet with their military students if they have less than 20 students enrolled in their institutions. Military students will have the added cost of having to leave their installation, spend money for gas, and travel to meet with their academic advisors. Educational institutions will need to secure, and potentially pay for, adequate facilities off the military installation for counseling and administrative support.

2. Next best alternative—The next best alternative is to incorporate this rule amendment into the ''full'' revision of the rule to occur at a later date. In accordance with the recommendation of the DoD Regulatory Reform Task Force, the rule has been identified as a priority for modification to increase effectiveness and improve efficiencies. The ''full'' revision is currently in the development stage. However, it will be a significant amount of time (approximately 18 months) to complete internal processes that will culminate in development of the rule. This would put military students, as well as educational institutions, at a disadvantage to not be able to meet for counseling and academic support on the military installation simply because the number of military students enrolled at the educational institution is not 20 or more.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100M or more or have certain other impacts. This rule amendment is not a major rule under the Congressional Review Act.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA), (5 U.S.C. 601)

The RFA requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this rule is not subject to the requirements of the RFA.

Public Law 104–4, Sec. 202, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140M. This rule amendment will not mandate any requirements for State, local, or tribal governments or the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule amendment does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. chapter 35).

Executive Order 13132, ''Federalism''

This rule amendment has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 68

Adult education, Armed forces, Colleges and universities, Education, Educational study programs, Government contracts, Military personnel, Student aid.

For the reasons stated in the preamble, DoD proposes to amend 32 CFR part 68 as follows:

PART 68—VOLUNTARY EDUCATION PROGRAMS

■ 1. The authority citation for part 68 is revised to read as follows:

Authority: 10 U.S.C. 2005, 2006a, 2007.

§ 68.6 [Amended]

■ 2. Section 68.6 is amended by removing paragraph (d)(2), and redesignating paragraphs (d)(3) through (6) as paragraphs (d)(2) through (5), respectively.

Dated: April 7, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–07601 Filed 4–14–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2018–OPE–0076]

RIN 1840–AD38

Distance Education and Innovation; Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed rule; correction.

SUMMARY: On April 2, 2020, the Department published in the **Federal Register** a notice of proposed rulemaking to amend the general, establishing eligibility, maintaining eligibility, and losing eligibility sections of the Institutional Eligibility regulations issued under the Higher Education Act of 1965, as amended (HEA), related to distance education and innovation. In that document, the Secretary also proposes to amend the Student Assistance General Provisions regulations issued under the HEA.

This document corrects the name, telephone number, and email address of the individual to whom postal mail, commercial delivery, or hand delivery should be addressed and to whom requests for further information should be directed.

DATES: Effective Date of Correction: April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Martin at (202) 453–7535 or *Gregory.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Corrections: In FR Document 2020–05700, appearing on page 18638 in the

Federal Register of April 2, 2020, the following corrections are made:

1. On page 18638, in the first column, in the section entitled ''*Postal Mail, Commercial Delivery, or Hand Delivery,*'' remove ''Scott Filter'' and add in its place ''Gregory Martin''.

2. On page 18638, in the second column, in the section entitled **FOR FURTHER INFORMATION CONTACT**, remove ''Scott Filter at (202) 453–7249 or *Scott.Filter@ed.gov*'' and add in its place ''Gregory Martin at (202) 453–7535 or *gregory.martin@ed.gov.*''

Program Authority: 20 U.S.C. 1001, *et seq.*

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Robert L. King,

Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2020–07893 Filed 4–14–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2020–0155; FRL–10007–62–Region 7]

Air Plan Approval; Missouri and Kansas; Determination of Attainment for the Jackson County, Missouri 1-Hour Sulfur Dioxide Nonattainment Area and Redesignation of the Wyandotte County, Kansas Unclassifiable Area to Attainment/Unclassifiable

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Jackson County, Missouri 1-hour (1-hr) Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) Nonattainment Area has attained the NAAQS and to redesignate the Wyandotte County, Kansas 1-hr SO_2 NAAQS Unclassifiable Area as Attainment/Unclassifiable. Both proposed decisions are based on air quality monitoring and modeling data.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0155 to *https://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address *casburn.tracey@epa.gov*.

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0155, at *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. What action is the EPA proposing?

The EPA is proposing to determine that the Jackson County 2010 1-hr primary SO_2 nonattainment area (hereby referred to as the ''Jackson County area''), in Missouri, has attained the 2010 1-hr primary SO_2 NAAQS.[1] This proposed determination of attainment is based on a May 2018 request (later supplemented) from the Missouri Department of Natural Resources (MoDNR) asking the EPA to consider complete, quality assured, and certified ambient air monitoring data from the 2015–2017 monitoring period and make a determination that the area has attained the 2010 1-hr primary SO_2 NAAQS.[2] [3]

The EPA is also proposing to redesignate the Wyandotte County, Kansas 1-hr SO_2 NAAQS unclassifiable area (hereinafter referred to as the ''Wyandotte County area'') to attainment/unclassifiable based on a January 2017 request from the Kansas Department of Health and Environment (KDHE).[4] The EPA's proposed redesignation of the Wyandotte County area is based on air quality dispersion modeling submitted by the KDHE and supplemented by modeling analysis from the MoDNR for the Jackson County area. The relationship between the MoDNR's modeling analysis and the Wyandotte County area is explained in more detail in the ''What is the EPA's Analysis of the Information Submitted by the States?'' and ''Connection to the Jackson County Clean Data Modeling'' sections of this document.

The EPA has made the monitoring and modeling data available in the docket to this rulemaking through *www.regulations.gov*.

III. What is the background of this action?

A. Designations

On June 2, 2010, the EPA established a health-based 1-hour primary SO_2 NAAQS at 75 ppb.[5] Upon promulgation of a new or revised NAAQS, section 107(d) of the Clean Air Act (CAA) requires the EPA to designate any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS as nonattainment.

In our final designations published on August 5, 2013, also known as Round 1 of the 2010 1-hr SO_2 NAAQS designations process, the EPA designated a portion of Jackson County, Missouri, as nonattainment for the 2010 1-hr primary SO_2 NAAQS, effective October 4, 2013.[6] [7] The designation was based on 2009–2011 monitoring data from the Troost monitor in Kansas City, Missouri, which monitored violations of the standard (see section IV. of this document for additional monitoring information). The effective date of the nonattainment designation was October 4, 2013. The CAA establishes that areas designated as nonattainment must attain the standard no later than five years from the date of designation (*i.e.,* by October 4, 2018). The MoDNR was also required to submit a State Implementation Plan (SIP) for the nonattainment area to the EPA that meets the requirements of CAA sections 110, 172(c) and 191–192 within 18 months following the October 4, 2013, effective date of designation (*i.e.,* by April 4, 2015). The MoDNR submitted the ''Nonattainment Area Plan for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard—Jackson County Sulfur Dioxide Nonattainment Area'' on October 16, 2015. The MoDNR withdrew the attainment plan, except for the baseline emissions inventory, from the EPA's consideration and review for action on June 6, 2018.[8]

In our final designations published on July 12, 2016, also known as Round 2 of the 2010 1-hr SO_2 NAAQS designations process, the EPA designated the Wyandotte County area as unclassifiable. The unclassifiable designation was based on information the KDHE provided to the EPA. The KDHE air dispersion modeling analyses indicated modeled compliance with the NAAQS. However, the modeling analyses included emission rates for sources in Missouri that weren't reflective of actual emissions or the sources' federally enforceable allowable emissions at the time of designation.[9] Based on this information, the EPA determined that it did not have enough information demonstrating whether the Wyandotte County Area was or was not meeting the 2010 1-hr SO_2 NAAQS or its impacts on the Jackson County area.

B. Clean Data Policy

Where states request a clean data determination of a designated SO_2 NAAQS nonattainment area, the EPA will determine whether an area has attained the NAAQS based on air quality monitoring data (when available) and air quality dispersion modeling information for the affected area as necessary. The EPA issued ''Clean Data'' policy memoranda for SO_2 and other NAAQS describing suspended attainment planning requirements for nonattainment areas that are attaining the NAAQS, but have not yet been redesignated to attainment.[10] [11]

[1] In accordance with appendix T to 40 CFR part 50, the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the valid 1-hour primary standard design value is less than or equal to 75 parts per billion (ppb). 40 CFR 50.17(b).

[2] In accordance with appendix T to 40 CFR part 50, a 1-hour primary SO_2 NAAQS design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.

[3] Monitoring data must be reported, quality assured, and certified in accordance with the requirements set forth in 40 CFR part 58.

[4] Designations for the 2010 1-hr SO_2 NAAQS occurred/will occur in four phases, often referred to as ''Rounds''. During Round 2 of the designations process, the EPA used the designation category ''unclassifiable/attainment'' for areas with air quality monitoring or modeling data demonstrating attainment and for areas for which such data weren't available but for which the EPA had reason to believe the areas were likely attainment and had not been determined to be contributing to nearby violations (see 81 FR 45039, July 12, 2016, page 45041 footnote 3). For Round 3 of the designations process the EPA used the designations category of ''attainment/unclassifiable'' instead of ''unclassifiable/attainment''. The EPA noted that the inversion of the order of the words ''attainment'' and ''unclassifiable'' in the amended term ''attainment/unclassifiable'' had no consequence itself, and that there were no regulatory consequences of the change in, or clarified interpretation of, the terminology applied to the areas to which the terms are applied. For consistency, the EPA also inverted the order of ''attainment'' and ''unclassifiable'' for areas previously designated in Round 2 (81 FR 45039, July 12, 2016, and 81 FR 89870, December 13, 2016). The re-ordering of the terms had no regulatory consequence and did not revisit the determinations made in Round 2 for these areas. The EPA found the change was consistent with Congress' definition of ''attainment area'' in CAA section 107(d)(1)(A)(ii) (see 83 FR 1098, January 9, 2018, page 1099).

[5] See 75 FR 35520, June 22, 2010.

[6] See 78 FR 47191, August 5, 2013, codified at 40 CFR 81.326.

[7] There are four rounds of designations for the 2010 1-hr SO_2 NAAQS. Round 1 was completed in August 2013. Round 2 was completed in July and December 2016. Round 3 was completed in January 2018. Round 4 is to be signed by the Administrator no later than December 31, 2020.

[8] See 84 FR 3703 (February 13, 2019). The EPA published a fnal rulemaking in the **Federal Register** approving the MoDNR's 172(c)(3) baseline year inventory for the Jackson County area.

[9] The submittal also indicated that a previously significant source of SO_2, the Kansas Board of Public Utilities-Quindaro location, did not need to be included in the supporting modeling because the facility switched to natural gas combustion in its boilers in 2015. The operating permit for the Quindaro facility is provided in the docket to this rulemaking.

[10] See, *e.g.,* Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' This document is available at: *http://www.epa.gov/pmdesignations/guidance.htm*.

Continued

Additionally, the EPA has issued national rulemakings that have codified this policy for ozone and fine particulate matter ($PM_{2.5}$) NAAQS.[12] Under the Clean Data Policy, the EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, such as attainment demonstrations and implementation of reasonably available control measures (including reasonably available control technology), reasonable further progress (RFP) demonstrations, and contingency measures, to be suspended as long as air quality continues to meet the standard.

In the memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' (2014 SO_2 Guidance), the EPA explained its intention to extend the Clean Data Policy to 1-hour SO_2 nonattainment areas that attained the standard. As noted therein, the legal bases set forth in the various guidance documents and regulations establishing the Clean Data Policy for other pollutants are equally pertinent to all NAAQS.[13] This proposed rule is also consistent with prior actions of the EPA applying the Clean Data Policy to two other nonattainment areas under the 2010 1-hr SO_2 NAAQS.[14]

Clean data determinations are not redesignations from nonattainment to attainment. For the EPA to redesignate a nonattainment area to attainment, a state must submit and receive full approval of a redesignation request that satisfies all of the statutory criteria for redesignation to attainment, including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions; have a fully approved SIP that meets all of the applicable requirements under CAA section 110 and CAA part D; and have a fully approved maintenance plan.

C. How does a nonattainment area achieve ''Clean Data'' for the 2010 1-hr primary SO_2 NAAQS?

Generally, the EPA relies on ambient air quality monitoring data alone in order to make determinations of attainment for areas designated nonattainment for a NAAQS. However, given the Agency's historical approach toward SO_2, the source-specific nature of SO_2 emissions, and the localized effect of those emissions, in the preamble to the 2010 1-hr primary SO_2 NAAQS rulemaking, the EPA stated that it did not expect to rely solely on monitored air quality data in all areas when determining if an area has attained the 2010 1-hr primary SO_2 NAAQS (75 FR 35551, June 22, 2010). As the EPA noted in the preamble, in order for the EPA to determine that an area is attaining the 2010 1-hr primary SO_2 NAAQS, dispersion modeling may be needed to show that there are no violating receptors even if a monitoring site showed no violations.[15] This was because, as the EPA explained in the preamble, the Agency did not expect that most existing SO_2 monitors were well sited to record maximum 1-hour ambient SO_2 concentrations under the new NAAQS. The 2014 SO_2 Guidance states that, for a nonattainment area that was designated based on air quality monitoring data to be determined as attaining the NAAQS, the state would need to meet a series of criteria. First, the state would need to demonstrate that the area is meeting the standard based on three consecutive calendar years of air quality monitoring that is complete and quality-assured (consistent with 40 CFR part 58 requirements). Second, the state would need to either (1) provide modeling of the most recent three years of actual emissions for the area or (2) provide a demonstration that the affected monitor(s) is or are in the area of maximum concentration. As explained in more detail in section (d) below, the EPA finds that it is permissible to substitute current source-specific federally enforceable and in effect allowable emissions for actual emissions for the purpose of demonstrating (1) above as long as certain requirements are met.

If a demonstration shows that the monitor(s) is or are in the area of maximum concentration, the EPA finds that it may be appropriate to determine that the nonattainment area is attaining the standard based on monitoring data alone.

The 2014 SO_2 Guidance states that, when air agencies provide monitoring and/or modeling to support clean data determinations, the monitoring data provided by the state should follow the EPA's ''SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document'' (SO_2 Monitoring TAD) and the modeling provided by the state should follow the EPA's ''SO_2 NAAQS Designations Modeling Technical Assistance Document'' (SO_2 Modeling TAD).[16] The SO_2 Modeling TAD outlines modeling approaches for characterizing air quality under the 2010 SO_2 NAAQS for designations. In the SO_2 Modeling TAD, the EPA recommends using a minimum of the most recent three years of actual emissions data, and concurrent meteorological data, so that the modeling better simulates what an ambient air monitor would observe.

D. What are the criteria to be redesignated from unclassifiable to attainment/unclassifiable?

Section 107(d)(3) of the CAA provides the framework for changing the area designations for any NAAQS pollutant.

[11] The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' provides guidance for the application of the clean data policy to the 2010 1-hr primary SO_2 NAAQS. This document is available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

[12] *See, e.g.,* 81 FR 58010, 81 FR 58127–81 FR 58129 (August 24, 2016) (promulgating 40 CFR 51.1015); 80 FR 12264, 80 FR 12296 (promulgating 51.1118). *See also* 70 FR 71612, 70 FR 71664–70 FR 71646 (November 29, 2005); 72 FR 20585, 72 FR 20603–72 FR 20605 (April 25, 2007).

[13] See court cases upholding legal basis for the EPA's Clean Data Determination Policy, *NRDC* v. *EPA,* 571 F.3d at 1258–61 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Latino Issues Forum* v. *EPA,* 315 Fed. App. 651, 652 (9th Cir. 2009).

[14] 82 FR 13227 (March 10, 2016) and 81 FR 28718 (May 10, 2016).

[15] As noted in the preamble to the 2010 1-hr primary SO_2 NAAQS (75 FR 35551, June 22 2010), this has been the EPA's general position throughout the history of implementation of the SO_2 NAAQS program. *See, e.g.,* ''Air Quality Control Regions, Criteria, and Control techniques; Attainment Status Designations,'' 43 FR 40412, 43 FR 40415–43 FR 40416 (September 11, 1978); ''Air Quality Control Regions, Criteria, and Control Techniques,'' 43 FR 45993, 43 FR 46000–43 FR 46002 (October 5, 1978); ''Air Quality Implementation Plans: State Implementation Plans; General Preamble,'' 57 FR 13498, 57 FR 13545, 57 FR 13547–57 FR 13557, 57 FR 13548 (April 16, 1992); ''Approval and Promulgation of State Implementation Plans; Call for Sulfur Dioxide SIP Revisions for Billings/Laurel, MT,'' 58 FR 41430 (August 4, 1993); ''Designation of Areas for Air Quality Planning Purposes; Ohio,'' 59 FR 12886, 59 FR 12887 (March 18, 1994); ''Ambient Air Quality Standards, National and Implementation Plans for Sulfur Oxides (Sulfur Dioxide),'' 60 FR 12492, 60 FR 12494–60 FR 12495 (March 7, 1995); ''Air Quality Implementation Plans; Approval and Promulgation: Various States: Montana,'' 67 FR 22167, 67 FR 22170–67 FR 22171, 67 FR 22183–67 FR 22887 (May 2, 2002).

[16] The EPA released earlier versions, December and May 2013, of both the modeling and monitoring TADs, as well as an earlier February 2016 version of the modeling TAD. The February 2016 version of the ''SO_2 NAAQS Designations Source-Oriented Monitoring Draft Technical Assistance Document, Office of Air Quality Planning and Standards, Air Quality Assessment Division'', can be found at *https://www.epa.gov/sites/production/files/2016-06/documents/so2monitoringtad.pdf.* The August 2016 version of the ''SO_2 NAAQS Designations Modeling Technical Assistance Document, Office of Air Quality Planning and Standards, Air Quality Assessment Division'', can be found at *https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf.* The December 2013 versions of the documents can be found in the docket to this rulemaking.

Section 107(d)(3)(A) provides that the Administrator may notify the Governor of any state that the designation of an area should be revised ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' The Act further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor's own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request.

When approving or denying a request to redesignate an area, the EPA bases its decision on the air quality data for the area as well as the considerations provided under section 107(d)(3)(A).[17] In keeping with section 107(d)(1)(A), areas that are redesignated to attainment/unclassifiable must meet the requirements for attainment areas and thus must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not meet the NAAQS.

For designations, the SO_2 Modeling TAD indicates that it is acceptable to use federally enforceable and in effect allowable emission rates instead of actual emission rates. Although past actual emissions could have been higher than those under the most recent allowable rate, the SO_2 Modeling TAD reflects the EPA's belief that it is reasonable to account for any lower allowable limits currently federally enforceable and in effect when determining if an area is attaining the NAAQS. In addition, the SO_2 Modeling TAD indicates that, where an allowable emissions limit has been lowered during the relevant three-year period (such as through the implementation of emissions controls), the air agency may rely on the new federally enforceable and in effect limit in demonstrating that the modeled limit assures attainment. In this fashion, the most recent permitted or potential to emit rate should be used along with a minimum of the most recent three years of meteorological data.[18]

The EPA finds that modeling a mix of current allowable emissions and actual emissions would be consistent with the SO_2 Modeling TAD for designations if the same type of emissions is used for each source for all three years. For instance, if a state decided to use current federally enforceable and in effect allowables for a facility in a modeling analysis, the state would need to use current allowables for all three years of the analysis for that facility. The state would not necessarily need to use current allowables for the other sources in the analysis (*i.e.,* actuals would be permissible for all three years for other sources in the area). The EPA finds this kind of analysis is sufficient for clean data determinations, which, similar to designations, use the analysis to determine whether the area is currently meeting the NAAQS. We also believe that this analysis can be used for purposes of a redesignation of an area from unclassifiable to attainment/unclassifiable, where the inquiry is also whether the area is factually attaining the NAAQS. Such redesignations are functionally similar to initial designations and are not subject to the requirements of CAA section 107(d)(3)(E), which require attainment to be due to permanent and enforceable measures and which require a demonstration that the area will maintain the NAAQS for ten years. Per the 2014 SO_2 Guidance, in redesignations of nonattainment areas to attainment, which are subject to the requirements of CAA section 107(d)(3)(E), states will be expected to use federally enforceable and in effect allowable emissions in air quality modeling.

The EPA recognizes that its 2014 SO_2 Guidance does not on its face suggest that modeling allowable emissions or a mix of allowable and actual emissions would be an acceptable alternative to modeling actual emissions in the clean data determination or redesignation of an area from unclassifiable to attainment/unclassifiable contexts. However, the Agency considers it to have been an oversight on its part not to have addressed this alternative possibility in the 2014 SO_2 Guidance, as the Agency clearly has endorsed the use of both actual emissions and allowable emissions in the SO_2 Modeling TAD in general and in the recent rounds of area designations under the SO_2 NAAQS, in contexts where, as here, the Agency is making a factual judgment about whether an area has attained the NAAQS. Moreover, the 2014 guidance also suggests that modeling of allowable emissions, combined with other information, could also be used to determine whether, after the attainment deadline has passed, areas in fact timely attained the NAAQS under CAA section 179. Therefore, although the SO_2 Nonattainment Area Guidance was silent on using allowable emissions in the clean data determination and redesignations of an area from unclassifiable to attainment/unclassifiable contexts, the EPA finds that it is not inconsistent with the guidance to endorse that practice now, provided the allowables-based modeling is conducted appropriately pursuant to the SO_2 Modeling TAD and the code of federal regulations at 40 CFR part 51, appendix W—*Guideline on Air Quality Models* (hereafter referred to as ''appendix W'') and regulations governing stack heights and dispersion techniques at 40 CFR 51.100 and 40 CFR 51.118 when applicable.

E. What information did Missouri provide to the EPA to demonstrate that the Jackson County area has attained the NAAQS?

On May 4, 2018, the MoDNR submitted a request asking the EPA to determine that the nonattainment area attained the 2010 1-hr SO_2 NAAQS per the EPA's Clean Data Policy. The request included three years of complete, quality assured, and certified ambient air monitoring data from the 2015–2017 monitoring period; the design value (dv) for 2015–2017 was 57 ppb. In a response letter, dated November 13, 2018, the EPA stated that, because the request did not include a modeling demonstration showing attainment utilizing the most recent three years of actual emissions or a demonstration that the monitor was located in the area of maximum concentration for the nonattainment area, the state's request did not contain the necessary supporting information as outlined in the EPA's 2014 SO_2 Guidance. In an emailed letter dated March 1, 2019, the state provided modeling of the most recent three years of actual emissions (2016–2018) for the nonattainment area. However, the EPA verbally expressed concern to the MoDNR regarding data used to derive the background concentration in the modeling analysis.[19] The MoDNR responded via email with an update to its modeling analysis.[20] On April 24,

[17] While CAA section 107(d)(3)(E) also lists specific requirements for redesignations, those requirements apply to redesignations of nonattainment areas to attainment and, therefore, are not applicable here.

[18] See page 10 of the August 2016 SO_2 Modeling TAD.

[19] Essentially, the MoDNR estimated days in 2016 and 2017 when a primary facility in the nonattainment area (Veolia) was burning coal in conjunction with monitored values at the design value monitor (Troost) instead of providing the actual days when the facility was burning coal. Additionally, the EPA had concerns with the background concentration of 13 parts per billion as described in the analysis and the list of sources included with actual emissions.

[20] The MoDNR updated the background concentration analysis to include actual days (not estimated days) that Veolia was burning coal in 2016 and 2017.

2019, via email, the MoDNR submitted an explanation of its interpretations of regulations and guidance, in particular its interpretations of appendix W and guidance in regard to determining background concentrations and which sources needed to be included in the clean data determination modeling analysis. The EPA continued to provide guidance to the MoDNR regarding background concentration analysis and sources to include in the model. On June 19, 2019, via email, the MoDNR submitted a revised modeling demonstration (hereafter referred to as the Jackson County clean data determination modeling) to support its request that the EPA determine the Jackson County area has attained the 2010 1-hr SO_2 NAAQS. In the Jackson County clean data determination modeling, the State adjusted its background concentration and included additional sources outside of the area in the model using actual emissions. The MoDNR submitted a correction to its June 19, 2019 modeling files on February 26, 2020. The correction ensured that the modeling files were reflective of the narrative description of how the MoDNR calculated and modeled hourly emission rates for sources that did not have Continuous Emissions Monitoring Systems (CEMS).[21] The EPA is proposing to determine that the Jackson County area has attained the NAAQS based on its review of the MoDNR's June 19, 2019, Jackson County clean data determination modeling submittal and the February 2020 correction along with the monitored ambient air data.

F. What information did Kansas provide to the EPA to demonstrate that the Wyandotte County area should be redesignated from unclassifiable to attainment/unclassifiable?

On September 17, 2015, the KDHE provided an air dispersion modeling analysis that demonstrated that the Wyandotte County Area was in attainment of the 2010 1-hr SO_2 NAAQS as part of its area designation recommendations for the Round 2 designations process.[22] [23] During the public comment period for the proposed designations, the EPA received revised modeling from Kansas City Board of Public Utilities (BPU) (hereinafter referred to as the ''BPU March 2016 modeling'') for the Wyandotte County area.[24] In its January 2017 Round 3 designations boundary recommendation submittal, the KDHE recommended that the EPA designate the Wyandotte County area as ''unclassifiable/attainment'' (we have already discussed the change in classification to ''attainment/unclassifiable'' in the ''What Action is the EPA Proposing?'' section of this document). Because the area was already designated in Round 2, the EPA had no obligation to consider the KDHE's recommendation for the Wyandotte County area at that time and instead said that it would consider the KDHE's request for redesignation in a separate action.[25] The KDHE resubmitted the BPU March 2016 modeling to the EPA in January 2017 as part of its redesignation request for the Wyandotte County area. The EPA is proposing to redesignate the Wyandotte County area based on the BPU March 2016 modeling and the MoDNR's Jackson County area clean data determination modeling (with the February 2020 correction). The BPU March 2016 modeling and the MoDNR's June 19, 2019, Jackson County clean data determination modeling (and the February 2020 correction) are described in more detail in ''What is the EPA's Rationale for Proposing this Action?'' section of this document.

G. What is the EPA's rationale for proposing this action?

i. Jackson County, Missouri

The EPA is proposing to issue a determination of attainment for the Jackson County area based on the area's 2016–2018 monitoring data at the Troost monitor and the MoDNR's June 19, 2019 updated modeling demonstration (with the February 2020 correction).[26] The 2014 SO_2 Guidance recommends that states, at a minimum, model the most recent three years of actual emissions data and concurrent meteorological data, for the modeling to simulate what a monitor would observe.

The state modeled actual emissions for all sources inside of, and 20 kilometers (km) from, the nonattainment area.[27] The modeled 3-year DV in the clean data determination modeling analysis is 113.9 $\mu g/m^3$, or 43.5 ppb, which meets the 1-hour standard of 75 ppb.[28] The model results satisfy the criteria for determinations of attainment according to the EPA's guidance and policy. See section IV.b. ''Jackson County Clean Data Modeling'' for more information regarding the EPA's analysis of the modeling submitted by the MoDNR.

ii. Wyandotte County, Kansas

The unclassifiable designation for the Wyandotte County area was based on modeling information the KDHE and the BPU provided to the EPA in 2015 and 2016. Although both air dispersion modeling analyses demonstrated that the Wyandotte County area would be in attainment with the 2010 1-hr SO_2 NAAQS based on the emissions rates used in the modeling, the EPA was not able to rely upon the analyses to designate the Wyandotte County Area as attainment/unclassifiable.

In our February 16, 2016, notice of intended designations, the EPA stated that it was not able to rely upon the September 2015 modeling analysis provided by KDHE because: Certain emission rates included in the model did not represent either the most recent three years of actual emissions or the federally enforceable and in effect allowable emission limits from sources in Missouri; a source of SO_2 emissions in Missouri was excluded—Independence Power and Light (IPL)-Blue Valley; concerns with the modeling receptor grid; and the inclusion of a stack at the BPU-Nearman facility as a building structure.[29] Specifically, the emission rates used in the modeling analysis submitted by KDHE in September 2015 for the following emission points (EP) were at issue (*e.g.,* State only limits): Veolia EP1, EP2, and EP3; IPL-Missouri City EP5 and EP6; Kansas City Power and Light (KCPL)-Sibley EP5A, EP5B and EP5C; KCPL-Hawthorn EP6 (Unit 5);

[21] As previously mentioned, the MoDNR submitted modeling on February 24, 2020 to correct the modeled actual emissions at three sources (Audubon Materials, Blue River Treatment Plant and KCPL Northeast Station). The February 24, 2020 modeling did not change the maximum modeled results from the June 19, 2019 modeling submittal. The February 2020 correction modeling data is included in the docket to this rulemaking.

[22] The modeling was performed by Trinity Consultants for the Board of Public Utilities utilizing the December 2013 version of the Modeling TAD.

[23] The highest modeled concentration of SO_2 was 160 $\mu g/m^3$ (61 ppb).

[24] Trinity Consultants prepared the revised modeling BPU March 2016 modeling utilizing the December 2013 Modeling TAD.

[25] The EPA's TSD for its Round 3 designations can be found at: *https://www.epa.gov/sites/production/files/2017-08/documents/1_2_rd3-final.pdf.*

[26] The EPA is utilizing the most current ambient monitoring data at the Troost monitor to support this action. The State's request was based on 2015–2017 data.

[27] The MoDNR also included KCP&L-Sibley, a source that is 50 km from the area, in the modeling at its most recent three years of actual emissions because it is a source of SO_2 emissions that may impact concentration gradients in the area.

[28] See section IV.b. Jackson County Clean Data Determination for more information regarding the EPA's adjusted background concentration value and impacts to the modeled maximum impact results.

[29] See 81 FR 10563, February 16, 2016.

and IPL-Blue Valley EP3, EP4, and EP5.[30]

During the public comment period, the EPA received revised modeling from BPU (the ''BPU March 2016'' modeling) for the Wyandotte County area.[31] Although the BPU March 2016 modeling submittal expanded the modeled receptor grid to include portions of Platte, Clay and Jackson counties in Missouri, added IPL-Blue Valley, removed the stack as a building structure, and included several Missouri sources at their actual emission rates instead of State only limits, the modeling continued to rely on emission rates for Veolia that were based on State only limits.[32] [33] The BPU March 2016 modeling utilized: 2013 Actual emission data for IPL-Missouri City EP5 and EP6; and IPL-Blue Valley EP3, EP4 and EP5; 3-years of CEMS data (2012–2014) for KCPL-Sibley EP5A, EP5B and EP5C and KCPL-Hawthorn EP6 (Unit 5). The KDHE resubmitted the BPU March 2016 modeling to the EPA in January 2017 as part of its redesignation request for the Wyandotte County area.

As already noted, the BPU March 2016 modeling utilized emission rates that were neither representative of the federally enforceable and in effect emission rates nor the most recent three years of actual emissions for Veolia. However, subsequent to the Round 2 designations, Missouri issued air construction permit #122016–009, effective on December 21, 2016, to Veolia limiting EP1 and EP2 to natural gas only, removing the permitted ability for EP1 to also burn fuel oil as a back-up and removing the permitted ability for EP2 to burn coal and fuel oil as a back-up.[34] [35] A title V operating permit, permit #OP2018–006, was issued in 2018. The title V operating permit included a requirement that the facility burn natural gas only in EP3-removing fuel oil as a back-up.[36] [37] [38]

With the issuance of the Veolia 2016 construction and 2018 operating permits, the emission rates used in the BPU March 2016 modeling are now conservative (*i.e.* overestimating the emission rates) in relation to the federally enforceable and in effect emission rates for that source. That is, the allowable facility-wide emissions rate used in the BPU March 2016 modeling, based on state only limits, was 352.8 pounds per hour. With the issuance of the 2016 construction permit and the 2018 operating permit, EP1, EP2 and EP3 are now limited to natural gas combustion only. The estimation of the facility-wide maximum emissions based on natural gas is 1.06 pounds per hour.[39] In the Jackson County clean data determination modeling, discussed in more detail in sections IV.b and IV.c.v of this document, Veolia was modeled using the most recent three years (2016–2018) of actual emissions which include a mixture of EP2 burning coal on some days in 2016 and 2017 and natural gas only in 2018. See table 5 in section IV.c.v. for a comparison of the BPU March 2016 model emission rates and the Jackson County clean data determination model emission rates.

Further, in the BPU March 2016 modeling, 2013 actual emissions for IPL-Blue Valley Units EP3, EP4 and EP5 were used in each of the three years modeled (2012–2014). These actual emissions reflect coal combustion, and the possibility to burn fuel oil as a back-up. In 2015, IPL-Blue Valley switched to natural gas with fuel oil as back-up.[40] The EPA proposes to find that the BPU March 2016 modeling emissions rates, based on coal (and the possibility to burn fuel oil as a back-up), are either representative of actual emissions before the switch to natural gas or conservative compared to the actual emissions from current natural gas operations (and the ability to burn fuel oil as a back-up) for the most recent three years of actual emissions and can therefore be relied upon in the analysis.[41] In the Jackson County clean data determination modeling, discussed in more detail in sections IV.b and IV.c.v of this document, IPL-Blue Valley was modeled using the most recent three years (2016–2018) of actual emissions. See table 5 in section IV.c.v. for a comparison of the BPU March 2016 model emission rates and the Jackson County clean data determination model emission rates.

The EPA also notes that it is unlikely that IPL-Blue Valley's actual emissions will increase significntly as the operating permit clearly limits the fuel for EP3, EP4 and EP5 to natural gas only with limited fuel oil backup. All of the

[30] There are several discrepancies in reference to which emission points (EPs) were modeled. A comparison of the EPs in the September 2015 modeling, the BPU March 2016 modeling, the comments submitted by BPU during the Round 2 designations process and the EPA's Round 2 final designations TSD and MoDNR permits don't all match. For example, the modeling protocol (appendix A) for the September 2015 modeling indicates that EPs at IPL Blue Valley would be included in the model but the modeling results (appendix B) don't include those EPs. Appendix A indicates Veolia EP2 (Boilers 6 and 8) only would be modeled, but appendix B indicates EP1 (Boiler 1A), EP2 (Boilers 6 and 8) and EP3 (Boiler 7) were modeled. Also, Hawthorn's Unit 5 (EP6) was referred to as Unit 6 in the EPA's Round 2 designations proposal TSD. This is believed to be a typographical error and the TSD should have referred to Unit 5 instead. Additionally, Unit 5 (EP6) is referred to as EU0010 in Hawthorn's 2017 title V operating permit.

[31] Trinity Consultants prepared the revised modeling BPU March 2016 modeling utilizing the December 2013 Modeling TAD.

[32] The BPU March 2016 modeling indicates that Veolia EP1, EP2 and EP3 were modeled at ''federally enforceable SIP limits.'' Trinity Consultants got the limits from a 2015 state rule—10 CSR 10–6.261 Control of Sulfur Dioxide Emissions, but that rule was not SIP approved when the modeling was submitted to the EPA. However, a 2013 operating permit, operating permit# OP2012–050, required EP1 and EP3 to burn natural gas with fuel oil as a back-up and limited EP2 to burn coal, natural gas and fuel oil as a back-up. A 2016 construction permit, construction permit# 122016–09, removed fuel oil as a back-up for EP1 and required EP2 to burn natural gas only as well. The ''Project Description/Emissions Calculations'' section of the construction permit states that the ''entire installation'' had not burned fuel oil since 2001. In 2018, the MoDNR issued Veolia a revised operating permit, operating permit# OP2018–06, which included EP3's removal of fuel-oil as a back-up, stating that the unit was to burn natural gas exclusively.

[33] In 2015, Missouri's rule included limits for Veolia EP1, EP2 and E3. The State submitted 10 CSR 10–6.261 to the EPA for approval into the SIP in October 2015, then withdrew the rule in April 2018 and revised it, removing Veolia (and limits for other sources) from the rule. The state resubmitted the rule for the EPA's approval in 2019. At the time of this document, the EPA has not acted on the State's request to approve the revised rule into the SIP.

[34] *https://dnr.mo.gov/env/apcp/permits/docs/veolia-kc2016cp.pdf.*

[35] The MoDNR reviewed Veolia's combustion of coal in 2016 and 2017 for compliance with the December 2016 construction permit. The permit effective date was December 21, 2016, however, it's unclear from the permit if the requirement to burn natural gas only came into effect on the effective date of the permit or the date the work specified in the permit was complete, which was January 2018. In addition, the MoDNR gave Veolia a one-year extension of the compliance date with the Boiler MACT which allowed them to burn coal until the end of January 2017. The record indicates that no coal was burned after January of 2017.

[36] *https://dnr.mo.gov/env/apcp/permits/docs/veolia-kc2018op.pdf.*

[37] It should be noted that construction permit #122016–06 indicates that fuel oil had not been burned installation wide since 2011.

[38] As noted in the ''Connection to the Jackson County Clean Data Modeling'' secion of this document, in the BPU 2016 modeling, the emissions from EP3 were modeled conservatively compared to the most recent three years of actual emissions (*i.e.* at a higher emissions rate), at a rate of 0.5 lb/hr. The Jackson County clean data determination modeling included EP3 at its actual emissions, which corresponded to modeling rates of 0.3 lb/hr, 0.3 lb/hr, and 0.1 lb/hr for 2016, 2017, and 2018, respectively. Thus, EPA can rely on the 2016 BPU modeling to determine that the Wyandotte County area is meeting the NAAQS since the BPU modeling used an hourly modeled rate greater than the hourly rate based on actual emissions from the three most recent years.

[39] With the required burning of natural gas, Veolia' facility wide potential to emit is 4.66 tons per year of SO_2.

[40] IPL-Blue Valley Station ceased coal combustion in EP5 (Unit 3) as of 4/15/2015 and in EP3 (Unit 1) and EP4 (Unit 2) as of 9/9/2015.

[41] MoDNR issued Title V operating permit number OP2017–27 (hereinafter referred to as ''OP2017–27'') to IPL-Blue Valley on March 28, 2017. The permit limits the fuel to natural gas only with fuel oil backup for EP3, EP4 and EP5.

emission units in the permit that supported coal combustion (such as coal handling equipment) have been removed from permit OP2017–27, effectively eliminating coal combustion as a fuel option at the facility.[42] In addition, the basis for the non-applicability of 40 CFR part 63, subpart UUUUU in the permit is the fact that the emission units are not coal-fired or oil-fired electric utility steam generating units. As discussed in the Statement of Basis to OP2017–27, the facility submitted a construction permit application in 2014 to cease firing coal in EP5. Missouri ultimately determined that a construction permit was not required, presumably because the project did not result in an increase in emissions that were greater than Missouri's minor New Source Review permitting thresholds, but the application signaled IPL's intent to cease burning coal for EP5. With the issuance of OP2017–27, IPL's intent to cease burning coal became memorialized in the facility's federally enforceable title V air permit.

Regarding the potential to combust fuel oil as a back-up, the source is limited to a period of less than 48-hours annually to combust fuel oil. Additionally, although noted under a requirement for particulate matter (10 10 CSR 10–6.405, *Restriction of Particulate Matter Emissions from Fuel Burning Equipment Used for Indirect Heating),* the permit states that because the source is limited to burning natural gas or fuel oil with less than 1.2 percent sulfur content, the source is in compliance with the MoDNR's particulate matter regulation. Given how few hours the facility is permitted to burn fuel oil, the facility when burning fuel oil may be treated as an intermittent source that, in accordance with EPA's intermittent source policy, need not be explicitly modeled.

Additionally, in the 2016 BPU modeling analysis IPL-Missouri City emission rates were based on actual emissions from 2013. In September 2015, the IPL-Missouri City units ceased power generation and are in the process of being demolished. Since the two IPL-Missouri City units are no longer able to operate, the EPA proposes to find that the emission rates used in BPU's modeling based on 2013 actual emissions are conservative compared to the most recent three years of actual emissions rates, and notes that actual emissions rates are likely to remain zero given that the source has ceased operation.[43] In the Jackson County clean data determination modeling, discussed in more detail in sections IV.b and IV.c.v of this document, IPL-Missouri City was modeled using the most recent three years (2016–2018) of emissions which were zero. See table 5 in section IV.c.v. for a comparison of the BPU March 2016 model emission rates and the Jackson County clean data determination model emission rates.

Therefore, the EPA is proposing that because the 2016 BPU modeling now represents the Missouri emission points—Veolia EP1, EP2, and EP3; IPL Missouri City EP5 and EP6; KCPL Sibley EP5A, EP5B and EP5C; KCPL Hawthorn EP6; and IPL Blue Valley EP3, EP4, and EP5—at either their 2013 actual emission rate (KCPL-Sibley and Hawthorn), a rate that is higher than a federally enforceable and in effect facility wide maximum emission rate or most recent three years of actual emissions, depending on the emissions unit (Veolia), or emission rates that are higher than the sources' most recent three years of actual emission rates (IPL-Blue Valley and Missouri City), in addition to the Missouri June 19, 2019 clean data determination modeling (with the February 2020 correction) clearly showing that when considering 2016–2018 actual emissions the Wyandotte County sources are not causing or contributing to a modeled violation of the NAAQS, it can now consider the BPU March 2016 modeling to redesignate the Wyandotte County Area to attainment/unclassifiable. The EPA acknowledges that the BPU March 2016 modeling was developed using an earlier version of the Modeling TAD, however, the EPA proposes to find that the changes at issue in the update to the TAD should not impact reliability of the modeling.[44] The EPA's analysis of the BPU March 2016 modeling is provided in the ''What is the EPA's Analysis of the Air Quality Monitoring and Modeling Data?'' section of this document.

IV. What is the EPA's analysis of the air quality monitoring and modeling data?

A. Monitoring Data

According to the 2014 SO_2 Guidance, to support a clean data determination based on monitoring, the State needs to demonstrate that the area is meeting the standard based on three consecutive calendar years of complete and quality-assured air quality monitoring data (consistent with 40 CFR part 58 requirements) at an air quality monitor that is demonstrated to be in the area of maximum concentration. The EPA has determined that three complete consecutive calendar years of quality-assured air quality monitoring data from the Troost (Jackson County, Missouri) and JFK (Wyandotte County, Kansas) monitors have been recorded in the EPA's Air Quality System (AQS), and the data meets the requirements of appendix T to 40 CFR part 50 and 40 CFR part 58. This data suggests improved air quality in both areas. As shown below in table 1, the 99th percentile 1-hour average (in ppb) and 3-year dv at the Troost and JFK monitors has decreased since 2013 and do not show violations of the 2010 1-hr primary SO_2 NAAQS. The certified 3-year 2016–2018 dv for the Jackson County area is 11 ppb; the certified 3-year 2016–2018 dv for the Wyandotte County area is 7 ppb.

However, MoDNR did not submit a demonstration showing that the Troost monitor is in the area of maximum concentration. Thus, the monitoring data on its own is not enough to support a clean data determination in this case, and, as such, the MoDNR submitted modeling to support the clean data determination.

[42] In a letter dated December 24, 2014, the MoDNR told IPL-Blue Valley that it recommended the coal handling equipment be dismantled or otherwise permanently disabled upon the cease firing of coal, such that coal cannot be fired. The installation should report the nature and extent of the actions performed and their date. The letter states that even if coal handling equipment was not rendered inoperable, a construction permit would be required prior to firing coal. The installation's coal delivery contract expires December 31, 2014 and there are no plans to renew it.

[43] The title V Operating Permit for IPL-Missouri City was terminated on January 31, 2018. In the event IPL-Missouri were to try and start operation, they would need to submit a major New Source Review permit application.

[44] The 2016 TAD update addressed receptor exclusion and clarified that, at minimum, 3 years of meteorological data and emissions data need to be modeled. Both these changes do not affect the BPU modeling.

TABLE 1—99TH PERCENTILE 1-HOUR AVERAGE IN PARTS PER BILLION (PPB) AND 3-YEAR DESIGN VALUE AT THE TROOST AND JFK MONITORS

[2013–2018]

Monitor	Site name	2013	2014	2015	2016	2017	2018	2016–2018 design value
29–095–0034	Troost	156	125.2	142	9.4	18.4	6.1	11
20–209–0021	JFK	45	55.1	37.6	9.6	5.5	6.1	7

B. Jackson County Clean Data Modeling

As noted earlier, the 2014 SO_2 Guidance states that, for the EPA to make a clean data determination, the State may need to submit information in addition to monitoring data if the area was designated nonattainment based on air quality monitoring data. In June 2019, the MoDNR submitted the Jackson County clean data determination modeling and updated the modeling information in February 2020.[45] The EPA reviewed the modeling data to determine consistency with the EPA's Clean Data Policy, the 2014 SO_2 Guidance, and the August 2016 SO_2 Modeling TAD. The EPA reviewed the submittal to determine if the appropriate meteorological data, background concentration, building downwash data, source characteristics, and emissions data were utilized.

i. Meteorological Data

The MoDNR elected to use the most recent three-year period (2016–2018) of meteorological data as measured at a spatially and temporally representative National Weather Service airport site. The MoDNR utilized the Kansas City Downtown Airport (KC Airport), which is located less than 1 kilometer to the north of the nonattainment area and provides similar land-use and meteorological characteristics for surface data, and the Topeka Regional Airport (Topeka Airport) site for upper air data. The meteorological data from the time period of 2016–2018 was processed using AERMET (version 18081), with the ADJ_U* option, and paired with the emissions data as discussed below using the AERMOD modeling system.[46] [47] Although appendix W and the 2014 SO_2 Guidance suggest that a state use five years of meteorological data from an NWS site, the August 2016 Modeling TAD suggests that at a minimum a state should utilize three years of meteorological data. Because a clean data determination for the 1-hr SO_2 NAAQS would look at monitoring data over a 3-year timeframe, the EPA is proposing to determine that the utilization of three years of meteorological data from these sites was sufficient for the clean data determination modeling demonstration.

ii. Background Concentration

The MoDNR used 2016–2018 SO_2 monitoring data from the JFK air quality monitor paired with wind direction data from the KC Airport to determine the appropriate background concentration. The MoDNR utilized the Openair package within the R-software to plot monitored 1-hr SO_2 emissions paired with temporally matching 1-hr wind direction data. The MoDNR determined that the 180 to 260-degree sector of the JFK monitor, represents the area that is the least impacted by emission sources that were explicitly modeled.[48] The MoDNR obtained all hourly SO_2 monitoring data when winds were blowing from this sector and calculated the 99th percentile of hourly concentrations for each year. However, the State did not use the 99th percentile of yearly maximum hourly daily concentrations in its background sector analysis. The EPA corrected the State's background analysis to fit the form of the 1-hr standard (*e.g.,* 3-yr year average of the 99th percentile of the annual maximum 1-hr daily concentration) and determined that the sector base background would be 3.2 ppb. Table 2 provides the results from this analysis.

TABLE 2—JFK MONITOR'S 99TH PERCENTILE SO_2 CONCENTRATION WITHIN 180–260 DEGREES WIND SECTORS

Year	180–260 degrees wind sectors 99th percentile concentration (ppb)
2016	4.1
2017	2.9
2018	2.7
Average	3.2

The average of the three-year 99th percentiles (3.2 ppb) was determined to be the appropriate background value. The EPA proposes to determine that the background value of 3.2 ppb is appropriate and comports with appendix W and the 2014 SO_2 Guidance.

iii. Source Characteristics

The EPA reviewed the MoDNR's source characterization used in its modeling demonstration, including source types, stack heights, and stack exit temperatures and velocities. The EPA is proposing to determine MoDNR's source characterization was consistent with the recommendations of appendix W and the 2014 SO_2 Guidance. The State modeled all stacks at their actual stack heights, following the 2014 SO_2 Guidance, which states, ''Consistent with previous SO_2 modeling guidance (U.S. EPA, 1994) and section 6.2.2 of appendix W, for stacks with heights that are within the limits of Good Engineering Practice (GEP), actual heights should be used in modeling.'' [49]

iv. Emissions Data

The MoDNR modeled the 2016–2018 SO_2 emissions for every permitted source of emissions located inside the nonattainment area and within 20 km of the nonattainment area. The MoDNR also modeled a source (KCPL Sibley) located within 50 km of the

[45] The MoDNR's submittal included 2016–2018 emissions data. The submittal includes tables of the sources included in the model and the emission rates used in the model. This information is provided in the docket.

[46] The MoDNR used AERMOD version 18081, the most recent version of AERMOD with ADJ_U*, which is a regulatory option for version 18081.

[47] See the state's modeling demonstration, provided in the docket to this action, for model selection information (*i.e.,* receptor grid selection).

[48] Given the locations/distribution of the sources that were explicitly modeled, 180–260 is an acceptable range to ensure the monitor is least impacted by the modeled sources. A 90-degree sector is used to determine the area of impact on a source. Given the location of BPU-Nearman to the NE of the JFK monitor and numerous sources to the SE of the monitor, the 180–260 sector to determine background is appropriate.

[49] U.S. EPA, 1994: SO_2 Guideline Document. EPA–452/R–95–008. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

nonattainment area because its SO_2 emissions were over 1,000 tons/year.

The MoDNR characterized the emissions from the sources in the modeling inventory in three ways: (1) Veolia burning coal or natural gas; (2) sources with CEMS data, and (3) sources without CEMS (other than Veolia).

For the Veolia facility, the MoDNR performed an analysis to temporally allocate its actual emissions during the 2016 and 2017 modeling periods.[50] The MoDNR asserted that this was necessary to capture the effect of switching from coal to natural gas on EP2, as required by the current operating permit (MO OP2018–006) and a 2016 construction permit (MO 122016–009). The emission inventory questionnaire (EIQ) submitted to the MoDNR by Veolia showed that it was still burning coal in EP2 during a few days in 2016 and 2017, with all other days burning natural gas.[51] Since the EIQ did not specify the dates when the facility was still burning coal, the MoDNR contacted the facility to obtain those dates with coal usage. The MoDNR temporalized the coal annual emissions to hourly emissions based on those days. For example, during 2017, EP2 operated using coal on nine days and the MoDNR assumed coal combustion on each hour for the nine days (216 hours). The MoDNR divided the 2017 annual emissions (173.90 tons) by 216 hours and multiplied the result by 2,000 to obtain the hourly emissions in pounds per hour (1,610.15 lbs./hour). The MoDNR then created an hourly emission file to account for the coal emissions where each of the 216 hours of 2017 emission year was assigned 202.88 grams per second (grams/sec) and the remaining 8,544 hours were assigned zero grams/sec. In addition, the remaining 8,544 hours of operation for EP2 in 2017 were modeled assuming natural gas combustion (0.30 lb/hr).

For all sources that have CEMS installed, the MoDNR obtained the actual hourly varying SO_2 emissions from EPA's Clean Air Market's Division (CAMD) and modeled those emissions.

For sources without CEMS data, with the exception of Veolia, the MoDNR determined each sources' highest actual annual emissions during years 2016, 2017 and 2018. The MoDNR used the highest annual emissions in the AERMOD input files for years 2016–2018. The MoDNR determined the hourly emissions for each of the modeled source facilities by dividing its highest annual emissions by the number of actual operational hours to determine a representative operational emission rate. The MoDNR then used this operational hourly emission rate as the emission input for all hours of the year for the three-year period.[52] Thus, the State modeled an hourly emission rate even for hours where there were no actual operations. As explained further below, this approach likely models slightly higher total annual emissions than the actual annual emissions.

The EPA is proposing to determine that the modeled source inventory was both created and characterized in accordance with the 2014 SO_2 Guidance and the 2016 SO_2 Modeling TAD. The August 2016 Modeling TAD recommends utilizing hourly CEMS data in modeling analyses for the purpose of designations or clean data determinations. The MoDNR has done this for sources with CEMS. The August 2016 Modeling TAD says that in the absence of CEMS data, simply dividing the annual emissions by the number of hours in the year (8,760) is not an accurate representation of actual emissions for sources that experience emissions rate variability throughout the year and should not be used. The EPA is proposing to determine that by using the highest annual emissions from 2016–2018 for the sources without CEMS, other than Veolia, and then dividing that number by the number of operational hours the hourly emissions input is acceptable. The EPA is proposing that the MoDNR adequately assessed the 2016 and 2017 Veolia emissions on the few days when burning coal and that the characterization of Veolia's 2016–2018 emissions is acceptable. Also, as mentioned above in the ''What Are the Criteria to be Redesignated from Unclassifiable to Attainment/Unclassifiable?'' section of this document, the EPA has determined that it is appropriate to model a mix of allowable and actual emissions.

v. Results

The maximum modeled impact from the June 19, 2019 Jackson County clean data determination modeling (with the February 2020 correction) was 113.9 μg/m^3, or 43.5 ppb.[53] The modeling scenario with the EPA's adjusted background is 115.1 μg/m^3 or 44 ppb, which meets the 1-hour standard of 75 ppb. The maximum modeled impact was located to the southeast of Veolia, caused on the modeled days when coal was combusted at Veolia.

The EPA proposes that the model results, along with monitored values below the NAAQS at the Troost Street monitor for the same time period, satisfies the criteria for clean data according to the EPA's guidance. Certified and quality assured 2018 air quality monitoring data is indicative of a substantial improvement in SO_2 air quality in the nonattainment area; the design value for 2016–2018 is 11 ppb. The MoDNR's monitoring data, technical modeling analysis and supplemental information all support EPA's proposed determination, consistent with its Clean Data Policy, that the nonattainment area has clean data and warrants a determination of attainment.

C. Wyandotte County Redesignation Modeling

As previously noted, the KDHE submitted the BPU March 2016 modeling as an appendix to its January 2017 Round 3 designations submittal. Because the Wyandotte County area was already designated in Round 2, the EPA had no obligation to consider the KDHE's recommendation during Round 3 and instead stated that it would consider the KDHE's request for redesignation in a separate action. This section describes the EPA's review of the BPU March 2016 modeling data submitted to the EPA by the KDHE in January 2017 and the EPA's reasoning for proposing to determine that the Wyandotte County area is attaining the 1-hour SO_2 NAAQS and to redesignate the Wyandotte County area to attainment/unclassifiable. Also as previously noted, the BPU March 2016 modeling was completed in accordance with the December 2013 Modeling TAD.[54] [55]

[50] Veolia is not required to operate a CEMS.

[51] As previously mentioned, the MoDNR reviewed Veolia's combustion of coal in 2016 and 2017 for compliance with the December 2016 construction permit. The permit effective date was December 21, 2016, however, it's unclear from the permit if the requirement to burn natural gas only came into effect on the effective date of the permit or the date the work specified in the permit was complete, which was January 2018. In addition, the MoDNR gave Veolia a one-year extension of the compliance date with the Boiler MACT which allowed them to burn coal until the end of January 2017. The record indicates that no coal was burned after January of 2017.

[52] During the EPA's review of modeling files submitted with the June 19, 2019 Jackson County clean data determination submittal, it noticed that the files did not reflect the State's narrative of using the highest annual emissions from 2016–2018. In February 2020, the State submitted corrected emissions files. The June 2019 and the February 2020 emission files are available in the docket to this rulemaking.

[53] MoDNR submitted modeling on February 24, 2020 to correct the modeled actual emissions at threes sources (Audubon Materials, Blue River Treatment Plant and KCPL Northeast Station). The February 24, 2020 modeling did not change the maximum modeled results from the June 19, 2019 modeling submittal.

[54] A side-by-side comparison of the December 2013 and August 2016 Modeling TADs is available in the docket to this rulemaking. The August 2016

i. Meteorological Data

The BPU March 2016 modeling used AERMOD's meteorological data preprocessor AERMET (version 14134) with 2012–2014 surface meteorological data from the KC Airport (referred to as the Charles B. Wheeler Downtown Airport in the modeling document) and upper air meteorological data from the NWS upper-air balloon station, located in Topeka, Kansas. Although appendix W, the 2014 SO_2 Guidance and the December 2013 Modeling TAD (as well as the August 2016 Modeling TAD) suggest that a state use 5 years of meteorological data from a NWS site (or at least one year of on-site meteorological data) for SIP development, this redesignation is not a redesignation from nonattainment to attainment, therefore no SIP was required from the KDHE for maintenance. The Modeling TAD indicates that for designations a minimum of three years of meteorological data should be used. Redesignations from unclassifiable to attainment/unclassifiable are a factual determination of whether the area is attaining the NAAQS, much like an initial designation. As such, the EPA believes utilization of 3 years of meteorological data from these sites is sufficient for this analysis.

ii. Background Concentration

Upon request from the KDHE, the BPU March 2016 modeling used a 1-hour SO_2 background concentration of 13 ppb. At the time of the BPU model's development, the MoDNR adopted an attainment plan for the Jackson County area (subsequently withdrawn from the EPA). In the now-withdrawn attainment SIP, the MoDNR described its background concentration analysis which it shared with the KDHE. In its background concentration analysis, the MoDNR obtained 2010–2012 monitoring data from the JFK monitor. The MoDNR ran back trajectories using a HYSPLIT model for monitored values above 10 ppb, 15 ppb, and 20 ppb. From the back-trajectory analysis, a sector with little to no influence from Missouri or Kansas SO_2 sources was chosen to represent background concentrations; the sector with the least source influence was at 180–200 degrees. Once a representative sector was a chosen, the highest monitoring values from that sector were evaluated. The 2010–2012 fourth high hourly monitored SO_2 value in the representative sector was 13 ppb. Therefore, a SO_2 concentration of 13 ppb was used as the modeled background concentration for the MoDNR's Jackson County SO_2 area planning purposes, was shared with the KDHE, and used in the BPU March 2016 modeling. A discussion of the background concentrations used in the Jackson County CDD modeling and the BPU March 2016 modeling is provided in the ''Connection to the Jackson County Clean Data Modeling'' section of this document.

The EPA proposes to determine that the background value of 13.0 ppb is appropriate and comports with appendix W, the 2014 SO_2 Guidance and the Modeling TAD.

iii. Source Characteristics

The EPA reviewed the BPU March 2016 source characterization used in its modeling demonstration, including source types, stack heights, and stack exit temperatures and velocities. The EPA is proposing to determine BPU's source characterization was consistent with the recommendations of appendix W and the 2014 SO_2 Guidance. BPU modeled all stacks at their actual stack heights, following the 2014 SO_2 Guidance, which says, ''Consistent with previous SO_2 modeling guidance (U.S. EPA, 1994) and section 6.2.2 of Appendix W, for stacks with heights that are within the limits of Good Engineering Practice (GEP), actual heights should be used in modeling.''

iv. Emissions Data

In the BPU March 2016 model, BPU-Nearman, KCP&L-Sibley EP5A, EP5B and EP5C, and KCP&L-Hawthorn Unit 5 (EP6) were included using 2012–2014 CEMS data. Each of the IPL (Missouri City and Blue Valley) emission points were modeled using their 2013 actual emissions. These 2013 actual emissions reflect coal combustion at IPL-Blue Valley and IPL-Missouri City, and since IPL-Missouri City has shut down and IPL-Blue Valley has switched to natural gas, the EPA proposes to find that the modeled emissions rates based on coal is conservative compared to the most recent three years of actual emissions from natural gas operations and shutdown and can therefore be relied upon in the analysis.

Table 3 provides annual SO_2 emissions for the major point sources in the area. Actual emissions have been reduced in 2018 at every major source compared to the 2012–2014 timeframe used in the BPU 2016 modeling. SO_2 emissions at these major point sources are down 83 percent from the highest emission year of 2013 (28,241 tons per year) to 2018 (4,738 tons per year). In addition, 2013 actual emissions used for modeled emissions at IPL-Blue Valley and IPL-Missouri City are the highest annual emissions at these two sources in the 2012–2018 timeframe. These two sources reported zero SO_2 emissions in 2018. Thus, EPA finds the modeled emissions from 2012–2014 for BPU-Nearman, KCP&L-Sibley EP5A, EP5B and EP5C, KCP&L-Hawthorn EP6 (Unit 5), and the 2013 emissions assuming coal combustion for IPL-Blue Valley and shutdown of IPL-Missouri City acceptable.

In the BPU March 2016 modeling, Veolia emission points EP1, EP2 and EP3 were modeled at 0.50, 351.8 and 0.50 lbs/hr of SO_2, respectively. The modeled Veolia rates are conservative to the permitted requirement to burn natural gas, and the 2016–2018 actual emissions modeled in the Jackson County clean data determination modeling. The EPA is proposing to determine that the emission rates used in the BPU March 2016 modeling comport with the Modeling TAD.

TABLE 3—MAJOR INDIVIDUAL POINT SOURCE SO_2 EMISSIONS (TONS PER YEAR) IN WYANDOTTE COUNTY, KANSAS, JACKSON COUNTY, MISSOURI AND CLAY COUNTY, MISSOURI

	2012	2013	2014	2015	2016	2017	2018
Veolia	6,702	7,934	7,782	7,343	25	175	1
Nearman	4,612	4,928	5,333	4,763	2,439	904	1,023
Blue Valley	1,295	1,487	998	229	1	0	0
Sibley	6,095	6,218	4,847	7,630	3,604	4,162	2,616

version identifies that the Data Requirements Rule was finalized, and that the EPA proposed to revise Appendix W, among other changes.

[55] The BPU March 2016 modeling was performed using AERMOD version 15181 which was the most recent version of AERMOD when the state initited the modeling analysis during Round 2. The EPA has issued three updated versions of AERMOD (version 19191 is the latest), but the model bug fixes and enhancements since the 15181 version are not expected to change the results of the modeling conducted with AERMOD version 15181.

TABLE 3—MAJOR INDIVIDUAL POINT SOURCE SO_2 EMISSIONS (TONS PER YEAR) IN WYANDOTTE COUNTY, KANSAS, JACKSON COUNTY, MISSOURI AND CLAY COUNTY, MISSOURI—Continued

	2012	2013	2014	2015	2016	2017	2018
Hawthorn	1,577	1,728	1,441	1,368	1,043	1,180	1,089
Quindaro	2,758	2,905	3,684	853	27	1	8
Missouri City	684	741	0	723			

v. Connection to the Jackson County Clean Data Modeling

A background value of 13 ppb was utilized in the BPU March 2016 modeling and an adjusted background value of 3.2 ppb was used in the Jackson County CDD modeling. Although the background concentrations were determined using the same analysis method (*i.e.,* sector exclusion analysis) the numbers are significantly different. The EPA has found this is likely due to the difference in years used in the analysis, 2012–2014 in the BPU March 2016 modeling vs. 2016–2018 in the Jackson County CDD modeling. The 2016–2018 years reflect a significant reduction in SO_2 emissions in both the Wyandotte and Jackson County areas since 2012. Table 4 shows the total point source SO_2 emission reductions from 2012–2018.

TABLE 4—POINT SOURCE SO_2 EMISSIONS (TONS PER YEAR) WYANDOTTE COUNTY, KANSAS AND JACKSON COUNTY, MISSOURI

State	County	2012	2013	2014	2015	2016	2017	2018
KS	Wyandotte	7,401	7,860	9,038	5,634	2,481	922	1,051
MO	Jackson	19,115	19,762	16,307	19,673	4,832	5,686	4,282
Total		26,516	27,622	25,345	25,308	7,313	6,608	5,333

The BPU March 2016 model had a receptor grid that included the Jackson County area, as well as portions of Platte and Clay counties in Missouri in addition to Wyandotte County, Kansas.

The BPU March 2016 modeling included all the large SO_2 emitters in Missouri, except for Veolia, at their actual emissions. In some cases, these emissions were much higher than the more recent actual emissions used by the MoDNR in its Jackson County clean data determination modeling. For example, the BPU March 2016 modeling included the IPL-Missouri City emission points at their 2013 actual emissions, however that source has since shut down and, as such, they were not included in the Jackson County clean data determination modeling. BPU-Nearman was included in the BPU March 2016 modeling at its 2012–2014 CEMS rate but was included at a much lower rate, 2016–2018 CEMS rate, in the Jackson County clean data determination modeling.

As previously discussed in this document, during the Round 2 designations, the EPA found that because the BPU March 2016 modeling included Veolia at emission rates that were neither federally enforceable and in effect nor reflective of the facility's most recent three years of actual emissions, it could not rely on the modeling to designate the Wyandotte County area. Subsequently, Missouri issued construction and operating permits to Veolia that limit the emission points to burning natural gas. Therefore, the Veolia emission rates used in the BPU March 2016 modeling are now higher than the maximum emission rates of natural gas combustion and higher than the 2016–2018 actual emission modeled in the Jackson County clean data determination modeling. These actual emissions included periods of time when Veolia was still burning coal—a practice that is no longer permitted. A comparison of the BPU March 2016 modeled emission rates and the Jackson County clean data determination modeled emission rates is given in table 5.

TABLE 5—MODEL INPUT COMPARISON

Model input	BPU March 2016 model	Jackson County CDD model
AERMOD Version	15181	18081
Meteorological Data	2012–2014	2016–2018
Background concentration	13 ppb	3.2 ppb.
BPU-Nearman	2012–2014 CEMS	2016–2018 CEMS.
Veolia		
EP1	0.5 lb/hr	= <0.12 lb/h.
EP2	351.8 lb/hr	= <0.30 lb/hr [1].
EP3	0.5 lb/hr	= <0.30 lb/hr.
IPL Missouri City		
EP5	2013 actual 220.4 lb/hr	Shutdown.
EP6	2013 actual 0.1 lb/hr	Shutdown.
IPL Blue Valley		
EP3	2013 actual 193.4 lb/hr	0.006 lb/hr.
EP4	2013 actual 224.6 lb/hr	0.004 lb/hr.
EP5	2013 actual 340.3 lb/hr	0.009 lb/hr.
KCP&L Sibley		

TABLE 5—MODEL INPUT COMPARISON—Continued

Model input	BPU March 2016 model	Jackson County CDD model
EP5A	2012–2014 CEMS	2016–2018 CEMS.
EP5B	2012–2014 CEMS	2016–2018 CEMS.
EP5C	2012–2014 CEMS	2016–2018 CEMS.
Hawthorn		
EP6	2012–2014 CEMS	2016–2018 CEMS.
Modeling Results	49.24 ppb	43.47 ppb.

[1] In addition to this modeled actual SO_2 emissions from natural gas, EP2 was also modeled with actual SO_2 emissions for the days Boiler 8 burned coal.

With a higher background concentration, higher modeled emissions from both Kansas and Missouri sources, the BPU March 2016 modeling demonstrates that the Wyandotte County area is attaining the standard. The BPU March 2016 modeling also demonstrates that the Wyandotte County area is not contributing to a modeled violation of the NAAQS in the nearby Jackson County area, which, as explained in III.g. ''What is the EPA's Rationale for Proposing This Action?'', the EPA is proposing to determine the Jackson County area is currently attaining the standard based on Missouri's June 2019 clean data determination modeling including the Veolia emission points at actual emissions from 2016–2018.

vi. Results

The maximum modeled impact from the BPU March 2016 model scenario, with the 34 μg/m³ (13 ppb) background included, is 163 μg/m³ or 62 ppb which complies with the 1-hour standard of 75 ppb. This maximum modeled concentration is located to the southeast of BPU-Nearman in Wyandotte County, Kansas. The BPU March 2016 modeling as well as the KDHE's monitoring data for the JFK monitoring location, the MoDNR's monitoring data for the Troost monitoring location and the MoDNR's Jackson County clean data determination modeling support the EPA's proposed determination that the area does not contribute to a violation of the NAAQS in the Jackson County area (which the MoDNR has demonstrated is monitoring and modeling attainment of the standard) and warrants a redesignation from unclassifiable to attainment/unclassifiable.

Note: Due to their large size, some or all modeling data files may not be available in the docket (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. When promulgated, what are the effects of this action?

A. Jackson County, Missouri

If the proposed determination is made final, the requirements for the MoDNR to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the 2010 1-hr primary SO_2 NAAQS in Jackson County shall be suspended until such time, if any, that the EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2010 1-hr primary SO_2 NAAQS. If this were to occur, the basis for the suspension of the specific SIP requirements would no longer exist, and the State would thereafter have to address the pertinent requirements. If finalized, this determination of attainment would not shield the area from other required actions, such as provisions to address pollution transport, which could require emission reductions at sources or other types of emission activities contributing significantly to nonattainment in other areas or states or interfering with maintenance in those areas. The EPA has the authority to require emissions reductions as necessary and appropriate to deal with transported air pollution situations. See CAA sections 110(a)(2)(D), 110(a)(2)(A), and 126.

If, after considering any comments received on this proposal, the EPA finalizes a clean data determination for this area, the MoDNR would need to continue to monitor and/or model air quality to verify continued attainment. The MoDNR would be expected to continue to operate an appropriate air quality monitoring network in the affected area, in accordance with the EPA regulations, to verify the attainment status of the area (see 40 CFR part 58).

This proposed clean data determination is limited to a determination that the Jackson County area attained the 2010 1-hr primary SO_2 NAAQS as evidenced by the MoDNR's monitoring data and modeling analysis; this proposed determination, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Jackson County area will remain nonattainment for the 2010 1-hr primary SO_2 NAAQS until such time as the MoDNR submits an approvable redesignation request and maintenance plan, and the EPA takes final rulemaking action to determine that such submission meets the CAA requirements for redesignation to attainment.

B. Wyandotte County, Kansas

If finalized, approval of the redesignation request would change the legal designation of Wyandotte County, found at 40 CFR part 81, from unclassifiable to attainment/unclassifiable for the 2010 1-hr SO_2 NAAQS. The KDHE's SIP obligations are unaffected by this redesignation.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality monitoring data and modeling and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements.

With regard to the redesignation portion of this action, under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the air quality designation status of geographical areas and does not impose any regulatory requirements. For these reasons, this proposed 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 it is not a significant regulatory action 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

This action does not 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 action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Clean data determination, Determination of attainment, Incorporation by reference, Redesignation, Reporting and recordkeeping requirements, Sulfur Dioxide.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: March 31, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR parts 52 and 81 as set forth below:

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—AA Missouri

■ 2. In § 52.1343, revise paragraph (b) to read as follows:

§ 52.1343 Control strategy: Sulfur dioxide.

* * * * *

(b) *Determination of attainment.* EPA has determined, as of [date of publication of the final rule in the **Federal Register**], that the Jackson County 2010 SO_2 nonattainment has attained the 2010 SO_2 1-hr NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 2010 SO_2 1-hr NAAQS.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 4. In § 81.317, the table titled ''Kansas—2010 Sulfur Dioxide NAAQS [Primary]'' is amended by revising the entry ''Wyandotte County, KS'' to read as follows:

§ 81.317 Kansas.

* * * * *

KANSAS—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
* *	* * * * *	*
Wyandotte County, KS	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Attainment/ Unclassifiable.
* *	* * * * *	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2020–07143 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R05–OW–2019–0705; FRL–10007–93–Region 5]

Request for Comments on Michigan Underground Injection Control Class II Program Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) gives public notice that the EPA has received a complete application from the State of Michigan requesting federal authorization for its Underground Injection Control (UIC) Program for wells that are used only to inject fluids associated with oil and natural gas production, known as Class II injection wells. EPA has determined the application contains all the required elements. EPA approval of this application would allow the Michigan Department of Environment, Great Lakes, and Energy to regulate all Class II injection wells in Michigan except for those on ''Indian lands.'' See the **ADDRESSES** section for information on how to access the application documents. Public comments are requested, and a public hearing is scheduled.

DATES: Comments will be accepted on or before June 5, 2020. A public hearing will be held before that date. For additional information regarding the public hearing, please see the **SUPPLEMENTARY INFORMATION** section or contact Anna Miller, UIC Section, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; telephone number: (312) 886–7060; email address: *miller.anna@epa.gov*.

ADDRESSES: You may send comments, identified by Agency Docket ID No. EPA–R05–OW–2019–0705, by any of the following methods:

- *Federal Portal (our preferred method): https://www.regulations.gov/docket?D=EPA-R05-OW-2019-0705.* Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency Region 5, UIC Section, WP–16J, ATTN: Michigan Class II Application Docket, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: All submissions received must include the Docket ID Number, EPA–R05–OW–2019–0705. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal or confidential business information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anna Miller, UIC Section, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; telephone number: (312) 886–7060; email address: *miller.anna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

The State of Michigan has submitted an application pursuant to section 1425 of the Safe Drinking Water Act and 40 CFR part 147 to regulate Class II injection wells in the State. EPA approval of this application would allow the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to regulate all Class II injection wells in Michigan except for those on ''Indian lands.''

EPA has determined that the application is complete because it contains all of the requirements including: A letter from the Governor requesting program approval; a complete description of the State Underground Injection Control program; a statement of legal authority; a memorandum of agreement between the State of Michigan and the EPA, Region 5; and copies of all applicable rules and forms. This notice is not an EPA decision or action to approve or disapprove the application; EPA is requesting comments on the application prior to making a decision to approve or disapprove the application.

II. Documents for Review

Publicly available docket materials are available electronically in *www.regulations.gov/docket?D=EPA-R05-OW-2019-0705.* Materials are also available in hard copy at the following location: EGLE Lansing office at Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909, during business hours and subject to any office closures. Contact Mark Snow at (517) 230–8233 or at *SnowM@Michigan.gov* for more information.

III. Public Participation

A. Written comments

Submit your comments, identified by Docket ID No. EPA–R05–OW–2019–0705, at *https://www.regulations.gov* or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

B. Public Hearing

A public hearing has been scheduled for those who wish to deliver comments orally. The hearing is scheduled for May 27, 2020 at the Kirtland Community College Event Center, 4800 W Four Mile Road, Grayling, MI 49738, from 6:30 p.m. to 9:30 p.m. local time.

Note: EPA may change the format and time for the May 27 hearing to virtual and regular business hours if appropriate to protect public health in the face of Coronavirus Disease 2019 (COVID 19) risks. EPA will publish notice of any such change on or before May 20, 2020 exclusively at: *https://www.epa.gov/uic/underground-injection-control-epa-region-5-il-mi-mn-oh-and-wi#public-notices.*

EPA will make every effort to accommodate all speakers who register to speak. The EPA will not respond to the oral comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically or in hard copy form.

Dated: April 8, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–07818 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–10006–54]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (February 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as i prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR [part 174 and/or part 180] for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Amended Tolerances for Non-Inerts

1. PP 9E8790. (EPA–HQ–OPP–2019–0651). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requests to amend 40 CFR 180.418 by removing the established tolerances for residues of zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate), including its metabolites and degradates, measuring only total cypermethrin, cyano(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate, in or on the following raw agricultural commodities: Berry group 13 at 0.8 parts per million (ppm); Borage, seed at 0.2

ppm; Brassica, head and stem, subgroup 5A at 2.00 ppm; Brassica, leafy greens, subgroup 5B at 14.00 ppm; Cabbage at 2.00 ppm; Castor oil plant, seed at 0.2 ppm; Chinese tallowtree, seed at 0.2 ppm; Cilantro, leaves at 10 ppm; Cotton, undelinted seed at 0.5 ppm; Crambe, seed at 0.2 ppm; Cuphea, seed at 0.2 ppm; Echium, seed at 0.2 ppm; Euphorbia, seed at 0.2 ppm; Evening primrose, seed at 0.2 ppm; Flax, seed at 0.2 ppm; Fruit, citrus, group 10 at 0.35 ppm; Fruit, pome, group 11 at 2 ppm; Fruit, stone, group 12 at 1 ppm; Gold of pleasure, seed at 0.2 ppm; Grape at 2 ppm; Hare's-ear mustard, seed at 0.2 ppm; Jojoba, seed at 0.2 ppm; Lesquerella, seed at 0.2 ppm; Lunaria, seed at 0.2 ppm; Meadowfoam, seed at 0.2 ppm; Milkweed, seed at 0.2 ppm; Mustard, seed at 0.2 ppm; Niger, seed at 0.2 ppm; Nut, tree, group 14 at 0.05 ppm; Oil radish, seed at 0.2 ppm; Okra at 0.2 ppm; Onion, bulb at 0.10 ppm; Onion, green at 3.00 ppm; Pea and bean, dried shelled, except soybean subgroup 6C at 0.05 ppm; Pea and bean, succulent shelled, subgroup 6B at 0.1 ppm; Pecan at 0.05 ppm; Pistachio at 0.05 ppm; Poppy, seed at 0.2 ppm; Rapeseed at 0.2 ppm; Rose hip, seed at 0.2 ppm; Safflower, seed at 0.2 ppm; Sesame, seed at 0.2 ppm; Stokes aster, seed at 0.2 ppm; Sunflower, seed at 0.2 ppm; Sweet rocket, seed at 0.2 ppm; Tallowwood, seed at 0.2 ppm; Tea oil plant, seed at 0.2 ppm; Turnip, greens at 14 ppm; Vegetable, fruiting, group 8 at 0.2 ppm; Vegetable, leafy, except brassica, group 4 at 10.00 ppm; Vegetable, legume, edible podded, subgroup 6A at 0.5 ppm; Vernonia, seed at 0.2 ppm. Contact: RD.

2. PP 9E8812. (EPA–HQ–OPP–2020–0054). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requests to amend 40 CFR 180.242 by removing the established tolerances for residues of thiabendazole (2-(4-thiazolyl)benzimidazole), including its metabolites and degradates, in or on the following raw agricultural commodities: Potato, postharvest at 10.0 parts per million (ppm); Sweet potato (postharvest to sweet potato intended only for use as seed) at 0.05 ppm; Alfalfa, forage at 0.02 ppm; Alfalfa, hay at 0.02 ppm; Radish, tops at 0.02 ppm; Brassica, head and stem, subgroup 5A at 0.02 ppm; Fruit, citrus, group 10, postharvest at 10.0 ppm; Fruit, pome, group 11, postharvest at 5.0 ppm; Vegetable, root (except sugarbeet), subgroup 1B at 0.02 ppm; Carrot, roots, postharvest at 10.0 ppm; and in paragraph (b) Sweet potato at 10 ppm. Contact: RD.

3. PP 9F8810. (EPA–HQ–OPP–2020–0064). Syngenta Crop Protection, LLC 410 Swing Road, Greensboro, NC 27409, requests to amend the tolerance in 40 CFR 180.505 for residues of the insecticide, emamectin benzoate, 4'-epi-methylamino- 4'-deoxyavermectin B1 benzoate (a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B1a and a maximum of 10% 4'-epi-methlyamino-4'deoxyavermectin B1b benzoate), and its metabolites 8,9 isomer of the B1a and B1b component of the parent insecticide in or on the raw agricultural commodity tea leaves at 0.2 parts per million (ppm). HPLC/FLD Method 244–92–3 is used to measure and evaluate the chemical parent compound and its delta 8,9-photoisomer. Contact: RD.

New Tolerance Exemptions for Inerts (Except PIPs)

PP IN–11305. (EPA–HQ–OPP–2019–0570). Stepan Company, c/o Spring Trading Company, 203 Dogwood Trail, Magnolia, TX 77354, requests to establish an exemption from the requirement of a tolerance for residues of N,N-dimethyl-9-dodecenamaide (CAS Reg. No. 1374570–57–6), when used as an inert ingredient in pesticide formulations under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

New Tolerance Exemptions for PIPs

PP 9F8785. (EPA–HQ–OPP–2019–0627). Pioneer Hi-Bred International, Inc. (Pioneer), 7100 NW 62nd Avenue, P.O. Box 1000, Johnston, Iowa, 50131, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) Pseudomonas chlororaphis IPD072Aa protein in or on maize. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance without numerical limitation is requested for IPD072Aa protein as expressed in maize, this section of the petition is not applicable. Contact: BPPD.

New Tolerances for Non-Inerts

1. PP 9E8790. (EPA–HQ–OPP–2019–0651). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.418 by establishing tolerances for residues of zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate), including its metabolites and degradates, measuring only total cypermethrin, cyano(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate, in or on the following raw agricultural commodities Basil, fresh leaves at 7 parts per million (ppm); Basil, dried leaves at 40 ppm, Onion, bulb, subgroup 3–07A at 0.1 ppm; Onion, green, subgroup 3–07B at 3 ppm; Leafy greens subgroup 4–16A at 10 ppm; Leaf petiole vegetable subgroup 22B at 10 ppm; Brassica, leafy greens, subgroup 4–16B at 14 ppm; Vegetable, brassica, head and stem, group 5–16 at 2 ppm; Vegetable, fruiting, group 8–10 at 0.2 ppm; Fruit, citrus, group 10–10 at 0.35 ppm; Fruit, pome, group 11–10 at 2 ppm; Fruit, stone, group 12–12 at 2 ppm; Caneberry subgroup 13–07A at 0.8 ppm; Bushberry subgroup 13–07B at 0.8 ppm; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2 ppm; Nut, tree, group 14–12 at 0.05 ppm; Rapeseed subgroup 20A at 0.2 ppm; Sunflower subgroup 20B at 0.2 ppm; Cottonseed subgroup 20C at 0.5 ppm; Kohlrabi at 2 ppm; Celtuce at 10 ppm; Fennel, Florence, fresh leaves and stalk at 10 ppm; Quinoa, grain at 3 ppm; Quinoa, hay at 6 ppm; Quinoa, straw at 20 ppm; Teff, forage at 3 ppm; Teff, grain at 0.2 ppm; Teff, hay at 6 ppm; Teff, straw at 7 ppm; individual crops of proposed Crop Subgroup 6–18A: Edible podded bean legume vegetable subgroup at 0.7 ppm including French bean, edible podded; Garden bean, edible podded; Green bean, edible podded; Scarlet runner bean, edible podded; Snap bean, edible podded; Kidney bean, edible podded; Navy bean, edible podded; Wax bean, edible podded; Asparagus bean, edible podded; Catjang bean, edible podded; Chinese longbean, edible podded; Cowpea, edible podded; Moth bean, edible podded; Mung bean, edible podded; Rice bean, edible podded; Urd bean, edible podded; Yardlong bean, edible podded; Goa bean, edible podded; Guar bean, edible podded; Jackbean, edible podded; Lablab bean, edible podded; Vegetable soybean, edible podded; Sword bean, edible podded; Winged pea, edible podded; Velvet bean, edible podded; individual crops of proposed Crop Subgroup 6–18B: Edible podded pea legume vegetable subgroup at 0.7 ppm including Dwarf pea, edible podded; Edible podded pea, edible podded; Green pea, edible podded; Snap pea,

edible podded; Snow pea, edible podded; Sugar snap pea, edible podded; Grass-pea, edible podded; Lentil, edible podded; Pigeon pea, edible podded; Chickpea, edible podded; individual crops of proposed crop subgroup 6–18C: Succulent shelled bean subgroup at 0.7 ppm including Lima bean, succulent shelled; Scarlet runner bean, succulent shelled; Wax bean, succulent shelled; Blackeyed pea, succulent shelled; Moth bean, succulent shelled; Catjang bean, succulent shelled; Cowpea, succulent shelled; Crowder pea, succulent shelled; Southern pea, succulent shelled; Andean lupin, succulent shelled; Blue lupin, succulent shelled; Grain lupin, succulent shelled; Sweet lupin, succulent shelled; White lupin, succulent shelled; White sweet lupin, succulent shelled; Yellow lupin, succulent shelled; Broad bean, succulent shelled; Jackbean, succulent shelled; Goa bean, succulent shelled; Lablab bean, succulent shelled; Vegetable soybean, succulent shelled; Velvet bean, succulent shelled; individual crops of proposed Crop Subgroup 6–18D: Succulent shelled pea subgroup at 0.7 ppm including Chickpea, succulent shelled; English pea, succulent shelled; Garden pea, succulent shelled; Green pea, succulent shelled; Pigeon pea, succulent shelled; Lentil, succulent shelled; individual crops of proposed Crop Subgroup 6–18E: Dried shelled bean, except soybean subgroup at 0.05 ppm including African yam-bean, dry seed; American potato bean, dry seed; Andean lupin bean, dry seed; Blue lupin bean, dry seed; Grain lupin bean, dry seed; Sweet lupin bean, dry seed; White lupin bean, dry seed; White sweet lupin bean, dry seed; Yellow lupin bean, dry seed; Black bean, dry seed; Cranberry bean, dry seed; Dry bean, dry seed; Field bean, dry seed; French bean, dry seed; Garden bean, dry seed; Great northern bean, dry seed; Green bean, dry seed; Kidney bean, dry seed; Lima bean, dry seed; Navy bean, dry seed; Pink bean, dry seed; Pinto bean, dry seed; Red bean, dry seed; Scarlet runner bean, dry seed; Tepary bean, dry seed; Yellow bean, dry seed; Adzuki bean, dry seed; Blackeyed pea, dry seed; Asparagus bean, dry seed; Catjang bean, dry seed; Chinese longbean, dry seed; Cowpea, dry seed; Crowder pea, dry seed; Mung bean, dry seed; Moth bean, dry seed; Rice bean, dry seed; Southern pea, dry seed; Urd bean, dry seed; Yardlong bean, dry seed; Broad bean, dry seed; Guar bean, dry seed; Goa bean, dry seed; Horse gram, dry seed; Jackbean, dry seed; Lablab bean, dry seed; Morama bean, dry seed; Sword bean, dry seed; Winged pea, dry seed; Velvet bean, seed, dry seed; Vegetable soybean, dry seed; individual crops of proposed Crop Subgroup 6–18F: Dried shelled pea subgroup at 0.05 ppm including Field pea, dry seed; Dry pea, dry seed; Green pea, dry seed; Garden pea, dry seed; Chickpea, dry seed; Lentil, dry seed; Grass-pea, dry seed; Pigeon pea, dry seed. There is a practical analytical method for detecting and measuring levels of zeta-cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD). Contact: RD.

2. PP 9E8794. (EPA–HQ–OPP–2019–0641). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.431 by establishing the tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid in or on the raw agricultural commodities Onion, bulb, subgroup 3–07A at 0.4 parts per million (ppm); Caneberry subgroup 13–07A at 0.1 ppm; Wheatgrass, intermediate, bran at 12 ppm; Wheatgrass, intermediate, forage at 9 ppm; Wheatgrass, intermediate, germ at 12 ppm; Wheatgrass, intermediate, grain at 3 ppm; Wheatgrass, intermediate, middling at 12 ppm; Wheatgrass, intermediate, shorts at 12 ppm; Wheatgrass, intermediate, straw at 9 ppm. EPA has determined adequate analytical methods are available for enforcement purposes for clopyralid in plant and animal matrices. Contact: RD.

3. PP 9E8797. (EPA–HQ–OPP–2019–0639). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.339 by establishing tolerances for residues of the herbicide MCPA ((4-chloro-2-methylphenoxy)acetic acid), both free and conjugated, resulting from the direct application of MCPA or its sodium or dimethylamine salts, or its 2-ethylhexyl ester in or on the following agricultural commodities: Wheatgrass, intermediate, forage at 20 parts per million (ppm); Wheatgrass, intermediate, grain at 1 ppm; Wheatgrass, intermediate, hay at 115 ppm; Wheatgrass, intermediate, straw at 25 ppm; and an import tolerance for Tea, plucked leaves at 0.3 ppm. For enforcement of tolerances for residues of MCPA, an enforcement analytical method designated as PAM Vol. II have been submitted and are deemed adequate for the enforcement of MCPA on plants and livestock commodities. Contact: RD.

4. PP 9E8806. (EPA–HQ–OPP–2020–0066). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of benzovindiflupyr (N-[9-(dichloromethylene)-1,2,3,4-tetrahydro-1,4-methanonaphthalen-5-yl]-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide) in or on the raw agricultural commodities Blueberry, lowbush at 2 parts per million (ppm) and Ginseng at 0.3 ppm. Method GRM042.03A and GRM042.04A for plant products have been developed to determine parent SYN545192 and its metabolite SYN546039 (and conjugates) with a limit of quantification (LOQ) of 0.01 mg/kg for both analytes. Contact: RD.

5. PP 9E8812. (EPA–HQ–OPP–2020–0054). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540 requesting, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.242 by establishing tolerances for residues of thiabendazole (2-(4-thiazolyl)benzimidazole), including its metabolites and degradates, in or on the following raw agricultural commodities: Vegetable, tuberous and corm, subgroup 1C, except sweet potato at 10 parts per million (ppm), Sweet potato, tuber at 2 ppm; Brassica, leafy greens, subgroup 4–16B at 0.01 ppm; Animal feed, nongrass, group 18 at 0.01 ppm; Vegetable, Brassica, head and stem, group 5–16 at 0.01 ppm; Fruit, citrus, group 10–10 at 10 ppm, Fruit, pome, group 11–10 at 5 ppm, Vegetable, root, except sugar beet, subgroup 1B, except carrot at 0.01 ppm and Carrot, roots at 10 ppm. The Pesticide Analytical Manual (PAM) Vol. II lists four spectrophotofluorometric methods (Methods I, A, B and C) for determining residues of thiabendazole per se in or on plant commodities, and one spectrophotofluorometric method (Method D) for determining residues of thiabendazole and 5-hydroxythiabendazole in milk. Contact: RD.

6. PP 8F8725. (EPA–HQ–OPP–2020–0045). Bayer CropScience, 800 N. Lindbergh Blvd. St. Louis, MO 63167, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide indaziflam in or on crop group 17 (Grass Forage, Fodder, and Hay Group) grass forage at 30 parts per million (ppm) and grass hay at 10 ppm; in sugarcane, cane at 0.01 ppm; and for animal fat, meat, meat by-products, milk, and milk fat at: 0.07, 0.01, 0.2, 0.01, and 0.25 ppm respectively. The high pressure liquid chromatography/triple stage quadrupole mass spectrometry (LC/MS/MS) method is used to measure and evaluate the chemical indaziflam. Contact: RD.

7. PP 9F8795. (EPA–HQ–OPP–2020–0065). E.I. du Pont de Nemours & Company (''DuPont''), Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805, requests to establish a tolerance in 40 CFR part 180 for residues of the nematicide, fluazaindolizine in or on Carrots at 15 ppm; Cucurbit Vegetables (Crop Group 9) at 3 ppm; Fruiting Vegetables (Crop Group 8–10) at 3 parts per million (ppm); Sun dried tomatoes at 30 ppm; Tomato paste at 15 ppm; Tomato puree at 6 ppm; Tomato wet pomace at 6 ppm; Tuberous and Corm Vegetables (Crop Subgroup 1C) at 9 ppm; Dried potato at 30 ppm; Potato process waste at 40 ppm; and establishing tolerances for residues of fluazaindolizine plus its metabolites IN–QEK$_{PEQ}$ and IN–F4106$_{PEQ}$, in the animal commodities: Cattle, whole milk at 0.5 ppm; Cattle, fat at 0.09 ppm; Cattle, muscle at 0.02 ppm; Cattle, liver at 0.2 ppm; Cattle, kidney at 0.5 ppm; Goat, whole milk at 0.5 ppm; Goat, fat at 0.09 ppm; Goat, muscle at 0.02 ppm; Goat, liver at 0.2 ppm; Goat, kidney at 0.5 ppm; Hog, whole milk at 0.5 ppm; Hog, fat at 0.09 ppm; Hog, muscle at 0.02 ppm; Hog, liver at 0.2 ppm; Hog, kidney at 0.5 ppm; Horse, whole milk at 0.5 ppm; Horse, fat at 0.09 ppm; Horse, muscle at 0.02 ppm; Horse, liver at 0.2 ppm; Horse, kidney at 0.5 ppm; Sheep, whole milk at 0.5 ppm; Sheep, fat at 0.09 ppm; Sheep, muscle at 0.02 ppm; Sheep, liver at 0.2 ppm; Sheep, kidney at 0.5 ppm. In addition, DuPont is proposing pursuant to section 408(d) of the Federal Food, Drug and cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish indirect or inadvertent tolerances for residues of fluazaindolizine, including its metabolites and their conjugates, expressed as the stoichiometric equivalent of fluazaindolizine, in or on the following commodities: Brassica Head and Stem Vegetables (Crop Group 5–16) at 0.5 ppm; Bulb Vegetables (Crop Group 3–07) at 3 ppm; Cereal Grains (Crop Group 15) at 3 ppm; Corn milled by-products at 6 ppm; Foliage of Legume Vegetables (Crop Group 7), Vines at 8 ppm; Foliage of Legume Vegetables (Crop Group 7), Forage and Straw at 5 ppm; Foliage of Legume Vegetables (Crop Group 7), Hay at 40 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Fodder at 4 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Forage at 8 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Hay at 15 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Straw at 10 ppm; Fruiting Vegetables (Crop Group 8–10) at 1 ppm; Grain, Aspirated Fractions at 0.5 ppm; Grass, Forage, Fodder and Hay (Crop Group 17), Forage at 8 ppm; Grass, Forage, Fodder and Hay (Crop Group 17), Hay at 15 ppm; Leafy Vegetables (Crop Group 4–16) at 9 ppm; Leaves of Root and Tuber (Crop Group 2) at 15 ppm; Legume Vegetables (Crop Group 6), Mature Seed at 9 ppm; Legume Vegetables (Crop Group 6), Immature Seed and Pod at 3 ppm; Low Growing Berry (Crop Subgroup 13–07G) at 0.6 ppm; Nongrass animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Fodder at 5 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Forage at 8 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Hay at 15 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Straw at 10 ppm; Oilseed (Crop Group 20) at 9 ppm; Oilseed (Crop Group 20), Forage and Straw at 5 ppm; Root Vegetables (Crop Subgroup 1A) at 7 ppm; Root Vegetables Except Sugar Beet (Crop Subgroup 1B) at 7 ppm; Soybean Hulls at 20 ppm; Soybean Meal at 20 ppm; Stalk, Stem and Leaf Petiole Vegetables (Crop Group 22) at 3 ppm; Strawberry, Dehydrated at 3 ppm; Wheat Milled By-Products at 6 ppm. The LC/MS/MS system operating with an electrospray interface (ESI) operating in both positive and negative polarities is used to measure and evaluate the chemical fluazaindolizine. Contact: RD.

8. PP 9F8796. EPA–HQ–OPP–2020–0068. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528, requests to establish tolerance in 40 CFR part 180 for residues of the fungicide mefentrifluconazole (BAS 750 F); 2-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-1-(1H–1,2,4-triazole-1-yl)propan-2-ol] in or on the raw agricultural commodities berry, low growing, subgroup 13–07G at 2 parts per million (ppm); bushberry, subgroup 13–07B at 5 ppm; caneberry, subgroup 13–07A at 3 ppm; cattle, fat at 0.8 ppm; cattle, kidney at 0.6 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.07 ppm; cattle, meat byproducts at 1.5 ppm; cotton, gin byproducts at 10 ppm; cottonseed subgroup 20C at 0.2 ppm; egg at 0.01 ppm; goat, fat at 0.8 ppm; goat, kidney at 0.6 ppm; goat, liver at 1.5 ppm, goat; meat at 0.07 ppm; goat, meat byproducts at 1.5 ppm; grass, crop group 17, forage at 50 ppm; grass, crop group 17, hay at 100 ppm; hog, fat at 0.02 ppm; hog, kidney at 0.03 ppm; hog, liver at 0.03 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.03 ppm; horse, fat at 0.8 ppm, horse; kidney at 0.6 ppm; horse, liver at 1.5 ppm; horse, meat at 0.07 ppm; horse, meat byproducts at 1.5 ppm; melon subgroup 9A at 0.5 ppm; milk at 0.09 ppm; milk fat at 2.4 ppm; non-grass animal feed, forage, crop group 18 at 15 ppm; non-grass animal feed, hay, crop group 18 at 40 ppm; onion, bulb, subgroup 3–07A at 0.2 ppm; onion, green, subgroup 3–07B at 4 ppm; poultry, fat at 0.015 ppm; poultry, liver at 0.01 ppm; poultry, meat at 0.015 ppm; poultry, meat byproducts at 0.015 ppm; sheep, fat at 0.8 ppm; sheep, kidney at 0.6 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.07 ppm; sheep, meat byproducts at 1.5 ppm; squash/cucumber subgroup 9B at 0.15 ppm, sugarcane, cane at 1.5 ppm; sunflower subgroup 20B at 0.15 ppm; tomato, dried at 5 ppm; vegetable, leafy, except brassica, crop group 4–16 at 30 ppm; vegetables, fruiting, crop group 8–10 at 0.9 ppm; vegetable, leaves of root and tuber, crop group 2 at 20 ppm; and vegetable, root, except sugar beet, subgroup 1B at 0.7 ppm. The independently validated method (L0295/01, based on the QuEChERS method) was used for analyzing residues of BAS 750 F with appropriate sensitivity and selectivity in all crops and processed commodities. Two independently validated methods (L0272/01 and L0309/01) have been submitted for analyzing residues of BAS 750 F and its metabolite M750F022 (and conjugates) in animal commodities with appropriate sensitivity and selectivity, to measure and evaluate the chemical mefentrifluconazole. Contact: RD.

9. PP 9F8799. (EPA–HQ–OPP–2020–0118) [Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604, requests to establish a tolerance in 40 CFR part 180 for residues of the nematicide, Fluensulfone, in or on soy bean seeds at 0.1 parts per million (ppm), soybean forage at 7.0 ppm and soybean hay at 20.0 ppm. High-Performance Liquid Chromatograph-Mass Spectrometer (LC–

MS/MS) is used to measure and evaluate the residues of the parent fluensulfone and residues of the metabolites, sulfonic acid in non-fatty matrices. Contact: RD.

Authority: 21 U.S.C. 346a.

Dated: March 12, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–07806 Filed 4–14–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409 and 413

[CMS–1737–P]

RIN 0938–AU13

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2021. The proposed rule includes proposals to make changes to the case-mix classification code mappings used under the SNF PPS and to make two minor revisions in the regulation text. This proposed rule also includes a proposal to adopt the recent revisions in Office of Management and Budget (OMB) statistical area delineations. The proposed rule also includes proposals for the Skilled Nursing Facility Value-Based Purchasing (VBP) Program that affects Medicare payment to SNFs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 9, 2020.

ADDRESSES: In commenting, please refer to file code CMS–1737–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1737–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1737–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Penny Gershman, (410) 786–6643, for information related to SNF PPS clinical issues.

Anthony Hodge, (410) 786–6645, for information related to consolidated billing, and payment for SNF-level swing-bed services.

John Kane, (410) 786–0557, for information related to the development of the payment rates and case-mix indexes, and general information.

Kia Sidbury, (410) 786–7816, for information related to the wage index.

Lang Le, (410) 786–5693, for information related to the skilled nursing facility value-based purchasing program.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the internet on the CMS website. The wage index tables for this proposed rule can be accessed on the SNF PPS Wage Index home page, at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Sidbury at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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I. Executive Summary

A. Purpose

This proposed rule would update the SNF prospective payment rates for fiscal year (FY) 2021 as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication of certain specified information relating

to the payment update (see section II.C. of this proposed rule) in the **Federal Register**, before the August 1 that precedes the start of each FY. As discussed in section IV.E. of this proposed rule, it would also make two minor revisions in the regulation text. This proposed rule also proposes changes to the code mappings used under the SNF PPS for classifying patients into case-mix groups. This proposed rule also includes a proposal to update the OMB delineations used to identify a facility's status as an urban or rural facility and to calculate the wage index. This proposed rule also proposes updates to the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP). There are no proposals or updates in this proposed rule related to the Skilled Nursing Facility Quality Reporting Program (SNF QRP).

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2020 (84 FR 38728). In this proposed rule, we propose to adopt the most recent OMB delineations, which are used to identify a provider's status as being either an urban or rural facility and to calculate the provider's wage index. This proposed rule also includes two proposed revisions to the regulations text. This proposed rule also includes proposed revisions to the International Classification of Diseases, Version 10 (ICD–10) code mappings used under PDPM to classify patients into case-mix groups.

Additionally, we are proposing a few technical updates to our SNF VBP regulations but are not making any substantive proposals for that program.

C. Summary of Cost and Benefits

TABLE 1—COST AND BENEFITS

Provision description	Total transfers
Proposed FY 2021 SNF PPS payment rate update.	The overall economic impact of this proposed rule is an estimated increase of $784 million in aggregate payments to SNFs during FY 2021.
Proposed FY 2021 SNF VBP changes.	The overall economic impact of the SNF VBP Program is an estimated reduction of $199.54 million in aggregate payments to SNFs during FY 2021.

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their health information. The Office of the National Coordinator for Health Information Technology (ONC) and CMS work collaboratively to advance interoperability across settings of care, including post-acute care.

To further interoperability in post-acute care settings, CMS continues to explore opportunities to advance electronic exchange of patient information across payers, providers and with patients, including developing systems that use nationally recognized health IT standards such as the Logical Observation Identifiers Names and Codes (LOINC), the Systematized Nomenclature of Medicine (SNOMED), and the Fast Healthcare Interoperability Resources (FHIR). In addition, CMS and ONC established the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with industry stakeholders to develop FHIR standards that could support the exchange and reuse of patient assessment data derived from the minimum data set (MDS), inpatient rehabilitation facility patient assessment instrument (IRF–PAI), long term care hospital continuity assessment record and evaluation (LCDS), outcome and assessment information set (OASIS) and other sources.

The Data Element Library (DEL) continues to be updated and serves as the authoritative resource for PAC assessment data elements and their associated mappings to health IT standards. The DEL furthers CMS' goal of data standardization and interoperability. These interoperable data elements can reduce provider burden by allowing the use and exchange of healthcare data, support provider exchange of electronic health information for care coordination, person-centered care, and support real-time, data driven, clinical decision making. Standards in the Data Element Library (*https://del.cms.gov/DELWeb/pubHome*) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2020 ISA is available at *https://www.healthit.gov/isa.*

In the September 30, 2019 **Federal Register**, CMS published a final rule, ''Medicare and Medicaid Programs; Revisions to Requirements for Discharge Planning'' (84 FR 51836) (''Discharge Planning final rule''), that revises the discharge planning requirements that hospitals (including psychiatric hospitals, long-term care hospitals, and inpatient rehabilitation facilities), critical access hospitals (CAHs), and home health agencies, must meet to participate in Medicare and Medicaid programs. The rule supports CMS' interoperability efforts by promoting the exchange of patient information between health care settings, and by ensuring that a patient's necessary medical information is transferred with the patient after discharge from a hospital, CAH, or post-acute care services provider. For more information on the Discharge planning requirements, please visit the final rule at *https://www.federalregister.gov/documents/2019/09/30/2019-20732/medicare-and-medicaid-programs-revisions-to-requirements-for-discharge-planning-for-hospitals.*

II. Background on SNF PPS

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105–33, enacted August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physicians' services) for which payment may otherwise be made under Part B and which are furnished to Medicare

beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf.*

Section 215(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted April 1, 2014) added section 1888(g) to the Act requiring the Secretary to specify an all-cause all-condition hospital readmission measure and an all-condition risk-adjusted potentially preventable hospital readmission measure for the SNF setting. Additionally, section 215(b) of PAMA added section 1888(h) to the Act requiring the Secretary to implement a VBP program for SNFs. Finally, section 2(c)(4) of the IMPACT Act amended section 1888(e)(6) of the Act, which requires the Secretary to implement a QRP for SNFs under which SNFs report data on measures and resident assessment data.

B. Initial Transition for the SNF PPS

Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the federal case-mix adjusted rate. The transition extended through the facility's first 3 cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2020 (84 FR 38728).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** the following:

- The unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this proposed rule would provide the required annual updates to the per diem payment rates for SNFs for FY 2021.

III. Proposed SNF PPS Rate Setting Methodology and FY 2021 Update

A. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the federal rates also incorporated a Part B add-on, which is an estimate of the amounts that, prior to the SNF PPS, would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case mix. In compiling the database used to compute the federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA 1997 prescribed, we set the federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

B. SNF Market Basket Update

1. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we revised and rebased the market basket index, which included updating the base year from FY 2010 to 2014.

The SNF market basket index is used to compute the market basket percentage change that is used to update the SNF federal rates on an annual basis, as required by section 1888(e)(4)(E)(ii)(IV) of the Act. This market basket percentage update is adjusted by a forecast error correction, if applicable, and then further adjusted by the application of a productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act and described in section III.B.4. of this proposed rule. For FY 2021, the growth rate of the 2014-based SNF market basket is estimated to be 2.7 percent, based on the IHS Global Insight, Inc. (IGI) first quarter 2020 forecast with historical data through fourth quarter 2019, before the multifactor productivity adjustment is applied.

In section V.A. of this proposed rule, we discuss the 2 percent reduction applied to the market basket update for those SNFs that fail to submit measures data as required by section 1888(e)(6)(A) of the Act.

2. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the federal rates set forth in this proposed rule, we use the percentage change in the SNF market basket index to compute the update factor for FY 2021. This factor is based on the FY 2021 percentage increase in the 2014-based SNF market basket index reflecting routine, ancillary, and capital-related expenses. In this proposed rule, the SNF market basket percentage is estimated to be 2.7 percent for FY 2021 based on IGI's first quarter 2020 forecast (with historical data through fourth quarter 2019).

3. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003 final rule (68 FR 46057 through

46059), § 413.337(d)(2) provides for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent FYs. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058), the adjustment will reflect both upward and downward adjustments, as appropriate.

For FY 2019 (the most recently available FY for which there is final data), the forecasted or estimated increase in the market basket index was 2.8 percentage points, and the actual increase for FY 2019 is 2.3 percentage points, resulting in the difference between the estimated and actual increase to be 0.5 percentage point. In the FY 2014 final rule (78 FR 47946 through 47947), we finalized our proposal to report the forecast error to the second significant digit in only those instances where the forecast error rounds to 0.5 percentage point at one significant digit, so that we can determine whether the forecast error adjustment threshold has been exceeded. As we stated in the FY 2014 SNF PPS final rule, once we determine that a forecast error adjustment is warranted, we will continue to apply the adjustment itself at one significant digit (otherwise referred to as a tenth of a percentage point). When rounded to the second significant digit, the percent change in the estimated market basket is 2.75 percent and the actual FY 2019 market basket increase is 2.34 percent. Subtracted, this yields a forecast error of 0.41 percentage point (2.75–2.34). Accordingly, as the difference between the estimated and actual amount of change in the market basket index does not exceed the 0.5 percentage point threshold, under the policy previously described (comparing the forecasted and actual increase in the market basket), the FY 2021 market basket percentage change of 2.7 percent would not be adjusted to account for the forecast error correction.

However, as discussed in the FY 2019 SNF PPS final rule (83 FR 39166), the market basket increase for FY 2019 was set at 2.4 percent, as a result of section 53111 of the Bipartisan Budget Act of 2018 (BBA 2018) (Pub. L. 115–123, enacted on February 9, 2018), which amended section 1888(e) of the Act to add section 1888(e)(5)(B)(iv) of the Act. Given that the market basket adjustment for FY 2019 was set by law, meaning that the forecasted 2014-based market basket percentage increase for FY 2019 was not used to calculate the SNF PPS per diem rates for FY 2019, and because the forecast error adjustment discussed in this section is intended to correct for differences between the foreasted market basket increase for a given year and the actual market basket increase for that year, we do not believe that it would be appropriate to apply a forecast error correction for FY 2019.

Table 2 shows the forecasted and actual market basket amounts for FY 2019.

TABLE 2—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2019

Index	Forecasted FY 2019 increase *	Actual FY 2019 increase **	FY 2019 difference
SNF	2.75	2.34	−0.41

* Published in **Federal Register**; based on second quarter 2018 IGI forecast (2014-based index).
** Based on the first quarter 2020 IGI forecast, with historical data through the fourth quarter 2019 (2014-based index).

4. Multifactor Productivity Adjustment

Section 1888(e)(5)(B)(ii) of the Act, as added by section 3401(b) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) requires that, in FY 2012 and in subsequent FYs, the market basket percentage under the SNF payment system (as described in section 1888(e)(5)(B)(i) of the Act) is to be reduced annually by the multifactor productivity (MFP) adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, in turn, defines the MFP adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost-reporting period, or other annual period). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. We refer readers to the BLS website at *http://www.bls.gov/mfp* for the BLS historical published MFP data.

MFP is derived by subtracting the contribution of labor and capital inputs growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. To generate a forecast of MFP, IGI replicates the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI's U.S. macroeconomic models. For a discussion of the MFP projection methodology, we refer readers to the FY 2012 SNF PPS final rule (76 FR 48527 through 48529) and the FY 2016 SNF PPS final rule (80 FR 46395). A complete description of the MFP projection methodology is available on our website at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html.*

a. Incorporating the MFP Adjustment Into the Market Basket Update

Per section 1888(e)(5)(A) of the Act, the Secretary shall establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, the Secretary shall reduce such percentage by the

productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act being less than such payment rates for the preceding fiscal year. Thus, if the application of the MFP adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in an MFP-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

The MFP adjustment, calculated as the 10-year moving average of changes in MFP for the period ending September 30, 2021, is estimated to be 0.4 percent based on IGI's first quarter 2020 forecast.

Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2), the market basket percentage for FY 2021 for the SNF PPS is based on IGI's first quarter 2020 forecast of the SNF market basket percentage, which is estimated to be 2.7 percent. In accordance with section 1888(e)(5)(B)(ii) of the Act and § 413.337(d)(3), this market basket percentage is then reduced by the MFP adjustment which, as discussed above, is 0.4 percent. The resulting MFP-adjusted SNF market basket update is equal to 2.3 percent, or 2.7 percent less 0.4 percentage point.

5. Market Basket Update Factor for FY 2021

Sections 1888(e)(4)(E)(ii)(IV) and (e)(5)(i) of the Act require that the update factor used to establish the FY 2021 unadjusted federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2019, through September 30, 2020 to the average market basket level for the period of October 1, 2020, through September 30, 2021. This process yields a percentage change in the 2014-based SNF market basket of 2.7 percent.

As further explained in section III.B.3. of this proposed rule, as applicable, we adjust the market basket percentage change by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold. Since the difference between the forecasted FY 2019 SNF market basket percentage change and the actual FY 2019 SNF market basket percentage change (FY 2019 is the most recently available FY for which there is historical data) did not exceed the 0.5 percentage point threshold, the FY 2021 market basket percentage change of 2.7 percent is not adjusted by the forecast error correction. Moreover, given that the market basket for FY 2019 was set independent of these estimates, as discussed above, we do not believe that a forecast error adjustment would be warranted even if the difference for FY 2019 exceeded 0.5 percentage point.

Section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage change by the MFP adjustment (10-year moving average of changes in MFP for the period ending September 30, 2021) which is 0.4 percent, as described in section III.B.4. of this proposed rule. The resulting net SNF market basket update would equal 2.3 percent, or 2.7 percent less the 0.4 percentage point MFP adjustment. We note that if more recent data become available (for example, a more recent estimate of the SNF market basket and/or MFP adjustment), we would use such data, if appropriate, to determine the SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, or MFP adjustment in the SNF PPS final rule.

We also note that section 1888(e)(6)(A)(i) of the Act provides that, beginning with FY 2018, SNFs that fail to submit data, as applicable, in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for a fiscal year will receive a 2.0 percentage point reduction to their market basket update for the fiscal year involved, after application of section 1888(e)(5)(B)(ii) of the Act (the MFP adjustment) and section 1888(e)(5)(B)(iii) of the Act (the 1 percent market basket increase for FY 2018). In addition, section 1888(e)(6)(A)(ii) of the Act states that application of the 2.0 percentage point reduction (after application of section 1888(e)(5)(B)(ii) and (iii) of the Act) may result in the market basket index percentage change being less than 0.0 for a fiscal year, and may result in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Section 1888(e)(6)(A)(iii) of the Act further specifies that the 2.0 percentage point reduction is applied in a noncumulative manner, so that any reduction made under section 1888(e)(6)(A)(i) of the Act applies only with respect to the fiscal year involved, and that the reduction cannot be taken into account in computing the payment amount for a subsequent fiscal year.

Accordingly, for the reasons discussed in this proposed rule, we are proposing to apply the SNF market basket update factor of 2.3 percent in our determination of the FY 2021 SNF PPS unadjusted federal per diem rates, which reflects a market basket increase factor of 2.7 percent, less the 0.4 percentage point MFP adjustment.

6. Unadjusted Federal Per Diem Rates for FY 2021

As discussed in the FY 2019 SNF PPS final rule (83 FR 39162), in FY 2020 we implemented a new case-mix classification system to classify SNF patients under the SNF PPS, the Patient Driven Payment Model (PDPM). As discussed in section V.B. of that final rule, under PDPM, the unadjusted federal per diem rates are divided into six components, five of which are case-mix adjusted components (Physical Therapy (PT), Occupational Therapy (OT), Speech-Language Pathology (SLP), Nursing, and Non-Therapy Ancillaries (NTA)), and one of which is a non-case-mix component, as exists under RUG–IV. We used the SNF market basket, adjusted as described above, to adjust each per diem component of the federal rates forward to reflect the change in the average prices for FY 2021 from the average prices for FY 2020. We would further adjust the rates by a wage index budget neutrality factor, described later in this section. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos, 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed below, in this proposed rule, we propose to adopt the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) in order to identify a facility's urban or rural status.

Tables 3 and 4 reflect the updated unadjusted federal rates for FY 2021, prior to adjustment for case-mix.

TABLE 3—FY 2021 UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$62.04	$57.75	$23.16	$108.16	$81.60	$96.85

TABLE 4—FY 2021 UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$70.72	$64.95	$29.17	$103.34	$77.96	$98.63

C. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the FY 2019 final rule (83 FR 39162, August 8, 2018), we finalized a new case-mix classification model, the PDPM, which took effect beginning October 1, 2019. The previous RUG–IV model classified most patients into a therapy payment group and primarily used the volume of therapy services provided to the patient as the basis for payment classification, thus inadvertently creating an incentive for SNFs to furnish therapy regardless of the individual patient's unique characteristics, goals, or needs. PDPM eliminates this incentive and improves the overall accuracy and appropriateness of SNF payments by classifying patients into payment groups based on specific, data-driven patient characteristics, while simultaneously reducing the administrative burden on SNFs.

We would note that we continue to monitor the impact of PDPM implementation on patient outcomes and program outlays, though we believe it would be premature to release any information related to these issues based on the amount of data currently available. We hope to release information in the future that relates to these issues. We also continue to monitor the impact of PDPM implementation as it relates to our intention to ensure that PDPM is implemented in a budget neutral manner, as discussed in the FY 2020 SNF PPS final rule (84 FR 38734). In future rulemaking, we may reconsider the adjustments made in the FY 2020 SNF PPS final rule to the case-mix weights used under PDPM to ensure budget neutrality and recalibrate these adjustments as appropriate, as we did after the implementation of RUG–IV in FY 2011. We invite comments from stakeholders on any observations or information related to the impact of PDPM implementation on providers or on patient care.

The PDPM uses clinical data from the MDS to assign case-mix classifiers to each patient that are then used to calculate a per diem payment under the SNF PPS, consistent with the provisions of section 1888(e)(4)(G)(i) of the Act. As discussed in section IV.A. of this proposed rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the timeframes for MDS completion in our Resident Assessment Instrument (RAI) Manual. As we have stated in prior rules, for an MDS to be considered valid for use in determining payment, the MDS assessment should be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS website at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html.*

Under section 1888(e)(4)(H) of the Act, each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The FY 2021 payment rates set forth in this proposed rule reflect the use of the PDPM case-mix classification system from October 1, 2020, through September 30, 2021. We list the proposed case-mix adjusted PDPM payment rates for FY 2021, provided separately for urban and rural SNFs, in Tables 5 and 6 with corresponding case-mix values.

Given the differences between the previous RUG–IV model and PDPM in terms of patient classification and billing, it is important that the format of Tables 5 and 6 reflect these differences. More specifically, under both RUG–IV and PDPM, providers use a Health Insurance Prospective Payment System (HIPPS) code on a claim in order to bill for covered SNF services. Under RUG–IV, the HIPPS code included the three-character RUG–IV group into which the patient classified as well as a two-character assessment indicator code that represented the assessment used to generate this code. Under PDPM, while providers still use a HIPPS code, the characters in that code represent different things. For example, the first character represents the PT and OT group into which the patient classifies. If the patient is classified into the PT and OT group ''TA'', then the first character in the patient's HIPPS code would be an A. Similarly, if the patient is classified into the SLP group ''SB'', then the second character in the patient's HIPPS code would be a B. The third character represents the Nursing group into which the patient classifies. The fourth character represents the NTA group into which the patient classifies. Finally, the fifth character represents the assessment used to generate the HIPPS code.

The format of Tables 5 and 6 reflects the PDPM's structure. Accordingly, Column 1 of Tables 5 and 6 represents the character in the HIPPS code associated with a given PDPM component. Columns 2 and 3 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant PT group. Columns 4 and 5 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant OT group. Columns 6 and 7 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant SLP

group. Column 8 provides the nursing case-mix group (CMG) that is connected with a given PDPM HIPPS character. For example, if the patient qualified for the nursing group CBC1, then the third character in the patient's HIPPS code would be a ''P.'' Columns 9 and 10 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant nursing group. Finally, columns 11 and 12 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant NTA group.

Tables 5 and 6 reflect the proposed PDPM case-mix adjusted rates and case-mix indexes for FY 2021. Tables 5 and 6 do not reflect adjustments which may be made to the SNF PPS rates as a result of the SNF VBP program, discussed in section V. of this proposed rule, or other adjustments, such as the variable per diem adjustment. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos, 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed below, in this proposed rule, we propose to adopt the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18–04.pdf*) in order to identify a facility's urban or rural status.

TABLE 5: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes--URBAN

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.53	$94.92	1.49	$86.05	0.68	$15.75	ES3	4.06	$439.13	3.24	$264.38
B	1.70	$105.47	1.63	$94.13	1.82	$42.15	ES2	3.07	$332.05	2.53	$206.45
C	1.88	$116.64	1.69	$97.60	2.67	$61.84	ES1	2.93	$316.91	1.84	$150.14
D	1.92	$119.12	1.53	$88.36	1.46	$33.81	HDE2	2.40	$259.58	1.33	$108.53
E	1.42	$88.10	1.41	$81.43	2.34	$54.19	HDE1	1.99	$215.24	0.96	$78.34
F	1.61	$99.88	1.60	$92.40	2.98	$69.02	HBC2	2.24	$242.28	0.72	$58.75
G	1.67	$103.61	1.64	$94.71	2.04	$47.25	HBC1	1.86	$201.18	-	-
H	1.16	$71.97	1.15	$66.41	2.86	$66.24	LDE2	2.08	$224.97	-	-
I	1.13	$70.11	1.18	$68.15	3.53	$81.75	LDE1	1.73	$187.12	-	-
J	1.42	$88.10	1.45	$83.74	2.99	$69.25	LBC2	1.72	$186.04	-	-
K	1.52	$94.30	1.54	$88.94	3.7	$85.69	LBC1	1.43	$154.67	-	-
L	1.09	$67.62	1.11	$64.10	4.21	$97.50	CDE2	1.87	$202.26	-	-
M	1.27	$78.79	1.30	$75.08	-	-	CDE1	1.62	$175.22	-	-
N	1.48	$91.82	1.50	$86.63	-	-	CBC2	1.55	$167.65	-	-
O	1.55	$96.16	1.55	$89.51	-	-	CA2	1.09	$117.89	-	-
P	1.08	$67.00	1.09	$62.95	-	-	CBC1	1.34	$144.93	-	-
Q	-	-	-	-	-	-	CA1	0.94	$101.67	-	-
R	-	-	-	-	-	-	BAB2	1.04	$112.49	-	-
S	-	-	-	-	-	-	BAB1	0.99	$107.08	-	-
T	-	-	-	-	-	-	PDE2	1.57	$169.81	-	-
U	-	-	-	-	-	-	PDE1	1.47	$159.00	-	-
V	-	-	-	-	-	-	PBC2	1.22	$131.96	-	-
W	-	-	-	-	-	-	PA2	0.71	$76.79	-	-
X	-	-	-	-	-	-	PBC1	1.13	$122.22	-	-
Y	-	-	-	-	-	-	PA1	0.66	$71.39	-	-

TABLE 6: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—RURAL

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.53	$108.20	1.49	$96.78	0.68	$19.84	ES3	4.06	$419.56	3.24	$252.59
B	1.70	$120.22	1.63	$105.87	1.82	$53.09	ES2	3.07	$317.25	2.53	$197.24
C	1.88	$132.95	1.69	$109.77	2.67	$77.88	ES1	2.93	$302.79	1.84	$143.45
D	1.92	$135.78	1.53	$99.37	1.46	$42.59	HDE2	2.40	$248.02	1.33	$103.69
E	1.42	$100.42	1.41	$91.58	2.34	$68.26	HDE1	1.99	$205.65	0.96	$74.84
F	1.61	$113.86	1.60	$103.92	2.98	$86.93	HBC2	2.24	$231.48	0.72	$56.13
G	1.67	$118.10	1.64	$106.52	2.04	$59.51	HBC1	1.86	$192.21	-	-
H	1.16	$82.04	1.15	$74.69	2.86	$83.43	LDE2	2.08	$214.95	-	-
I	1.13	$79.91	1.18	$76.64	3.53	$102.97	LDE1	1.73	$178.78	-	-
J	1.42	$100.42	1.45	$94.18	2.99	$87.22	LBC2	1.72	$177.74	-	-
K	1.52	$107.49	1.54	$100.02	3.7	$107.93	LBC1	1.43	$147.78	-	-
L	1.09	$77.08	1.11	$72.09	4.21	$122.81	CDE2	1.87	$193.25	-	-
M	1.27	$89.81	1.30	$84.44	-	-	CDE1	1.62	$167.41	-	-
N	1.48	$104.67	1.50	$97.43	-	-	CBC2	1.55	$160.18	-	-
O	1.55	$109.62	1.55	$100.67	-	-	CA2	1.09	$112.64	-	-
P	1.08	$76.38	1.09	$70.80	-	-	CBC1	1.34	$138.48	-	-
Q	-	-	-	-	-	-	CA1	0.94	$97.14	-	-
R	-	-	-	-	-	-	BAB2	1.04	$107.47	-	-
S	-	-	-	-	-	-	BAB1	0.99	$102.31	-	-
T	-	-	-	-	-	-	PDE2	1.57	$162.24	-	-
U	-	-	-	-	-	-	PDE1	1.47	$151.91	-	-
V	-	-	-	-	-	-	PBC2	1.22	$126.07	-	-
W	-	-	-	-	-	-	PA2	0.71	$73.37	-	-
X	-	-	-	-	-	-	PBC1	1.13	$116.77	-	-
Y	-	-	-	-	-	-	PA1	0.66	$68.20	-	-

D. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We propose to continue this practice for FY 2021, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the inpatient prospective payment system (IPPS) also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we would continue to use the pre-reclassified IPPS hospital wage data, without applying the occupational mix, rural floor, or outmigration adjustment, as the basis for the SNF PPS wage index. For FY 2021, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2016 and before October 1, 2017 (FY 2017 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted December 21, 2000) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF PPS wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data. More specifically, auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the IPPS wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. Adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS given that there are nearly five times as many SNFs as there are inpatient hospitals. Therefore, while we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not believe this undertaking is feasible at this time.

In addition, we propose to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2020 SNF PPS wage index. For rural geographic areas that do not have hospitals, and therefore, lack hospital wage data on which to base an area wage adjustment, we would use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as

a reasonable proxy. For FY 2021, there are no rural geographic areas that do not have hospitals, and thus, this methodology would not be applied. For rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we would use the average wage indexes of all of the urban areas within the state to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2021, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

The wage index applicable to FY 2021 is set forth in Tables A and B available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. In adopting the CBSA geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this 1-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided minor updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. In addition, on August 15, 2017, OMB issued Bulletin No. 17–01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300). As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), we wish to note that this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. To this end, as discussed in section V.A.1. of this proposed rule, we propose to adopt the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) beginning October 1, 2020, including a proposed 1-year transition for FY 2021 under which we would apply a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020). We believe that these updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and that use of such delineations would allow us to more accurately determine the appropriate wage index and rate tables to apply under the SNF PPS. Thus, we believe it is appropriate to use these updated OMB delineations for these purposes, in order to enhance the accuracy of payments under the SNF PPS. These changes are discussed further in section V.A.1. of this proposed rule. We invite comments on this proposal. The proposed wage index applicable to FY 2021 is set forth in Tables A and B and are available on the CMS website at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*. Table A provides a crosswalk between the FY 2021 wage index for a provider using the current OMB delineations in effect in FY 2020 and the FY 2021 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in FY 2021 if these proposed changes are finalized.

Once calculated, we would apply the wage index adjustment to the labor-related portion of the federal rate. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are labor-intensive and vary with the local labor market) in the input price index. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we finalized a proposal to revise the labor-related share to reflect the relative importance of the 2014-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses.

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2021. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2021 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2021 in four steps. First, we compute the FY 2021 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2021 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2021 relative importance for each cost category by multiplying this ratio by the base year (2014) weight. Finally, we add the FY 2021 relative importance for each of the labor-related cost categories (Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related services, and a portion of Capital-

Related expenses) to produce the FY 2021 labor-related relative importance.

Table 7 summarizes the proposed labor-related share for FY 2021, based on IGI's first quarter 2020 forecast with historical data through fourth quarter 2019, compared to the labor-related share that was used for the FY 2020 SNF PPS final rule.

TABLE 7: Labor-Related Relative Importance, FY 2020 and FY 2021

	Relative importance, labor-related, FY 2020 19:2 forecast[1]	Relative importance, labor-related, FY 2021 20:1 forecast[2]
Wages and salaries	50.6	50.9
Employee benefits	10.0	9.9
Professional Fees: Labor-Related	3.7	3.7
Administrative and facilities support services	0.5	0.6
Installation, Maintenance and Repair Services	0.6	0.7
All Other: Labor Related Services	2.6	2.6
Capital-related (.391)	2.9	2.9
Total	**70.9**	**71.3**

[1] Published in the **Federal Register (84 FR 38738)**; based on second quarter 2019 IGI forecast

[2] Based on first quarter 2020 IGI forecast, with historical data through fourth quarter 2019.

In order to calculate the labor portion of the case-mix adjusted per diem rate, we would multiply the total case-mix adjusted per diem rate, which is the sum of all five case-mix adjusted components into which a patient classifies, and the non-case-mix component rate, by the FY 2021 labor-related share percentage provided in Table 7. The remaining portion of the rate would be the non-labor portion. Under the previous RUG–IV model, we included tables which provided the case-mix adjusted RUG–IV rates, by RUG–IV group, broken out by total rate, labor portion and non-labor portion, such as Table 9 of the FY 2019 SNF PPS final rule (83 FR 39175). However, as we discussed in the FY 2020 final rule (84 FR 38738), under PDPM, as the total rate is calculated as a combination of six different component rates, five of which are case-mix adjusted, and given the sheer volume of possible combinations of these five case-mix adjusted components, it is not feasible to provide tables similar to those that existed in the prior rulemaking.

Therefore, to aid stakeholders in understanding the effect of the wage index on the calculation of the SNF per diem rate, we have included a hypothetical rate calculation in Table 8.

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2021 (federal rates effective October 1, 2020), we would apply an adjustment to fulfill the budget neutrality requirement. We would meet this requirement by multiplying each of the components of the unadjusted federal rates by a budget neutrality factor. Our proposed budget neutrality calculations are described in section V.A.4 of this proposed rule. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component.

The proposed budget neutrality factor for FY 2021 would be 0.9986. We note that if more recent data become available (for example, revised wage data), we would use such data as appropriate to determine the wage index budget neutrality factor in the SNF PPS final rule. Further, as discussed in section V.A.4. of this proposed rule, we note that this budget neutrality factor accounts for all proposed changes to the wage index contained in this proposed rule, both those described in this section as well as those described in section V.A. of this proposed rule.

E. SNF Value-Based Purchasing Program

Beginning with payment for services furnished on October 1, 2018, section 1888(h) of the Act requires the Secretary to reduce the adjusted federal per diem rate determined under section 1888(e)(4)(G) of the Act otherwise applicable to a SNF for services furnished during a fiscal year by 2 percent, and to adjust the resulting rate for a SNF by the value-based incentive payment amount earned by the SNF based on the SNF's performance score for that fiscal year under the SNF VBP Program. To implement these requirements, we finalized in the FY 2019 SNF PPS final rule the addition of § 413.337(f) to our regulations (83 FR 39178).

Please see section V.C. of this proposed rule for a further discussion of our policies for the SNF VBP Program.

F. Adjusted Rate Computation Example

The following tables provide examples generally illustrating payment calculations during FY 2021 under PDPM for a hypothetical 30-day SNF stay, involving the hypothetical SNF XYZ, located in Frederick, MD (Urban CBSA 23224), for a hypothetical patient who is classified into such groups that the patient's HIPPS code is NHNC1. Table 8 shows the adjustments made to the federal per diem rates (prior to application of any adjustments under the SNF VBP programs as discussed above) to compute the provider's case-mix adjusted per diem rate for FY 2021, based on the patient's PDPM classification, as well as how the VPD adjustment factor affects calculation of the per diem rate for a given day of the stay. Table 9 shows the adjustments made to the case-mix adjusted per diem rate from Table 8 to account for the provider's wage index. The wage index used in this example is based on the FY 2021 SNF PPS wage index that appears

in Table A available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*. Finally, Table 10 provides the case-mix and wage index adjusted per-diem rate for this patient for each day of the 30-day stay, as well as the total payment for this stay. Table 10 also includes the variable per diem (VPD) adjustment factors for each day of the patient's stay, to clarify why the patient's per diem rate changes for certain days of the stay. As illustrated in Table 10, SNF XYZ's total PPS payment for this particular patient's stay would equal $20,441.62.

TABLE 8: PDPM Case-Mix Adjusted Rate Computation Example

Per Diem Rate Calculation				
Component	**Component Group**	**Component Rate**	**VPD Adjustment Factor**	**VPD Adj. Rate**
PT	N	$91.82	1.00	$91.82
OT	N	$86.63	1.00	$86.63
SLP	H	$66.24	1.00	$66.24
Nursing	N	$167.65	1.00	$167.65
NTA	C	$150.14	3.00	$450.42
Non-Case-Mix	-	$96.85	-	$96.85
Total PDPM Case-Mix Adj. Per Diem				$959.61

TABLE 9: Wage Index Adjusted Rate Computation Example

PDPM Wage Index Adjustment Calculation						
HIPPS Code	**PDPM Case-Mix Adjusted Per Diem**	**Labor Portion**	**Wage Index**	**Wage Index Adjusted Rate**	**Non-Labor Portion**	**Total Case Mix and Wage Index Adj. Rate**
NHNC1	$959.61	$684.20	0.9869	$675.24	$275.41	$950.65

TABLE 10: Adjusted Rate Computation Example

Day of Stay	NTA VPD Adjustment Factor	PT/OT VPD Adjustment Factor	Case Mix and Wage Index Adjusted Per Diem Rate
1	3.0	1.0	$950.65
2	3.0	1.0	$950.65
3	3.0	1.0	$950.65
4	1.0	1.0	$653.17
5	1.0	1.0	$653.17
6	1.0	1.0	$653.17
7	1.0	1.0	$653.17
8	1.0	1.0	$653.17
9	1.0	1.0	$653.17
10	1.0	1.0	$653.17
11	1.0	1.0	$653.17
12	1.0	1.0	$653.17
13	1.0	1.0	$653.17
14	1.0	1.0	$653.17
15	1.0	1.0	$653.17
16	1.0	1.0	$653.17
17	1.0	1.0	$653.17
18	1.0	1.0	$653.17
19	1.0	1.0	$653.17
20	1.0	1.0	$653.17
21	1.0	0.98	$649.64
22	1.0	0.98	$649.64
23	1.0	0.98	$649.64
24	1.0	0.98	$649.64
25	1.0	0.98	$649.64
26	1.0	0.98	$649.64
27	1.0	0.98	$649.64
28	1.0	0.96	$646.10
29	1.0	0.96	$646.10
30	1.0	0.96	$646.10
Total Payment			$20,441.62

IV. Additional Aspects of the SNF PPS

A. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section III.C. of this proposed rule. This approach includes an administrative presumption that utilizes a beneficiary's correct assignment, at the outset of the SNF stay, of one of the case-mix classifiers designated for this purpose to assist in making certain SNF level of care determinations.

In accordance with § 413.345, we include in each update of the federal payment rates in the **Federal Register** a discussion of the resident classification system that provides the basis for case-mix adjustment. We also designate those specific classifiers under the case-mix classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption that those beneficiaries who are correctly assigned one of the designated case-mix classifiers on the initial Medicare assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date (ARD) for that assessment.

A beneficiary who does not qualify for the presumption is not automatically classified as either meeting or not meeting the level of care definition, but instead receives an individual determination on this point using the existing administrative criteria. This presumption recognizes the strong likelihood that those beneficiaries who are assigned one of the designated case-mix classifiers during the immediate post-hospital period would require a covered level of care, which would be less likely for other beneficiaries.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. The FY 2018 final rule (82 FR 36544) further specified that we would henceforth disseminate the standard description of the administrative presumption's designated groups via the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html* (where such designations appear in the paragraph entitled ''Case Mix Adjustment''), and would publish such designations in rulemaking only to the extent that we actually intend to propose changes in them. Under that approach, the set of case-mix classifiers designated for this purpose under PDPM was finalized in the FY 2019 SNF PPS final rule (83 FR 39253) and is posted on the SNF PPS website (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html*), in the paragraph entitled ''Case Mix Adjustment.''

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that any services prompting the assignment of one of the designated case-mix classifiers (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations where the sole classifier that triggers the presumption is itself assigned through the receipt of services that are subsequently determined to be not reasonable and necessary. Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the ARD of the initial Medicare assessment.

B. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA 1997) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) of the Act places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf.* In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113, enacted November 29, 1999) amended section 1888(e)(2)(A) of the Act by further excluding a number of individual high-cost, low probability services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf.*

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary the authority to designate additional, individual services for exclusion within each of these four specified service categories. In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment SNFs receive under the PPS. According to the conferees, section 103(a) of the BBRA is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. By

contrast, the amendments enacted in section 103 of the BBRA do not designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as is consistent with our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: They must fall within one of the four service categories specified in the BBRA; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice) (65 FR 46791). In this proposed rule, we specifically invite public comments identifying HCPCS codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We may consider excluding a particular service if it meets our criteria for exclusion as specified above. Commenters should identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (in that case, as of July 1, 1999). Identifying the excluded services in this manner made it possible for us to utilize program issuances as the vehicle for accomplishing routine updates of the excluded codes, to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, as of October 1, 2020). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions.

C. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, SNF-level services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. As discussed in the FY 2019 SNF PPS final rule (83 FR 39235), revisions were made to the swing bed assessment in order to support implementation of PDPM, effective October 1, 2019. A discussion of the assessment schedule and the MDS effective beginning FY 2020 appears in the FY 2019 SNF PPS final rule (83 FR 39229 through 39237). The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html.*

D. Revisions to the Regulation Text

Along with our proposed revisions as discussed elsewhere in this proposed rule, we are also proposing to make certain revisions in the regulation text itself. Specifically, we propose to update the example used in illustrating the application of the SNF level of care's ''practical matter'' criterion that appears at 42 CFR 409.35(a), as well as to correct an erroneous cross-reference that appears in the swing-bed payment regulations at 42 CFR 413.114(c)(2), as discussed further below.

The statutory SNF level of care definition set forth in section 1814(a)(2)(B) of the Act provides that the beneficiary must need and receive skilled services on a daily basis which, as a practical matter, can only be provided in a SNF on an inpatient basis.

Section 409.35(a) provides that in making a ''practical matter'' determination, consideration must be given to the patient's condition and to the availability and feasibility of using more economical alternative facilities and services. In this context, in evaluating whether a given non-inpatient alternative is more economical than inpatient SNF care, the regulation provides that the availability of Medicare payment for those services may not be a factor.

In illustrating this point, the existing regulation text at § 409.35(a) uses as an example the previous annual caps on Part B payment for outpatient therapy services. It indicates that Medicare's nonpayment for services that exceed the cap would not, in itself, serve as a basis for determining that needed care can only be provided in a SNF. In order to reflect the recent repeal of the Part B therapy caps in section 50202 of the BBA 2018, we now propose to revise the regulation text by rewording the example used to illustrate this point in a manner that omits its reference to the repealed therapy cap provision. Specifically, we would revise the regulation text on this point to provide as an example that the unavailability of Medicare payment for *outpatient* therapy due to the beneficiary's nonenrollment in Part B cannot serve as a basis for finding that the needed care can only be provided on an *inpatient* basis in a SNF.

In addition, we propose to make a minor technical correction to the regulation text in § 413.114(c), which discusses historical swing-bed payment policies that were in effect for cost reporting periods beginning prior to July 1, 2002. Specifically, we would revise § 413.114(c)(2) to remove an erroneous cross-reference to a non-existent

§ 413.55(a)(1), and would substitute in its place the correct cross-reference to the regulations on reasonable cost reimbursement at § 413.53(a)(1).

V. Other Issues

A. Proposed Changes to SNF PPS Wage Index

1. Core-Based Statistical Areas (CBSAs) for the FY 2021 SNF PPS Wage Index

a. Background

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We proposed to continue this practice for FY 2021, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the IPPS also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we would continue to use, as the basis for the SNF PPS wage index, the IPPS hospital wage data, unadjusted for occupational mix, without taking into account geographic reclassifications under section 1886(d)(8) and (d)(10) of the Act, and without applying the rural floor under section 4410 of the BBA 1997 and the outmigration adjustment under section 1886(d)(13) of the Act. For FY 2021, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2016 and before October 1, 2017 (FY 2017 cost report data).

The applicable SNF PPS wage index value is assigned to a SNF on the basis of the labor market area in which the SNF is geographically located. In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Area (MSA) and the creation of micropolitan statistical areas and combined statistical areas. In adopting the Core-Based Statistical Areas (CBSA) geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this 1-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13–01 established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided minor updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. In addition, on August 15, 2017, OMB issued Bulletin No. 17–01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300). As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), and as we note in this proposed rule, this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. Subsequently, on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of the most recent bulletin, No. 18–04, may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* (We note that on March 6, 2020, OMB issued OMB Bulletin 20–01 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*)), which, as discussed below was not issued in time for development of this proposed rule.) While OMB Bulletin No. 18–04 is not based on new census data, it includes some material changes to the OMB statistical area delineations, including some new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would be split apart. In this proposed rule, we are proposing to adopt the updates to the OMB delineations announced in OMB Bulletin No. 18–04 effective beginning in FY 2021 under the SNF PPS. As noted above, the March 6, 2020 OMB Bulletin 20–01 was not issued in time for development of this proposed rule. We intend to propose any updates from this bulletin in the FY 2022 SNF PPS proposed rule.

To implement these changes for the SNF PPS beginning in FY 2021, it is necessary to identify the revised labor market area delineation for each affected county and provider in the country. The revisions OMB published on September 14, 2018 contain a number of significant changes. For example, under the proposed revised OMB delineations, there would be new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would split apart. We discuss these changes in more detail later in this proposed rule.

b. Proposed Implementation of Revised Labor Market Area Delineations

We typically delay implementing revised OMB labor market area delineations to allow for sufficient time to assess the new changes. For example, as discussed in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), we delayed implementing the revised OMB statistical area delineations described in OMB Bulletin No. 13–01 to allow for sufficient time to assess the new changes. We believe it is important for the SNF PPS to use the latest labor market area delineations available as

soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the delineations reflected in OMB Bulletin No. 18–04 would increase the integrity of the SNF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. We have reviewed our findings and impacts relating to the revised OMB delineations set forth in OMB Bulletin No. 18–04, and find no compelling reason to further delay implementation. Because we believe we have broad authority under section 1888(e)(4)(G)(ii) of the Act to determine the labor market areas used for the SNF PPS wage index, and because we believe the delineations reflected in OMB Bulletin No. 18–04 better reflect the local economies and wage levels of the areas in which hospitals are currently located, we are proposing to implement the revised OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04, for the SNF PPS wage index effective beginning in FY 2021. In addition, we are proposing to implement a 1-year transition policy under which we would apply a 5 percent cap in FY 2021 on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020) to assist providers in adapting to the revised OMB delineations (if we finalize the implementation of such delineations for the SNF PPS wage index beginning in FY 2021). This transition is discussed in more detail later in this proposed rule. We invite comments on these proposals.

(1) Micropolitan Statistical Areas

As discussed in the FY 2006 SNF PPS proposed rule (70 FR 29093 through 29094) and final rule (70 FR 45041), we considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a CBSA ''associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000'' (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's SNF PPS rural wage index (see 70 FR 29094 and 70 FR 45040 through 45041)).

Thus, the SNF PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSA areas, and the statewide rural wage index is assigned to SNFs located in those areas. Because Micropolitan Areas tend to encompass smaller population centers and contain fewer hospitals than MSAs, we determined that if Micropolitan Areas were to be treated as separate labor market areas, the SNF PPS wage index would have included significantly more single-provider labor market areas. As we explained in the FY 2006 SNF PPS proposed rule (70 FR 29094), recognizing Micropolitan Areas as independent labor markets would generally increase the potential for dramatic shifts in year-to-year wage index values because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of an area. Dramatic shifts in an area's wage index from year-to-year are problematic and create instability in the payment levels from year-to-year, which could make fiscal planning for SNFs difficult if we adopted this approach. For these reasons, we adopted a policy to include Micropolitan Areas in the state's rural wage area for purposes of the SNF PPS wage index, and have continued this policy through the present.

We believe that the best course of action would be to continue the policy established in the FY 2006 SNF PPS final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). We do not believe it would be appropriate to calculate a separate wage index for areas that typically may include only a few hospitals for the reasons discussed in the FY 2006 SNF PPS proposed rule, and as discussed earlier. Therefore, in conjunction with our proposal to implement the revised OMB labor market delineations beginning in FY 2021 and consistent with the treatment of Micropolitan Areas under the IPPS, we are proposing to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of the state's rural wage index.

(2) Urban Counties That Would Become Rural Under the Revised OMB Delineations

As previously discussed, we are proposing to implement the revised OMB statistical area delineations based upon OMB Bulletin No. 18–04 beginning in FY 2021. Our analysis shows that a total of 34 counties (and county equivalents) that are currently considered part of an urban CBSA would be considered to be located in a rural area, beginning in FY 2021, if we adopt these revised OMB delineations. Table 11 lists the 34 urban counties that would be rural if we finalize our proposal to implement the revised OMB delineations.

TABLE 11: Urban Counties That Would Become Rural

FIPS County Code	County/County Equivalent	State	Current CBSA	
01127	Walker	AL	13820	Birmingham-Hoover, AL
12045	Gulf	FL	37460	Panama City, FL
13007	Baker	GA	10500	Albany, GA
13235	Pulaski	GA	47580	Warner Robins, GA
15005	Kalawao	HI	27980	Kahului-Wailuku-Lahaina, HI
17039	De Witt	IL	14010	Bloomington, IL
17053	Ford	IL	16580	Champaign--Urbana, IL
18143	Scott	IN	31140	Louisville/Jefferson County, KY-IN
18179	Wells	IN	23060	Fort Wayne, IN
19149	Plymouth	IA	43580	Sioux City, IA-NE-SD
20095	Kingman	KS	48620	Wichita, KS
21223	Trimble	KY	31140	Louisville/Jefferson County, KY-IN
22119	Webster	LA	43340	Shreveport-Bossier City, LA
26015	Barry	MI	24340	Grand Rapids-Wyoming, MI
26159	Van Buren	MI	28020	Kalamazoo-Portage, MI
27143	Sibley	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
28009	Benton	MS	32820	Memphis, TN-MS-AR
29119	Mc Donald	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
30037	Golden Valley	MT	13740	Billings, MT
31081	Hamilton	NE	24260	Grand Island, NE
38085	Sioux	ND	13900	Bismarck, ND
40079	Le Flore	OK	22900	Fort Smith, AR-OK
45087	Union	SC	43900	Spartanburg, SC
46033	Custer	SD	39660	Rapid City, SD
47081	Hickman	TN	34980	Nashville-Davidson-Murfreesboro-Franklin, TN
48007	Aransas	TX	18580	Corpus Christi, TX
48221	Hood	TX	23104	Fort Worth-Arlington, TX
48351	Newton	TX	13140	Beaumont-Port Arthur, TX
48425	Somervell	TX	23104	Fort Worth-Arlington, TX
51029	Buckingham	VA	16820	Charlottesville, VA
51033	Caroline	VA	40060	Richmond, VA
51063	Floyd	VA	13980	Blacksburg-Christiansburg-Radford, VA
53013	Columbia	WA	47460	Walla Walla, WA
53051	Pend Oreille	WA	44060	Spokane-Spokane Valley, WA

We are proposing that, for purposes of determining the wage index under the SNF PPS, the wage data for all hospitals located in the counties listed in Table 11 would be considered rural when calculating their respective state's rural wage index under the SNF PPS. We recognize that rural areas typically have lower area wage index values than urban areas, and SNFs located in these counties may experience a negative impact in their SNF PPS payment due to the proposed adoption of the revised OMB delineations. A discussion of the proposed wage index transition policy appears later in this proposed ruled. Furthermore, for SNF providers currently located in an urban county that would be considered rural should this proposal be finalized, we would utilize the rural unadjusted per diem

rates, found in Table 4, as the basis for determining payment rates for these facilities beginning on October 1, 2020.

(3) Rural Counties That Would Become Urban Under the Revised OMB Delineations

As previously discussed, we are proposing to implement the revised OMB statistical area delineations based upon OMB Bulletin No. 18–04 beginning in FY 2021. Analysis of these OMB statistical area delineations shows that a total of 47 counties (and county equivalents) that are currently located in rural areas would be located in urban areas if we finalize our proposal to implement the revised OMB delineations. Table 12 lists the 47 rural counties that would be urban if we finalize our proposal to implement the revised OMB delineations.

TABLE 12: Counties That Would Gain Urban Status

FIPS County Code	County/County Equivalent	State Name	New CBSA	
01063	Greene	AL	46220	Tuscaloosa, AL
01129	Washington	AL	33660	Mobile, AL
05047	Franklin	AR	22900	Fort Smith, AR-OK
12075	Levy	FL	23540	Gainesville, FL
13259	Stewart	GA	17980	Columbus, GA-AL
13263	Talbot	GA	17980	Columbus, GA-AL
16077	Power	ID	38540	Pocatello, ID
17057	Fulton	IL	37900	Peoria, IL
17087	Johnson	IL	16060	Carbondale-Marion, IL
18047	Franklin	IN	17140	Cincinnati, OH-KY-IN
18121	Parke	IN	45460	Terre Haute, IN
18171	Warren	IN	29200	Lafayette-West Lafayette, IN
19015	Boone	IA	11180	Ames, IA
19099	Jasper	IA	19780	Des Moines-West Des Moines, IA
20061	Geary	KS	31740	Manhattan, KS
21043	Carter	KY	26580	Huntington-Ashland, WV-KY-OH
22007	Assumption	LA	12940	Baton Rouge, LA
22067	Morehouse	LA	33740	Monroe, LA
25011	Franklin	MA	44140	Springfield, MA
26067	Ionia	MI	24340	Grand Rapids-Kentwood, MI
26155	Shiawassee	MI	29620	Lansing-East Lansing, MI
27075	Lake	MN	20260	Duluth, MN-WI
28031	Covington	MS	25620	Hattiesburg, MS
28051	Holmes	MS	27140	Jackson, MS
28131	Stone	MS	25060	Gulfport-Biloxi, MS
29053	Cooper	MO	17860	Columbia, MO
29089	Howard	MO	17860	Columbia, MO
30095	Stillwater	MT	13740	Billings, MT
37007	Anson	NC	16740	Charlotte--Concord-Gastonia, NC-SC
37029	Camden	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
37077	Granville	NC	20500	Durham-Chapel Hill, NC
37085	Harnett	NC	22180	Fayetteville, NC
39123	Ottawa	OH	45780	Toledo, OH
45027	Clarendon	SC	44940	Sumter, SC
47053	Gibson	TN	27180	Jackson, TN
47161	Stewart	TN	17300	Clarksville, TN-KY
48203	Harrison	TX	30980	Longview, TX

FIPS County Code	County/County Equivalent	State Name	New CBSA	
48431	Sterling	TX	41660	San Angelo, TX
51097	King and Queen	VA	40060	Richmond, VA
51113	Madison	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	Southampton	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	Franklin City	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	Jackson	WV	16620	Charleston, WV
54065	Morgan	WV	25180	Hagerstown-Martinsburg, MD-WV
55069	Lincoln	WI	48140	Wausau-Weston, WI
72001	Adjuntas	PR	38660	Ponce, PR
72083	Las Marias	PR	32420	Mayagüez, PR

We are proposing that, for purposes of calculating the area wage index under the SNF PPS, the wage data for hospitals located in the counties listed in Table 12 would be included in their new respective urban CBSAs. Typically, SNFs located in an urban area would receive a wage index value higher than or equal to SNFs located in their state's rural area. A discussion of the proposed wage index transition policy appears later in this proposed rule. Furthermore, for SNFs currently located in a rural county that would be considered urban should this proposal be finalized, we would utilize the urban unadjusted per diem rates found in Table 3, as the basis for determining the payment rates for these facilities beginning October 1, 2020.

(4) Urban Counties That Would Move to a Different Urban CBSA Under the Revised OMB Delineations

In addition to rural counties becoming urban and urban counties becoming rural, some urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the revised OMB delineations. In other cases, adopting the revised OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. We consider these proposed changes (where only the CBSA name and/or number would change) to be inconsequential changes with respect to the SNF PPS wage index. Table 13 sets forth a list of such CBSAs where there would be a change in CBSA name and/or number only if we adopt the revised OMB delineations.

TABLE 13: Urban CBSAs With Change to Name and/or Number

Current CBSA Code	Current CBSA Title	New CBSA Code	New CBSA Title
10540	Albany, OR	10540	Albany-Lebanon, OR
11500	Anniston-Oxford-Jacksonville, AL	11500	Anniston-Oxford, AL
12060	Atlanta-Sandy Springs-Roswell, GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
12420	Austin-Round Rock, TX	12420	Austin-Round Rock-Georgetown, TX
13460	Bend-Redmond, OR	13460	Bend, OR
13980	Blacksburg-Christiansburg-Radford, VA	13980	Blacksburg-Christiansburg, VA
14740	Bremerton-Silverdale, WA	14740	Bremerton-Silverdale-Port Orchard, WA
15380	Buffalo-Cheektowaga-Niagara Falls, NY	15380	Buffalo-Cheektowaga, NY
19380	Dayton, OH	19430	Dayton-Kettering, OH
24340	Grand Rapids-Wyoming, MI	24340	Grand Rapids-Kentwood, MI
24860	Greenville-Anderson-Mauldin, SC	24860	Greenville-Anderson, SC
25060	Gulfport-Biloxi-Pascagoula, MS	25060	Gulfport-Biloxi, MS
25540	Hartford-West Hartford-East Hartford, CT	25540	Hartford-East Hartford-Middletown, CT
25940	Hilton Head Island-Bluffton-Beaufort, SC	25940	Hilton Head Island-Bluffton, SC
28700	Kingsport-Bristol-Bristol, TN-VA	28700	Kingsport-Bristol, TN-VA
31860	Mankato-North Mankato, MN	31860	Mankato, MN
33340	Milwaukee-Waukesha-West Allis, WI	33340	Milwaukee-Waukesha, WI
34940	Naples-Immokalee-Marco Island, FL	34940	Naples-Marco Island, FL
35660	Niles-Benton Harbor, MI	35660	Niles, MI
36084	Oakland-Hayward-Berkeley, CA	36084	Oakland-Berkeley-Livermore, CA
36500	Olympia-Tumwater, WA	36500	Olympia-Lacey-Tumwater, WA
38060	Phoenix-Mesa-Scottsdale, AZ	38060	Phoenix-Mesa-Chandler, AZ
39140	Prescott, AZ	39150	Prescott Valley-Prescott, AZ
43524	Silver Spring-Frederick-Rockville, MD	23224	Frederick-Gaithersburg-Rockville, MD
44420	Staunton-Waynesboro, VA	44420	Staunton, VA
44700	Stockton-Lodi, CA	44700	Stockton, CA
45940	Trenton, NJ	45940	Trenton-Princeton, NJ

Current CBSA Code	Current CBSA Title	New CBSA Code	New CBSA Title
46700	Vallejo-Fairfield, CA	46700	Vallejo, CA
47300	Visalia-Porterville, CA	47300	Visalia, CA
48140	Wausau, WI	48140	Wausau-Weston, WI
48424	West Palm Beach-Boca Raton-Delray Beach, FL	48424	West Palm Beach-Boca Raton-Boynton Beach, FL

However, in other cases, if we adopt the revised OMB delineations, counties would shift between existing and new urban CBSAs, changing the constituent makeup of the CBSAs. In one type of change, CBSAs would split into multiple new CBSAs. For example, CBSA 35614 (New York Jersey City White Plains, NY NJ) has counties splitting off into new CBSAs, such as CBSA 35154 (New Brunswick Lakewood, NJ). In other cases, a CBSA would lose one or more counties to another urban CBSA. For example, Kendall County, IL, that is currently in CBSA 16974 (Chicago Naperville Arlington Heights, IL) is moving to CBSA 20994 (Elgin, IL).

Table 14 lists the urban counties that would move from one urban CBSA to another newly proposed or modified CBSA if we adopt the revised OMB delineations.

TABLE 14: Urban Counties That Would Move From One Urban CBSA to Another

FIPS County Code	County Name	State	Current CBSA		New CBSA Code	
17031	Cook	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17043	Du Page	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17063	Grundy	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17093	Kendall	IL	16974	Chicago-Naperville-Arlington Heights, IL	20994	Elgin, IL
17111	Mc Henry	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17197	Will	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
34023	Middlesex	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34025	Monmouth	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34029	Ocean	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34035	Somerset	NJ	35084	Newark, NJ-PA	35154	New Brunswick-Lakewood, NJ
36027	Dutchess	NY	20524	Dutchess County-Putnam County, NY	39100	Poughkeepsie-Newburgh-Middletown, NY
36071	Orange	NY	35614	New York-Jersey City-White Plains, NY-NJ	39100	Poughkeepsie-Newburgh-Middletown, NY
36079	Putnam	NY	20524	Dutchess County-Putnam County, NY	35614	New York-Jersey City-White Plains, NY-NJ
47057	Grainger	TN	28940	Knoxville, TN	34100	Morristown, TN
54043	Lincoln	WV	26580	Huntington-Ashland, WV-KY-OH	16620	Charleston, WV
72055	Guanica	PR	38660	Ponce, PR	49500	Yauco, PR
72059	Guayanilla	PR	38660	Ponce, PR	49500	Yauco, PR
72111	Penuelas	PR	38660	Ponce, PR	49500	Yauco, PR
72153	Yauco	PR	38660	Ponce, PR	49500	Yauco, PR

If SNFs located in these counties move from one CBSA to another under the revised OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values. A discussion of the proposed wage index transition policy appears later in this proposed rule.

2. Proposed Transition Policy for FY 2021 Wage Index Changes

As discussed previously in this proposed rule, we believe that adopting the revised OMB delineations would result in SNF PPS wage index values being more representative of the actual costs of labor in a given area. However, we also recognize that some SNFs (42 percent) would experience decreases in their area wage index values as a result of this proposal, though just over 2 percent of providers would experience a significant decrease (that is, greater than 5 percent) in their area wage index value. We also realize that many SNFs (54 percent) would have higher area wage index values after adopting the revised OMB delineations.

To mitigate the potential impacts, we have in the past provided for transition periods when adopting revised OMB delineations. For example, we proposed

and finalized budget neutral transition policies to help mitigate negative impacts on SNFs following the adoption of the new CBSA delineations based on the 2010 decennial census data in the FY 2015 SNF PPS final rule (79 FR 45644 through 45646). Specifically, we implemented a 1-year 50/50 blended wage index for all SNFs due to our adoption of the revised delineations. This required calculating and comparing two wage indexes for each SNF since that blended wage index was computed as the sum of 50 percent of the FY 2015 SNF PPS wage index values under the FY 2014 CBSA delineations and 50 percent of the FY 2015 SNF PPS wage index values under the FY 2015 new OMB delineations. While we believed that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels, we also recognized that adopting such changes may cause some short-term instability in SNF PPS payments. Similar instability may result from the proposed adoption of the revised OMB delineations discussed in this proposed rule. For example, SNFs currently located in CBSA 35614 (New York-Jersey City-White Plains, NY–NJ) that would be located in new CBSA 35154 (New Brunswick-Lakewood, NJ) under the proposed changes to the CBSA-based labor market area delineations would experience a nearly 17 percent decrease in the wage index as a result of that the proposed change. Therefore, consistent with past practice, we are proposing a transition policy to help mitigate any significant negative impacts that SNFs may experience if we adopt the revised OMB delineations for FY 2021. Specifically, for FY 2021, as a transition, we are proposing to apply a 5-percent cap on any decrease in an SNF's wage index from the SNF's wage index from the prior fiscal year. This transition would allow the effects of adopting the revised OMB delineations to be phased in over 2 years, where the estimated reduction in an SNF's wage index would be capped at 5 percent in FY 2021 (that is, no cap would be applied to any reductions in the wage index for the second year (FY 2022)).

We considered using a 50/50 blend for the transition, similar to the transition we finalized in the FY 2015 SNF PPS final rule, as described previously in this proposed rule. However, given that a majority of SNFs would experience an increase in their area wage index values as a result of the revised OMB delineations, and given that a blended option would affect all SNF providers, we believe it would be more appropriate to allow SNFs that would experience an increase in wage index values to receive the full benefit of their increased wage index value (which is intended to reflect accurately the higher labor costs in that area), while mitigating any significant negative wage index impacts that may be experienced by a minority of SNFs. By utilizing a cap on negative impacts, this restricts the transition to only those with negative impacts and allows providers who would experience positive impacts to receive the full amount of their wage index increase. Thus, we believe a 5 percent cap on the overall decrease in an SNF's wage index value would be an appropriate transition for FY 2021. We believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in an SNF's wage index for FY 2021, while balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Additionally, a cap on significant wage index decreases provides a certain degree of predictability in payment changes for providers and allows providers time to adjust to any significant decreases they may face in FY 2022, after the transition period has ended.

Furthermore, consistent with the requirement at section 1888(e)(4)(G)(ii) of the Act that wage index adjustments must be made in a budget neutral manner, we are proposing that this proposed 5 percent cap on the decrease in an SNF's wage index would not result in any change in estimated aggregate SNF PPS payments by applying a budget neutrality factor to the unadjusted Federal per diem rates. Our proposed methodology for calculating this proposed budget neutrality factor is discussed below in section V.A.4 of this proposed rule.

This transition policy would be for a 1-year period, going into effect October 1, 2020, and continuing through September 30, 2021. That is, no cap would be applied to any reductions in the wage index for FY 2022. We invite comments on our proposed transition methodology. (The proposed wage index applicable to FY 2021 is set forth in Table A available on the CMS website at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.* Table A provides a crosswalk between the FY 2021 wage index for a provider using the current OMB delineations in effect in FY 2020 and the FY 2021 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in FY 2021 if these proposed changes are finalized.)

3. Proposed Budget Neutrality Adjustments for Changes to the SNF PPS Wage Index

Section 1888(e)(4)(G)(ii) of the Act requires that we apply the wage index adjustment in a budget neutral manner such that aggregate SNF PPS payments will be neither greater than nor less than aggregate SNF PPS payments without the wage index adjustment. Under this provision, we determine a wage index adjustment budget neutrality factor that is applied to the Federal per diem rates to ensure that any changes to the area wage index values would not result in any change (increase or decrease) in estimated aggregate SNF PPS payments. Accordingly, we are proposing to apply a wage index budget neutrality factor in determining the Federal per diem rates, and we are also proposing a methodology for calculating this budget neutrality factor.

For FY 2021, we are proposing to adjust the SNF PPS unadjusted Federal per diem rates to account for the estimated effect of the wage index adjustments discussed in this section of the proposed rule on estimated aggregate SNF PPS payments. Under our established methodology, we have historically applied a single budget neutrality factor to ensure that any changes to the wage index are budget neutral. In general, annual changes to the wage index include updates to the wage index values based on updated hospital wage data, labor-related share, and geographic labor-market area (that is, CBSA) designations, as applicable. However, for FY 2021, as discussed previously in this proposed rule, we are also proposing to adopt revised OMB delineations and proposing to apply a 5-percent cap on any decrease in a SNF's wage index. Therefore, for purposes of the wage index budget neutrality requirement under section 1888(e)(4)(G)(ii) of the Act, in determining the SNF PPS Federal per diem rates, the proposed budget neutrality factor calculated for FY 2021, described below, accounts for all of these proposed changes to the SNF PPS wage index. Below we discuss our proposed methodology for calculating and applying the proposed wage index budget neutrality factor for determining the proposed FY 2021 Federal per diem rates.

We are proposing to apply a budget neutrality factor to adjust the FY 2021 SNF PPS Federal per diem rates to account for the estimated effect of the proposed changes to the wage index values based on updated hospital wage

data, as well as adopting the revised OMB delineations and accounting for the proposed 5 percent cap on any decreases in a provider's area wage index value, on estimated aggregate SNF PPS payments using a methodology that is consistent with the methodology we have used in prior years (most recently, in the FY 2020 SNF PPS final rule (84 FR 38738)).

Specifically, we are proposing to determine a budget neutrality factor for all updates to the wage index that would be applied to the SNF PPS Federal per diem rate for FY 2021 using the following methodology:

- *Step 1*—Simulate estimated aggregate SNF PPS payments using the FY 2020 wage index values and FY 2019 SNF PPS claims utilization data.
- *Step 2*—Simulate estimated aggregate SNF PPS payments using the FY 2019 SNF PPS claims utilization data and the proposed FY 2021 wage index values based on updated hospital wage data and the proposed revised OMB delineations, assuming a 5 percent cap on any decreases in an area wage index (that is, in cases where a provider's FY 2021 area wage index value would be less than 95 percent of the provider's FY 2020 wage index value, we set the provider's area FY 2021 wage index value to equal 95 percent of the provider's FY 2020 wage index value.)
- *Step 3*—Calculate the ratio of these estimated aggregate SNF PPS payments by dividing the estimated aggregate SNF PPS payments using the FY 2020 wage index values (calculated in Step 1) by the estimated aggregate SNF PPS payments using the proposed FY 2021 wage index values (calculated in Step 2) to determine the proposed budget neutrality factor for updates to the wage index that would be applied to the unadjusted Federal per diem rates for FY 2021.

For this proposed rule, using the steps in the methodology previously described, we determined a proposed FY 2021 SNF PPS budget neutrality factor of 0.9982.

Accordingly, in section III.B. of this proposed rule, to determine the proposed FY 2021 SNF PPS Federal per diem payment rates, we applied the proposed budget neutrality factor of 0.9982.

B. Technical Updates to PDPM ICD–10 Mappings

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the implementation of the Patient Driven Payment Model (PDPM), effective October 1, 2019. The PDPM utilizes International Classification of Diseases, Version 10 (ICD–10) codes in several ways, including to assign patients to clinical categories used for categorization under several PDPM components, specifically the PT, OT, SLP and NTA components. The ICD–10 code mappings and lists used under PDPM are available on the PDPM website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.*

Each year, the ICD–10 Coordination and Maintenance Committee, a federal interdepartmental committee that is chaired by representatives from the National Center for Health Statistics (NCHS) and by representatives from CMS, meets biannually and publishes updates to the ICD–10 medical code data sets in June of each year. These changes become effective October 1 of the year in which these updates are issued by the committee. The ICD–10 Coordination and Maintenance Committee also has the ability to make changes to the ICD–10 medical code data sets effective on April 1.

In the FY 2020 SNF PPS final rule (84 FR 38750), we outlined the process by which we maintain and update the ICD–10 code mappings and lists associated with the PDPM, as well as the SNF GROUPER software and other such products related to patient classification and billing, so as to ensure that they reflect the most up to date codes possible. Beginning with the updates for FY 2020, we apply nonsubstantive changes to the ICD–10 codes included on the PDPM code mappings and lists through a subregulatory process consisting of posting updated code mappings and lists on the PDPM website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* Such nonsubstantive changes are limited to those specific changes that are necessary to maintain consistency with the most current ICD–10 medical code data set. On the other hand, substantive changes, or those that go beyond the intention of maintaining consistency with the most current ICD–10 medical code data set, will be proposed through notice and comment rulemaking. For instance, changes to the assignment of a code to a comorbidity list or other changes that amount to changes in policy are considered substantive changes that require notice and comment rulemaking.

We are proposing several changes to the PDPM ICD–10 code mappings and lists. The proposed updated mappings and lists may be viewed online at the SNF PDPM website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* Our proposed changes are as follows.

Under the PDPM, we classify patients in clinical categories based on the primary SNF diagnosis. The clinical classification may change based on whether the patient had a major procedure during the prior inpatient stay that impacts the plan of care as captured in items J2100 through J5000 on the MDS. In the current ICD–10 to clinical category mapping being used in FY 2020, ICD–10 codes associated with certain cancers that could require a major procedure (specifically, C15 through C26.9, C33 through C39.9, C40.01 through C40.02, C40.11 through C40.12, C40.21 through C40.22, C40.31 through C40.32, C40.81 through C40.82, C40.91 through C41.9, C45.0 through C45.9, C46.3 through C46.9, C47.0, C47.11 through C47.12, C47.21 through C47.22, C47.3 through C48.8, C49.0, C49.11 through C49.12, C49.21 through C49.A9, C50.011 through C50.012, C50.021 through C50.022, C50.111 through C50.112, C50.121 through C50.122, C50.211 through C50.212, C50.221 through C50.222, C50.311 through C50.312, C50.321 through C50.322, C50.411 through C50.412, C50.421 through C50.422, C50.511 through C50.512, C50.521 through C50.522, C50.611 through C50.612, C50.621 through C50.622, C50.811 through C50.812, C50.821 through C50.822, C50.911 through C50.912, C50.921 through C50.922, C51.0 through C61, C62.01 through C62.02, C62.11 through C62.12, C62.91 through C68.9, C70.0 through C76.3, C76.41 through C76.42, C76.51 through C80.1, D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, D49.0 through D49.7) do not include the option of a major procedure in the prior inpatient stay that may impact the plan of care. We propose to add the surgical clinical category options of ''May be Eligible for the Non-Orthopedic Surgery Category'' or ''May be Eligible for One of the Two Orthopedic Surgery Categories'' to the clinical category mapping of the following diagnoses when a major procedure, as described previously, is identified on the MDS: C15 through C26.9, C33 through C39.9, C40.01 through C40.02, C40.11 through C40.12, C40.21 through C40.22, C40.31 through C40.32, C40.81 through C40.82, C40.91 through C41.9, C45.0 through C45.9, C46.3 through C46.9, C47.0, C47.11 through C47.12, C47.21 through C47.22, C47.3 through C48.8, C49.0, C49.11 through C49.12, C49.21 through C49.A9, C50.011 through C50.012, C50.021 through C50.022, C50.111

through C50.112, C50.121 through C50.122, C50.211 through C50.212, C50.221 through C50.222, C50.311 through C50.312, C50.321 through C50.322, C50.411 through C50.412, C50.421 through C50.422, C50.511 through C50.512, C50.521 through C50.522, C50.611 through C50.612, C50.621 through C50.622, C50.811 through C50.812, C50.821 through C50.822, C50.911 through C50.912, C50.921 through C50.922, C51.0 through C61, C62.01 through C62.02, C62.11 through C62.12, C62.91 through C68.9, C70.0 through C76.3, C76.41 through C76.42, C76.51 through C80.1, D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, D49.0 through D49.7. We propose to include the surgical clinical category options specified previously in this proposed rule for these codes because a major procedure for these codes in a prior inpatient stay could affect the plan of care. These proposed changes are outlined more specifically below.

We propose to include the surgical clinical category option ''May be Eligible for the Non-Orthopedic Surgery Category'' for cancer codes C15.3 through C26.9 which correspond to J2910 of the MDS and address cancers involving the gastrointestinal tract.

We propose to include the surgical clinical category option ''May be Eligible for the Non-Orthopedic Surgery Category'' for cancer codes C33 through C39.9, which correspond to J2710 of the MDS and that address cancers involving the respiratory system.

We propose to include the ''May be Eligible for One of the Two Orthopedic Surgery Categories'' option for codes C40.01 through C41.9 (with the exception of C410 Malignant neoplasm of bones of skull and face) for cancers involving the bones. We propose to include the ''May be Eligible for the Non-Orthopedic Surgery Category'' option for code C410 Malignant neoplasm of bones of skull and face because this type of cancer is more likely to be treated by non-orthopedic than orthopedic surgery.

We propose to include the ''May be Eligible for the Non-Orthopedic Surgery Category'' option for codes C46.3 through C46.9 for Kaposi's sarcoma because the cancers associated with those codes could require a major surgical procedure.

We propose to include the ''May be Eligible for the Non-Orthopedic Surgery Category'' option for certain codes relating to neoplasms, specifically D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, and D49.0 through D49.7, because these conditions sometimes require surgery.

In the FY 2020 ICD–10 to clinical category mapping, the ICD–10 code D75.A ''Glucose-6-phosphate dehydrogenase (G6PD) deficiency without anemia'' is assigned to the default clinical category of ''Cardiovascular and Coagulations'' to align with the other D75 codes. However, G6PD deficiency without anemia is generally asymptomatic and detected by testing. Compared to other blood diseases in the D75 code family, D75.A is very minor and likely asymptomatic. For this reason, we propose to change the assignment of D75.A to ''Medical Management''.

Stakeholders have pointed out that in the FY 2020 ICD–10 clinical category mappings, certain fracture codes map to the surgical default clinical categories such as ''Orthopedic Surgery (Except Major Joint Replacement or Spinal Surgery)'' or ''Major Joint Replacement or Spinal Surgery'' even if no surgery was performed. The specific codes mentioned were S32.031D, S32.19XD, S82.001D, and S82.002D through S82.002J. Given the concern raised by stakeholders, we propose to change the default clinical category to ''Non-Surgical Orthopedic'', with the surgical option of ''May be Eligible for One of the Two Orthopedic Surgery Categories'', for the following codes mentioned by stakeholders: S32.031D, S32.19XD, S82.001D, and S82.002D through S82.002J. We will continue to address changes to the mapping of fracture codes on a case-by-case basis as they are raised by stakeholders. We further propose to change the default clinical category of the following fracture codes to ''Return to Provider'' because these codes are unspecific and lack the level of detail provided by more specific codes as to whether the condition is on the right or left side of the body: S82.009A, S82.013A, S82.016A, S82.023A, S82.026A, S82.033A, S82.036A, and S82.099A.

A stakeholder pointed out that in the FY 2020 ICD–10 to clinical category mapping, the M48.00 through M48.08 spinal stenosis codes have a default clinical category mapping of ''Non-Surgical Orthopedic/Musculoskeletal'' and no surgical option, which does not allow for coding in cases where patients have spinal stenosis and spinal laminectomy surgery. For this reason, we propose to add the surgical option of ''May be Eligible for One of the Two Orthopedic Surgery Categories'' to M48.00 through M48.08 spinal stenosis codes.

In the FY 2020 ICD–10 to clinical category mapping, Z48 surgery aftercare codes map to the default clinical categories of ''Return to Provider'' or ''Medical Management'' even if a surgical procedure was indicated in J2100 of the MDS. Although Z48 codes are not very specific, we acknowledge that aftercare of some major non-orthopedic surgeries is coded through Z48 codes. Therefore, we propose to add the surgical option of ''May be Eligible for the Non-Orthopedic Surgery Category'' to the following surgery aftercare codes: Z48.21, Z48.22, Z48.23, Z48.24, Z48.280, Z48,.288, Z48.290, Z48.298, Z48.3, Z48.811, Z48.812, Z48.813, Z48.815, Z48.816, and Z48.29, to promote more accurate clinical category assignment.

With regard to the NTA comorbidity to ICD–10 code mappings, in the FY 2020 NTA comorbidity mapping, ICD–10 codes T82.310A through T85.89XA for initial encounter codes map to the NTA comorbidity CC176 ''Complications of Specified Implanted Device or Graft''. This mapping is based on the Part C risk adjustment model condition category mapping, which only included ICD–10 codes for acute encounters for complications of internal devices. Stakeholder have requested that we add to the mappings the ICD–10 codes in this range with the seventh digit of D (subsequent encounter) or S (sequela) for subsequent care. We are proposing to add codes in this range with the seventh digit of D (but not the seventh digit of S, because sequela can be coded years after the event and are likely not a reason for SNF treatment) for use in the ICD–10 code mapping to the NTA comorbidity CC176 ''Complications of Specified Implanted Device or Graft'' on the NTA conditions and extensive services list for the purpose of calculating the PDPM NTA score.

We invite comments on the proposed substantive changes to the ICD–10 code mappings discussed previously, as well as comments on additional substantive and non-substantive changes that stakeholders believe are necessary.

C. Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)

1. Background

Section 215(b) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) authorized the SNF VBP Program (the ''Program'') by adding section 1888(h) to the Act. As a prerequisite to implementing the SNF VBP Program, in the FY 2016 SNF PPS final rule (80 FR 46409 through 46426), we adopted an all-cause, all-condition

hospital readmission measure, as required by section 1888(g)(1) of the Act, and discussed other policies to implement the Program such as performance standards, the performance period and baseline period, and scoring. In the FY 2017 SNF PPS final rule (81 FR 51986 through 52009), we adopted an all-condition, risk-adjusted potentially preventable hospital readmission measure for SNFs, as required by section 1888(g)(2) of the Act, and adopted policies on performance standards, performance scoring, and sought comment on an exchange function methodology to translate SNF performance scores into value-based incentive payments, among other topics. In the FY 2018 SNF PPS final rule (82 FR 36608 through 36623), we adopted additional policies for the Program, including an exchange function methodology for disbursing value-based incentive payments. Additionally, in the FY 2019 SNF PPS final rule (83 FR 39272 through 39282), we adopted more policies for the Program, including a scoring adjustment for low-volume facilities. In the FY 2020 SNF PPS final rule (84 FR 38820 through 38825), we also adopted additional policies for the Program, including a change to our public reporting policy and an update to the deadline for the Phase One Review and Correction process.

The SNF VBP Program applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing-bed rural hospitals. Section 1888(h)(1)(B) of the Act requires that the SNF VBP Program apply to payments for services furnished on or after October 1, 2018. We believe the implementation of the SNF VBP Program is an important step towards transforming how care is paid for, moving increasingly towards rewarding better value, outcomes, and innovations instead of merely rewarding volume.

For additional background information on the SNF VBP Program, including an overview of the SNF VBP Report to Congress and a summary of the Program's statutory requirements, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46409 through 46426); the FY 2017 SNF PPS final rule (81 FR 51986 through 52009); the FY 2018 SNF PPS final rule (82 FR 36608 through 36623); the FY 2019 SNF PPS final rule (83 FR 39272 through 39282); and the FY 2020 SNF PPS final rule (84 FR 38820 through 38825).

2. Measures

a. Background and Proposal To Update the SNF VBP Program Measure Name in Our Regulations

For background on the measures we have adopted for the SNF VBP Program, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46419), where we finalized the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) (NQF #2510) that we are currently using for the SNF VBP Program. We also refer readers to the FY 2017 SNF PPS final rule (81 FR 51987 through 51995), where we finalized the Skilled Nursing Facility 30-Day Potentially Preventable Readmission Measure (SNFPPR) that we will use for the SNF VBP Program instead of the SNFRM as soon as practicable, as required by statute. We intend to submit the measure for NQF endorsement review during the Fall 2021 cycle, and to assess transition timing of the SNFPPR measure to the SNF VBP program after NQF endorsement review is complete.

In the FY 2020 SNF PPS final rule (84 FR 38821 through 38822), we adopted a policy changing the name of the SNFPPR to Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge. We adopted this change to differentiate the SNF VBP Program's measure of potentially preventable hospital readmissions from a similar measure specified for use in the SNF QRP, which uses a 30-day post-SNF discharge readmission window. We are not proposing any updates to this measure policy at this time.

However, consistent with this finalized policy, we are proposing to amend the definition of ''SNF Readmission Measure'' under 42 CFR 413.338(a)(11) to reflect the updated Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure name.

We welcome public comments on this proposal to amend the regulation text to reflect the updated measure name.

3. SNF VBP Performance Period and Baseline Period

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46422) for a discussion of our considerations for determining performance periods under the SNF VBP Program. In the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), we adopted a policy whereby we will automatically adopt the performance period and baseline period for a SNF VBP program year by advancing the performance period and baseline period by one year from the previous program year. For example, under this policy, the FY 2023 performance period will be FY 2021, and the baseline period will be FY 2019. We are not proposing any changes to this policy in this proposed rule.

4. Performance Standards

a. Background

We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for a summary of the statutory provisions governing performance standards under the SNF VBP Program and our finalized performance standards policy, as well as the numerical values for the achievement threshold and benchmark for the FY 2019 program year. We published the final numerical values for the FY 2020 performance standards in the FY 2018 SNF PPS final rule (82 FR 36613) and published the final numerical values for the FY 2021 performance standards in the FY 2019 SNF PPS final rule (83 FR 39276). We also adopted a policy allowing us to correct the numerical values of the performance standards in the FY 2019 SNF PPS final rule (83 FR 39276 through 39277). We are not proposing any changes to these policies in this proposed rule.

b. Proposal To Codify the SNF VBP Performance Standards Correction Policy

In the FY 2019 SNF PPS final rule (83 FR 39276 through 39277), we finalized a policy to correct numerical values of performance standards for a program year in cases of errors. We also finalized that we will only update the numerical values for a program year one time, even if we identify a second error, because we believe that a one-time correction will allow us to incorporate new information into the calculations without subjecting SNFs to multiple updates. We stated that any update we make to the numerical values based on a calculation error will be announced via the CMS website, listservs, and other available channels to ensure that SNFs are made fully aware of the update. In this proposed rule, we are not proposing any changes to these policies.

We are proposing to amend the definition of ''Performance standards'' at § 413.338(a)(9), consistent with these policies finalized in the FY 2019 SNF PPS final rule, to reflect our ability to update the numerical values of performance standards if we determine there is an error that affects the achievement threshold or benchmark.

We welcome public comments on this proposal to codify the performance standards correction policy finalized in

the FY 2019 SNF PPS final rule (83 FR 39276 through 39277).

c. FY 2023 Performance Standards

Based on our previously finalized policy, as discussed above, FY 2019 is the baseline period for the FY 2023 SNF VBP Program year. Based on this baseline period, we estimate that the performance standards would have the numerical values noted in Table 15. We note that these values represent estimates based on the most recently available data, and we will update the numerical values in the FY 2021 SNF PPS final rule.

TABLE 15: Estimated FY 2023 SNF VBP Program Performance Standards

Measure ID	Measure Description	Achievement Threshold	Benchmark
SNFRM	SNF 30-Day All-Cause Readmission Measure (NQF #2510)	0.79025	0.82917

5. SNF VBP Performance Scoring

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52000 through 52005) for a detailed discussion of the scoring methodology that we have finalized for the Program. We also refer readers to the FY 2018 SNF PPS final rule (82 FR 36614 through 36616) for discussion of the rounding policy we adopted. We also refer readers to the FY 2019 SNF PPS final rule (83 FR 39278 through 39281), where we adopted: (1) A scoring policy for SNFs without sufficient baseline period data, (2) a scoring adjustment for low-volume SNFs, and (3) an extraordinary circumstances exception policy.

We are not proposing any updates to SNF VBP scoring policies in this proposed rule.

6. SNF Value-Based Incentive Payments

We refer readers to the FY 2018 SNF PPS final rule (82 FR 36616 through 36621) for discussion of the exchange function methodology that we have adopted for the Program, as well as the specific form of the exchange function (logistic, or S-shaped curve) that we finalized, and the payback percentage of 60 percent. We adopted these policies for FY 2019 and subsequent fiscal years.

We also discussed the process that we undertake for reducing SNFs' adjusted federal per diem rates under the Medicare SNF PPS and awarding value-based incentive payments in the FY 2019 SNF PPS final rule (83 FR 39281 through 39282).

For estimates of FY 2021 SNF VBP Program incentive payment multipliers, we encourage SNFs to refer to FY 2020 SNF VBP Program performance information, available at *https://data.medicare.gov/Nursing-HomeCompare/SNF-VBP-Facility-LevelDataset/284v-j9fz.* Our previous analysis of historical SNF VBP data shows that the Program's incentive payment multipliers appear to be relatively consistent over time. As a result, we believe that the FY 2020 payment results represent our best estimate of FY 2021 performance at this time.

We are not proposing any updates to SNF VBP payment policies in this proposed rule.

7. Public Reporting on the Nursing Home Compare Website or a Successor Website

a. Background

Section 1888(g)(6) of the Act requires the Secretary to establish procedures to make SNFs' performance information on SNF VBP Program measures available to the public on the Nursing Home Compare website or a successor website, and to provide SNFs an opportunity to review and submit corrections to that information prior to its publication. We began publishing SNFs' performance information on the SNFRM in accordance with this directive and the statutory deadline of October 1, 2017.

Additionally, section 1888(h)(9)(A) of the Act requires the Secretary to make available to the public certain information on SNFs' performance under the SNF VBP Program, including SNF performance scores and their ranking. Section 1888(h)(9)(B) of the Act requires the Secretary to post aggregate information on the Program, including the range of SNF performance scores and the number of SNFs receiving value-based incentive payments, and the range and total amount of those payments.

In the FY 2017 SNF PPS final rule (81 FR 52009), we discussed the statutory requirements governing public reporting of SNFs' performance information under the SNF VBP Program. In the FY 2018 SNF PPS final rule (82 FR 36622 through 36623), we finalized our policy to publish SNF measure performance information under the SNF VBP Program on Nursing Home Compare after SNFs have an opportunity to review and submit corrections to that information under the two-phase Review and Correction process that we adopted in the FY 2017 SNF PPS final rule (81 FR 52007 through 52009) and for which we adopted additional requirements in the FY 2018 SNF PPS final rule. In the FY 2018 SNF PPS final rule, we also adopted requirements to rank SNFs and adopted data elements that we will include in the ranking to provide consumers and stakeholders with the necessary information to evaluate SNFs' performance under the Program (82 FR 36623).

b. Proposal To Codify the Data Suppression Policy for Low-Volume SNFs

In the FY 2020 SNF PPS final rule (84 FR 38823 through 38824), we adopted a data suppression policy for low-volume SNF performance information. Specifically, we finalized our proposal to suppress the SNF information available to display as follows: (1) If a SNF has fewer than 25 eligible stays during the baseline period for a program year, we will not display the baseline risk-standardized readmission rate (RSRR) or improvement score, though we will still display the performance period RSRR, achievement score, and total performance score if the SNF had sufficient data during the performance period; (2) if a SNF has fewer than 25 eligible stays during the performance period for a program year and receives an assigned SNF performance score as a result, we will report the assigned SNF performance score and we will not display the performance period RSRR, the achievement score, or improvement score; and (3) if a SNF has zero eligible cases during the performance period for a program year, we will not display any information for that SNF. We are not proposing any changes to this policy in this proposed rule.

However, to ensure that SNFs are fully aware of this public reporting policy, we are proposing to codify it at § 413.338(e)(3)(i), (ii), and (iii).

We welcome public comment on this proposal to codify the data suppression policy for low-volume SNFs policy finalized in the FY 2020 SNF PPS final rule (84 FR 38823 through 38824).

c. Proposal To Publicly Report SNF VBP Performance Information on Nursing Home Compare or a Successor Website

Section 1888(h)(9)(A) of the Act requires that the Secretary make available to the public on the Nursing Home Compare website or a successor website information regarding the performance of individual SNFs for a FY, including the performance score for each SNF for the FY and each SNF's ranking, as determined under section 1888(h)(4)(B) of the Act. Additionally, section 1888(h)(9)(B) of the Act requires that the Secretary periodically post aggregate information on the SNF VBP Program on the Nursing Home Compare website or a successor website, including the range of SNF performance scores, and the number of SNFs receiving value-based incentive payments and the range and total amount of those payments. In the FY 2018 SNF PPS final rule (82 FR 36622 through 36623), we finalized our policy to publish SNF measure performance information under the SNF VBP Program on Nursing Home Compare.

Our SNF VBP Program regulations currently only refer to the Nursing Home Compare website and do not account for the situation where a successor website replaces the Nursing Home Compare website. Therefore, we are proposing to amend § 413.338(e)(3) to reflect that we will publicly report SNF performance information on the Nursing Home Compare website or a successor website. CMS announced our website transition on a public internet blog in January 2020 (*https://www.cms.gov/blog/making-it-easier-compare-providers-and-care-settings-medicaregov*). We intend to update SNFs and other stakeholders through internet and other widely used communication modes at a later date closer to the targeted transition date.

We welcome public comments on this proposal.

8. Proposal To Update and Codify the Phase One Review and Correction Deadline

In the FY 2017 SNF PPS final rule (81 FR 52007 through 52009), we adopted a two-phase review and corrections process for SNFs' quality measure data that will be made public under section 1888(g)(6) of the Act and SNF performance information that will be made public under section 1888(h)(9) of the Act. We detailed the process for requesting Phase One corrections and finalized a policy whereby we would accept Phase One corrections to any quarterly report provided during a calendar year until the following March 31. In the FY 2020 SNF PPS final rule (84 FR 38824 through 38835) we updated this policy to reflect a 30-day Phase One Review and Correction deadline rather than through March 31st following receipt of the performance period quality measure quarterly report that we issue in June. We are now proposing to also apply this 30-day Phase One Review and Correction deadline to the baseline period quality measure report that we typically issue in December. This proposal would align the Phase One Review and Correction deadlines for the quarterly reports that contain the underlying claims and measure rate information for the baseline period or performance period. Under this proposal, SNFs would have 30 days following issuance of those reports to review the underlying claims and measure rate information. Should a SNF believe that any of the information is inaccurate, it may submit a correction request within 30 days following issuance of the reports. Although these reports are typically issued in December (baseline period information) and June (performance period information), we note that the issuance dates could vary. If the issuance dates of these reports are significantly delayed or need to be shifted for any reason, we would notify SNFs through routine communication channels, including, but not limited to memos, emails, and notices on the CMS SNF VBP website. We welcome public comments on this proposal.

We are also proposing to codify this policy in our regulations by amending the ''Confidential feedback reports and public reporting'' paragraph at § 413.338(e)(1).

We welcome public comments on this proposal to update the Phase One Review and Correction deadline and to codify that policy in our regulations.

VI. Collection of Information Requirements

This proposed rule would not impose any new/revised ''collection of information'' requirements or burden. For the purpose of this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the Paperwork Reduction Act of 1995 (PRA's) (44 U.S.C. 3501 *et seq.*) implementing regulations. Consequently, we are not setting out any burden nor seeking OMB approval of this rule's proposed changes under the authority of the PRA.

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Economic Analyses

A. Regulatory Impact Analysis

1. Statement of Need

This proposed rule would update the FY 2020 SNF prospective payment rates as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register** before the August 1 that precedes the start of each FY, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, we do not have the discretion to adopt an alternative approach on these issues.

2. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an economically significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed

below. Also, the rule has been reviewed by OMB.

3. Overall Impacts

This rule proposes updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728). We estimate that the aggregate impact will be an increase of approximately $784 million in payments to SNFs in FY 2021, resulting from the SNF market basket update to the payment rates. We note that these impact numbers do not incorporate the SNF VBP reductions that we estimate will total $199.54 million in FY 2021. We would note that events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented, and thus, very susceptible to forecasting errors due to events that may occur within the assessed impact time period.

In accordance with sections 1888(e)(4)(E) and (e)(5) of the Act, we update the FY 2020 payment rates by a factor equal to the market basket index percentage change adjusted by the MFP adjustment to determine the payment rates for FY 2021. The impact to Medicare is included in the total column of Table 16. In proposing the SNF PPS rates for FY 2021, we are proposing a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used for adjusting the federal rates).

The annual update proposed in this rule would apply to SNF PPS payments in FY 2021. Accordingly, the analysis of the impact of the annual update that follows only describes the impact of this single year. Furthermore, in accordance with the requirements of the Act, we will publish a rule or notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2021 SNF PPS payment impacts appear in Table 16. Using the most recently available data, in this case FY 2019, we apply the current FY 2020 wage index and labor-related share value to the number of payment days to simulate FY 2020 payments. Then, using the same FY 2019 data, we apply the proposed FY 2021 wage index and labor-related share value to simulate FY 2021 payments. We tabulate the resulting payments according to the classifications in Table 16 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2020 payments to the simulated FY 2021 payments to determine the overall impact. The breakdown of the various categories of data Table 16 follows:

- The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.
- The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).
- The second column shows the number of facilities in the impact database.
- The third column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is 0.0 percent; however, there are distributional effects of the change.
- The fourth column shows the impact of adopting the proposed revised OMB delineations, discussed in section V.A.1. of this proposed rule. The total impact of this change is 0.0 percent; however, there are distributional effects of the change.
- The fifth column shows the effect of all of the changes on the FY 2021 payments. The update of 2.3 percent is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 2.3 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 16, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to proposed changes in this proposed rule, rural providers would experience a 2.5 percent increase in FY 2021 total payments.

TABLE 16: Impact to the SNF PPS for FY 2021

Provider Characteristics	# Providers	Update Wage Data	Update OMB Delineation	Total Change (Total Wage Update + Market Basket Update)
Group				
Total	15,078	0.0%	0.0%	2.3%
Urban	10,951	0.0%	0.0%	2.3%
Rural	4,127	0.1%	0.1%	2.5%
Hospital-based urban	380	0.3%	0.1%	2.7%
Freestanding urban	10,571	0.0%	0.0%	2.2%
Hospital-based rural	245	0.1%	0.1%	2.5%
Freestanding rural	3,882	0.1%	0.1%	2.5%
Urban by region				
New England	775	-1.2%	-0.1%	1.0%
Middle Atlantic	1,470	0.6%	0.2%	3.2%
South Atlantic	1,868	0.0%	-0.1%	2.2%
East North Central	2,118	-0.2%	-0.1%	2.0%
East South Central	536	-0.2%	-0.1%	1.9%
West North Central	921	-0.6%	-0.1%	1.5%
West South Central	1,323	0.0%	0.0%	2.2%
Mountain	527	-0.5%	0.0%	1.7%
Pacific	1,407		0.0%	2.5%
Outlying	6	0.1%	-0.1%	2.3%
Rural by region				
New England	126	-0.5%	-0.1%	1.7%
Middle Atlantic	194	0.8%	-0.1%	3.0%
South Atlantic	462	-0.1%	0.2%	2.4%
East North Central	908	0.6%	0.1%	3.0%
East South Central	452	-0.1%	0.1%	2.2%
West North Central	1,020	-0.2%	0.1%	2.2%
West South Central	666	0.1%	0.0%	2.5%
Mountain	207	-0.2%	-0.1%	2.0%
Pacific	92	1.2%	-0.1%	3.4%
Ownership				
For profit	10,729	0.0%	0.0%	2.3%
Non-profit	3,469	0.0%	0.0%	2.3%
Government	880	0.1%	0.0%	2.4%

Note: The Total column includes the 2.3 percent market basket increase factor. Additionally, we found no SNFs in rural outlying areas.

5. Impacts for the SNF VBP Program

The estimated impacts of the FY 2021 SNF VBP Program are based on historical data and appear in Table 17. We modeled SNF performance in the Program using SNFRM data from FY 2016 as the baseline period and FY 2018 as the performance period. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621), though we note that the 60 percent payback percentage for FY 2021 will adjust to account for the low-volume scoring adjustment that we adopted in the FY 2019 SNF PPS final rule (83 FR 39278 through 39280). We estimate that the low-volume scoring adjustment would increase the 60 percent payback percentage for FY 2021 by approximately 2.25 percentage points (or $11.91 million), resulting in a payback percentage for FY 2021 that is 62.25 percent of the estimated $528.63 million in withheld funds for that fiscal year. Based on the 60 percent payback percentage (as modified by the low-volume scoring adjustment), we estimate that we will redistribute approximately $329.09 million in value-based incentive payments to SNFs in FY 2021, which means that the SNF VBP Program is estimated to result in approximately $199.54 million in savings to the Medicare Program in FY 2021. We refer readers to the FY 2019 SNF PPS final rule (83 FR 39278 through 39280) for additional information about payment adjustments for low-volume SNFs in the SNF VBP Program.

Our detailed analysis of the estimated impacts of the FY 2021 SNF VBP Program follows in Table 17.

TABLE 17: SNF VBP Program Estimated Impacts for FY 2021

Characteristic	Number of facilities	Mean SNFRM Risk-Standardized Readmission Rate (%)	Mean performance score	Mean incentive multiplier	Percent of total SNF Medicare Part A FFS payment after applying incentives
Group					
Total	15,201	19.67	27.7397	0.99251	100.00
Urban	10,893	19.72	26.6713	0.99205	84.98
Rural	4,308	19.55	30.4412	0.99367	15.02
Hospital-based urban*	307	19.30	34.4100	0.99645	1.88
Freestanding urban*	10,545	19.73	26.4063	0.99191	83.07
Hospital-based rural*	208	19.15	38.7270	0.99781	0.49
Freestanding rural*	3,888	19.56	29.9215	0.99346	14.36
Urban by region					
New England	752	19.76	25.4730	0.99151	5.48
Middle Atlantic	1,468	19.47	29.2070	0.99355	16.07
South Atlantic	1,864	19.84	25.2768	0.99150	17.29
East North Central	2,087	19.82	24.5481	0.99085	13.66
East South Central	542	19.85	25.2002	0.99120	3.56
West North Central	927	19.72	27.2973	0.99194	4.10
West South Central	1,324	20.05	23.3211	0.98996	7.49
Mountain	527	19.11	34.3344	0.99643	3.68
Pacific	1,396	19.50	30.1656	0.99406	13.65
Outlying	6	20.16	17.5878	0.98708	0.00
Rural by region					
New England	129	19.13	32.5091	0.99497	0.67
Middle Atlantic	210	19.24	31.5817	0.99419	0.91
South Atlantic	493	19.72	27.3343	0.99248	2.22
East North Central	909	19.45	29.3109	0.99361	3.44
East South Central	515	19.81	26.1659	0.99182	2.33
West North Central	1,040	19.41	34.5946	0.99503	1.98
West South Central	708	20.02	25.6838	0.99105	2.21
Mountain	208	18.97	40.1353	0.99883	0.66
Pacific	95	18.53	43.9844	1.00106	0.60
Outlying	1	18.78	30.7950	0.98659	0.00
Ownership					
Government	948	19.37	33.8732	0.99539	3.48
Profit	10,656	19.76	26.2134	0.99171	74.39
Non-Profit	3,597	19.48	30.6447	0.99414	22.13

* The group category which includes hospital-based/freestanding by urban/rural excludes 253 swing-bed SNFs.

6. Alternatives Considered

As described in this section, we estimated that the aggregate impact for FY 2021 under the SNF PPS will be an increase of approximately $784 million in payments to SNFs, resulting from the SNF market basket update to the payment rates.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating base payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY; accordingly, we are not pursuing alternatives for this process.

With regard to the alternatives considered related to the other proposals contained in this proposed rule, such as the proposed adoption of revised OMB delineations and proposed cap on wage index decreases discussed in section V.A. of this proposed rule, we discuss any alternatives considered within those sections.

7. Accounting Statement

As required by OMB Circular A–4 (available online at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*), in Tables 18 and 19, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule for FY 2020. Tables 16 and 18 provide our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this proposed rule, based on the data for 15,078 SNFs in our database. Tables 17 and 19 provide our best estimate of the possible changes in Medicare payments under the SNF VBP as a result of the policies we have adopted for this program.

TABLE 18: Accounting Statement: Classification of Estimated Expenditures, from the 2020 SNF PPS Fiscal Year to the 2021 SNF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	$784 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

* The net increase of $784 million in transfer payments is a result of the market basket increase of $784 million.

TABLE 19: Accounting Statement: Classification of Estimated Expenditures for the FY 2021 SNF VBP Program

Category	Transfers
Annualized Monetized Transfers	$329.09 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

*This estimate does not include the two percent reduction to SNFs' Medicare payments (estimated to be $528.63 million) required by statute.

8. Conclusion

This rule proposes updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728). Based on the above, we estimate that the overall payments for SNFs under the SNF PPS in FY 2021 are projected to increase by approximately $784 million, or 2.3 percent, compared with those in FY 2020. We estimate that in FY 2021, SNFs in urban and rural areas will experience, on average, a 2.3 percent increase and 2.5 percent increase, respectively, in estimated payments compared with FY 2020. Providers in the rural Pacific region will experience the largest estimated increase in payments of approximately 3.4 percent. Providers in the urban New England region will experience the smallest estimated increase in payments of 1.0 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by reason of their non-profit status or by having revenues of $30 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, for the purposes of the RFA, we estimate that almost all SNFs are small entities as that term is used in the RFA, according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of $30 million or less in any 1 year. (For details, see the Small Business Administration's website at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*). In addition, approximately 20 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not included in the definition of a small entity.

This rule proposes updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728).

Based on the above, we estimate that the aggregate impact for FY 2021 will be an increase of $784 million in payments to SNFs, resulting from the SNF market basket update to the payment rates. While it is projected in Table 16 that all providers would experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2021 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. In their March 2020 Report to Congress (available at *http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch8_sec.pdf*), MedPAC states that Medicare covers approximately 10 percent of total patient days in freestanding facilities and 18 percent of facility revenue (March 2020 MedPAC Report to Congress, 224). As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 16. As indicated in Table 16, the effect on facilities is projected to be an aggregate positive impact of 2.3 percent for FY 2021. As the overall impact on the industry as a whole, and thus on small entities specifically, is less than the 3 to 5 percent threshold discussed previously, the Secretary has determined that this proposed rule would not have a significant impact on a substantial number of small entities for FY 2021.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This proposed rule would affect small rural hospitals that (1) furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals will be a positive impact. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2020 (84 FR 38728)), the category of small rural hospitals is included within the analysis of the impact of this proposed rule on small entities in general. As indicated in Table 16, the effect on facilities for FY 2021 is projected to be an aggregate positive impact of 2.3 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule would not have a significant impact on a substantial number of small rural hospitals for FY 2021.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This proposed rule would impose no mandates on state, local, or tribal governments or on the private sector.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule would have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.

E. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' It has been determined that this proposed rule is a transfer rule that does not impose more than *de minimis* costs and thus is not a regulatory action for the purposes of Executive Order 13771.

F. Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

G. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons, we thought that the number of past commenters is a fair estimate of the number of reviewers of this rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of the proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $109.36 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm.* Assuming an average reading speed, we estimate that it would take approximately 4 hours for the staff to review half of the proposed rule. For each SNF that reviews the rule, the estimated cost is $437.44 (4 hours × $109.36). Therefore, we estimate that the total cost of reviewing this regulation is $27,559 ($437.44 × 63 reviewers).

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

CMS–1737–P

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 409.35 is amended by revising paragraph (a) to read as follows:

§ 409.35 Criteria for "practical matter".

(a) *General considerations.* In making a ''practical matter'' determination, as required by § 409.31(b)(3), consideration must be given to the patient's condition and to the availability and feasibility of using more economical alternative facilities and services. However, in making that determination, the availability of Medicare payment for those services may not be a factor. For example, if a beneficiary can obtain daily physical therapy services on an outpatient basis, the unavailability of Medicare payment for those alternative services due to the beneficiary's non-enrollment in Part B may not be a basis for finding that the needed care can only be provided in a SNF.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES; PAYMENT FOR ACUTE KIDNEY INJURY DIALYSIS

■ 3. The authority citation for part 413 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

§ 413.114 [Amended]

■ 4. Section 413.114 is amended in paragraph (c)(2) by removing the reference ''§ 413.55(a)(1)'' and adding in its place the reference ''§ 413.53(a)(1)''.

■ 5. Section 413.338 is amended by revising paragraphs (a)(9) and (11) and (e)(1) and (3) to read as follows:

§ 413.338 Skilled nursing facility value-based purchasing program.

(a) * * *

(9) *Performance standards* are the levels of performance that SNFs must meet or exceed to earn points under the SNF VBP Program for a fiscal year, and are announced no later than 60 days prior to the start of the performance period that applies to the SNF readmission measure for that fiscal year. Beginning with the performance standards that apply to FY 2021, if CMS discovers an error in the performance standard calculations subsequent to publishing their numerical values for a fiscal year, CMS will update the numerical values to correct the error. If CMS subsequently discovers one or more other errors with respect to the same fiscal year, CMS will not further update the numerical values for that fiscal year.

* * * * *

(11) *SNF readmission measure* means, prior to October 1, 2019, the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (SNFPPR) specified by CMS for application in the SNF Value-Based Purchasing Program. Beginning October 1, 2019, the term *SNF readmission measure* means the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure) specified by CMS for application in the SNF Value-Based Purchasing Program.

* * * * *

(e) * * *

(1) Beginning October 1, 2016, CMS will provide quarterly confidential feedback reports to SNFs on their performance on the SNF readmission measure. SNFs will have the opportunity to review and submit corrections for these data by March 31st following the date that CMS provides the reports, for reports issued prior to October 1, 2019. Beginning with the performance period quality measure quarterly report issued on or after October 1, 2019 that contains the performance period measure rate and all of the underlying claim information used to calculate the measure rate that applies for the fiscal year, SNFs will have 30 days following the date that CMS provides these reports to review and submit corrections for the data contained in these reports. Beginning with the baseline period quality measure quarterly report issued on or after October 1, 2020 that contains the baseline period measure rate and all of the underlying claim information used to calculate the measure rate that applies for the fiscal year, SNFs will have 30 days following the date that CMS provides these reports to review and submit corrections for the data contained in these reports. Any such correction requests must be accompanied by appropriate evidence showing the basis for the correction.

* * * * *

(3) CMS will publicly report the information described in paragraphs (e)(1) and (2) of this section on the Nursing Home Compare website or a successor website. Beginning with information publicly reported on or after October 1, 2019, the following exceptions apply:

(i) If CMS determines that a SNF has fewer than 25 eligible stays during the baseline period for a fiscal year but has 25 or more eligible stays during the performance period for that fiscal year, CMS will not publicly report the SNF's baseline period SNF readmission measure rate and improvement score for that fiscal year;

(ii) If CMS determines that a SNF is a low-volume SNF with respect to a fiscal year and assigns a performance score to the SNF under paragraph (d)(3) of this section, CMS will not publicly report the SNF's performance period SNF readmission measure rate, achievement score or improvement score for the fiscal year; and

(iii) If CMS determines that a SNF has zero eligible cases during the performance period with respect to a fiscal year, CMS will not publicly report any information for that SNF for that fiscal year.

* * * * *

Dated: March 24, 2020.

Seema Verma

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–07875 Filed 4–10–20; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1733–P]

RIN 0938–AU09

Medicare Program; FY 2021 Hospice Wage Index and Payment Rate Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2021. This rule also proposes changes to the hospice wage index by adopting the most recent Office of

Management and Budget statistical area delineations, with a 5 percent cap on wage index decreases. Finally, this proposed rule summarizes the changes to the hospice election statement finalized in the FY 2020 Hospice Wage Index and Rate Update final rule and effective for October 1, 2020; and provides hospices with a model election statement and sample addendum.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 9, 2020.

ADDRESSES: In commenting, refer to file code CMS–1733–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1733–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1733–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general questions about hospice payment policy, send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Wage index addenda will be available only through the internet on our website at: (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html.*)

I. Executive Summary

A. Purpose

This rule proposes updates to the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2021, as required under section 1814(i) of the Social Security Act (the Act). In addition, this rule proposes to adopt the most recent Office of Management and Budget (OMB) statistical area delineations and apply a 5 percent cap on wage index decreases; and proposes to sunset the Service Intensity Add-on (SIA) budget neutrality factor.

B. Summary of the Major Provisions

Section III.A.1 of this rule proposes to adopt the OMB statistical area delineations outlined in a September 14, 2018, OMB bulletin. Section III.A.2 proposes to apply a 5 percent cap on wage index decreases. Section III.B.1 proposes updates to the hospice wage index and makes the application of the updated wage data budget neutral for all four levels of hospice care. In section III.B.2 of this proposed rule we discuss the proposed FY 2021 hospice payment update percentage of 2.6 percent. Section III.B.3 of this proposed rule proposes to sunset the service intensity add-on budget neutrality factor (SBNF) and update the hospice payment rates. Section III.B.4 proposes the hospice cap amount for FY 2021 by the hospice payment update percentage discussed in section III.B.2 of this rule. Finally, section III.C discusses the modifications to the hospice election statement and the election statement addendum that were finalized in the FY 2020 Hospice final rule (84 FR 38484) and solicits comments on model examples of the modified election statement and the addendum.

C. Summary of Impacts

The overall economic impact of this proposed rule is estimated to be $580 million in increased payments to hospices for FY 2021.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. The regulations at § 418.22(b)(3) require that the certification and recertification forms include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of services. These hospice services are provided primarily in the individual's home. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary team, which includes the hospice physician, the patient's symptoms cannot be effectively managed at home, then the patient is

eligible for GIP, a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home and continue to receive routine home care. Limited, short-term, intermittent, IRC is also available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive CHC during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with our regulations at § 418.204. A minimum of 8 hours of nursing care, or nursing and aide care, must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices must comply with applicable civil rights laws,[1] including section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, under which covered entities must take appropriate steps to ensure effective communication with patients and patient care representatives with disabilities, including the provisions of auxiliary aids and services. Additionally, they must take reasonable steps to ensure meaningful access for individuals with limited English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at: *http://www.hhs.gov/ocr/civilrights.*

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare Hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (here called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, the Congress also expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see section 1861(dd)(2)(E) of the Act). As stated in the FY 1983 Hospice Wage Index and Rate Update proposed rule (48 FR 38149), the hospice interdisciplinary group should comprise paid hospice employees as well as hospice volunteers, and that ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices.'' This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (RHC, CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payment is made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, federal funds cannot be used for the prohibited activities, even in the context of a per diem payment. Recent news reports[2] have brought to light the potential role hospices could play in medical aid in dying (MAID) where such practices have been legalized in certain states. We wish to remind hospices that The Assisted Suicide Funding Restriction Act of 1997 (ASFRA) (Pub. L. 105–12) prohibits the use of federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including mercy killing, euthanasia, or assisted suicide. However, pursuant to section 3(b)(4) of ASFRA, the prohibition does not apply to the provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided changes in the methodology concerning updating the daily payment rates based on the hospital market basket percentage increase applied to the payment rates in effect during the previous federal FY.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established that updates to the hospice payment rates beginning FY 2002 and subsequent FYs be the hospital market basket percentage increase for the FY.

3. FY 1998 Hospice Wage Index Final Rule

The FY 1998 Hospice Wage Index final rule (62 FR 42860), implemented a

[1] Hospices are also subject to additional Federal civil rights laws, including the Age Discrimination Act, Section 1557 of the Affordable Care Act, and conscience and religious freedom laws.

[2] Nelson, R., Should Medical Aid in Dying Be Part of Hospice Care? Medscape Nurses. February 26, 2020. *https://www.medscape.com/viewarticle/925769#vp_1.*

new methodology for calculating the hospice wage index and instituted an annual Budget Neutrality Adjustment Factor (BNAF) so aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index.

4. FY 2010 Hospice Wage Index Final Rule

The FY 2010 Hospice Wage Index and Rate Update final rule (74 FR 39384) instituted an incremental 7-year phase-out of the BNAF beginning in FY 2010 through FY 2016. The BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value, but was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act is subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act.

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148), required hospices to begin submitting quality data, based on measures specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Beginning in FY 2014, hospices that fail to report quality data have their market basket percentage increase reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the PPACA, required, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we finalized in the FY 2011 Hospice Wage Index final rule (75 FR 70435) that the 180th day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the PPACA, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the PPACA could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we were required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

In the FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) we announced that beginning in 2012, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. We allowed existing hospices the option of having their cap calculated through the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. If a hospice's total Medicare payments for the cap year exceed the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days of care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act contains a new provision mandating that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures.

8. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50452) finalized a requirement that the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5-day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). Similar to the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation within 5 calendar days after the effective date of the discharge/revocation (unless the hospice has already filed a final claim) through the submission of a final claim or a Notice of Termination or Revocation (NOTR).

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50479) also finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians.

In addition, the FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50496) provided background, eligibility criteria, survey respondents, and implementation of the Hospice Experience of Care Survey for informal caregivers. Hospice providers were required to begin using this survey for hospice patients as of 2015.

Finally, the FY 2015 Hospice Wage Index and Rate Update final rule required providers to complete their aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to submit their aggregate cap determinations on a timely basis will have their payments suspended until the determination is completed and received by the Medicare contractor (79 FR 50503).

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we created two different payment rates for RHC that resulted in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for subsequent days of hospice care. We also created a SIA payment payable for services during the last 7 days of the beneficiary's life, equal to the CHC hourly payment rate multiplied by the amount of direct

patient care provided by a registered nurse (RN) or social worker that occurs during the last 7 days (80 FR 47177).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47186) implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016 and before October 1, 2025 would be updated by the hospice payment update percentage rather than using the CPI–U. This was applied to the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016. In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the fiscal year for FY 2017 and thereafter. Finally, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47144) clarified that hospices would have to report all diagnoses of the beneficiary on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements.

10. FY 2017 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52160), we finalized several new policies and requirements related to the HQRP. First, we codified our policy that if the National Quality Forum (NQF) made non-substantive changes to specifications for HQRP measures as part of the NQF's re-endorsement process, we would continue to utilize the measure in its new endorsed status, without going through new notice-and-comment rulemaking. We would continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures we have adopted for the HQRP; determinations about what constitutes a substantive versus non-substantive change would be made on a measure-by-measure basis. Second, we finalized two new quality measures for the HQRP for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission (81 FR 52173). The data collection mechanism for both of these measures is the HIS, and the measures were effective April 1, 2017. Regarding the CAHPS® Hospice Survey, we finalized a policy that hospices that receive their CMS Certification Number (CCN) after January 1, 2017 for the FY 2019 Annual Payment Update (APU) and January 1, 2018 for the FY 2020 APU will be exempted from the Hospice Consumer Assessment of Healthcare Providers and Systems (CAHPS®) requirements due to newness (81 FR 52182). The exemption is determined by CMS and is for 1 year only.

11. FY 2020 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38487), we rebased the payment rates for CHC and GIP and set those rates equal to their average estimated FY 2019 costs per day. We also rebased IRC per diem rates equal to the estimated FY 2019 average costs per day, with a reduction of 5 percent to the FY 2019 average cost per day to account for coinsurance. We finalized the FY 2020 proposal to reduce the RHC payment rates by 2.72 percent to offset the increases to CHC, IRC, and GIP payment rates to implement this policy in a budget-neutral manner in accordance with section 1814(i)(6) of the Act (84 FR 38496). We also finalized a policy to use the current year's pre-floor, pre-reclassified hospital inpatient wage index as the wage adjustment to the labor portion of the hospice rates. Finally, in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38505) we finalized modifications to the hospice election statement content requirements at § 418.24(b) by requiring hospices, upon request, to furnish an election statement addendum effective beginning in FY 2021. The addendum must list those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions, increasing coverage transparency for beneficiaries under a hospice election.

III. Provisions of the Proposed Rule

A. Proposed Hospice Wage Index Changes

1. Proposed Implementation of New Labor Market Delineations

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On April 10, 2018, OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revisions to the delineations of Metropolitan Statistical Areas (MSA), Micropolitan Statistical Areas, and Combines Statistical Areas, and guidance on uses of the delineation in these areas. A copy of the September 14, 2018 bulletin is available online at: *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* (We note, on March 6, 2020 OMB issued Bulletin 20–01 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*), and as discussed below was not issued in time for development of this proposed rule.) This bulletin states it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252), and Census Bureau data.''

While the revisions OMB published on September 14, 2018, are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the September 14, 2018 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the hospice wage index to use the latest OMB delineations available in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the most current OMB delineations would increase the integrity of the hospice wage index by creating a more accurate representation of geographic variation in wage levels. We are proposing to implement the new OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04 for the hospice wage index effective beginning in FY 2021. As noted above, the March 6, 2020 OMB Bulletin 20–01 was not issued in time for development of this proposed rule. While we do not believe that the minor updates included in OMB Bulletin 20–01 would impact our proposed updates to the CBSA-based labor market area delineations, if needed we would include any updates from this bulletin in any changes that would be adopted in the FY 2021 hospice final rule.

i. Micropolitan Statistical Areas

As discussed in the FY 2006 Hospice Wage Index proposed rule (70 FR 22397) and final rule (70 FR 45132), CMS considered how to use the Micropolitan Statistical Area definitions

in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a ''CBSA'' associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), CMS determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's Hospice rural wage index (see 70 FR 22397 and 70 FR 45132). Thus, the hospice statewide rural wage index is determined using IPPS hospital data from hospitals located in non-Metropolitan Statistical Areas (MSA).

Based upon the 2010 Decennial Census data, a number of urban counties have switched status and have joined or became Micropolitan Areas, and some counties that once were part of a Micropolitan Area, have become urban. Overall, there are fewer Micropolitan Areas (542) under the new OMB delineations based on the 2010 Census than existed under the latest data from the 2000 Census (581). We believe that the best course of action would be to continue the policy established in the FY 2006 Hospice Wage Index final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in FY 2021 and consistent with the treatment of Micropolitan Areas under the IPPS, we are proposing to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each state's rural wage index.

ii. Urban Counties Becoming Rural

If we adopt the new OMB delineations (based upon the 2010 decennial Census data), a total of 34 counties (and county equivalents) that are currently considered urban would be considered rural beginning in FY 2021. Table 1 below lists the 34 counties that would change to rural status if we finalize our proposal to implement the new OMB delineations.

TABLE 1—COUNTIES THAT WOULD CHANGE TO RURAL STATUS

County name	State	CBSA	CBSA name
BAKER	GA	10500	Albany, GA.
NEWTON	TX	13140	Beaumont-Port Arthur, TX.
GOLDEN VALLEY	MT	13740	Billings, MT.
WALKER	AL	13820	Birmingham-Hoover, AL.
SIOUX	ND	13900	Bismarck, ND.
FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA.
DE WITT	IL	14010	Bloomington, IL.
FORD	IL	16580	Champaign-Urbana, IL.
BUCKINGHAM	VA	16820	Charlottesville, VA.
ARANSAS	TX	18580	Corpus Christi, TX.
MC DONALD	MO	22220	Fayetteville-Springdale-Rogers, AR–MO.
LE FLORE	OK	22900	Fort Smith, AR–OK.
WELLS	IN	23060	Fort Wayne, IN.
HOOD	TX	23104	Fort Worth-Arlington, TX.
SOMERVELL	TX	23104	Fort Worth-Arlington, TX.
HAMILTON	NE	24260	Grand Island, NE.
BARRY	MI	24340	Grand Rapids-Wyoming, MI.
KALAWAO	HI	27980	Kahului-Wailuku-Lahaina, HI.
VAN BUREN	MI	28020	Kalamazoo-Portage, MI.
SCOTT	IN	31140	Louisville/Jefferson County, KY–IN.
TRIMBLE	KY	31140	Louisville/Jefferson County, KY–IN.
BENTON	MS	32820	Memphis, TN–MS–AR.
SIBLEY	MN	33460	Minneapolis—St. Paul—Bloomington, MN–WI.
HICKMAN	TN	34980	Nashville-Davidson-Murfreesboro-Franklin, TN.
GULF	FL	37460	Panama City, FL.
CUSTER	SD	39660	Rapid City, SD.
CAROLINE	VA	40060	Richmond, VA.
WEBSTER	LA	43340	Shreveport-Bossier City, LA.
PLYMOUTH	IA	43580	Sioux City, IA–NE–SD.
UNION	SC	43900	Spartanburg, SC.
PEND OREILLE	WA	44060	Spokane-Spokane Valley, WA.
COLUMBIA	WA	47460	Walla Walla, WA.
PULASKI	GA	47580	Warner Robins, GA.
KINGMAN	KS	48620	Wichita, KS.

iii. Rural Counties Becoming Urban

If we finalize our proposal to implement the new OMB delineations (based upon the 2010 decennial Census data), a total of 47 counties (and county equivalents) that are currently designated rural would be considered urban beginning in FY 2021. Table 2 below lists the 47 counties that would change to urban status.

TABLE 2—COUNTIES THAT WOULD CHANGE TO URBAN STATUS

County name	State	CBSA	CBSA name
GREENE	AL	46220	Tuscaloosa, AL.
WASHINGTON	AL	33660	Mobile, AL.
FRANKLIN	AR	22900	Fort Smith, AR–OK.
LEVY	FL	23540	Gainesville, FL.
STEWART	GA	17980	Columbus, GA–AL.
TALBOT	GA	17980	Columbus, GA–AL.
POWER	ID	38540	Pocatello, ID.
FULTON	IL	37900	Peoria, IL.
JOHNSON	IL	16060	Carbondale-Marion, IL.
FRANKLIN	IN	17140	Cincinnati, OH–KY–IN.
PARKE	IN	45460	Terre Haute, IN.
WARREN	IN	29200	Lafayette-West Lafayette, IN.
BOONE	IA	11180	Ames, IA.
JASPER	IA	19780	Des Moines-West Des Moines, IA.
GEARY	KS	31740	Manhattan, KS.
CARTER	KY	26580	Huntington-Ashland, WV–KY–OH.
ASSUMPTION	LA	12940	Baton Rouge, LA.
MOREHOUSE	LA	33740	Monroe, LA.
FRANKLIN	MA	44140	Springfield, MA.
IONIA	MI	24340	Grand Rapids-Kentwood, MI.
SHIAWASSEE	MI	29620	Lansing-East Lansing, MI.
LAKE	MN	20260	Duluth, MN–WI.
COVINGTON	MS	25620	Hattiesburg, MS.
HOLMES	MS	27140	Jackson, MS.
STONE	MS	25060	Gulfport-Biloxi, MS.
COOPER	MO	17860	Columbia, MO.
HOWARD	MO	17860	Columbia, MO.
STILLWATER	MT	13740	Billings, MT.
ANSON	NC	16740	Charlotte-Concord-Gastonia, NC–SC.
CAMDEN	NC	47260	Virginia Beach-Norfolk-Newport News, VA–NC.
GRANVILLE	NC	20500	Durham-Chapel Hill, NC.
HARNETT	NC	22180	Fayetteville, NC.
OTTAWA	OH	45780	Toledo, OH.
CLARENDON	SC	44940	Sumter, SC.
GIBSON	TN	27180	Jackson, TN.
STEWART	TN	17300	Clarksville, TN–KY.
HARRISON	TX	30980	Longview, TX.
STERLING	TX	41660	San Angelo, TX.
KING AND QUEEN	VA	40060	Richmond, VA.
MADISON	VA	47894	Washington-Arlington-Alexandria, DC–VA–MD–WV.
SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA–NC.
FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA–NC.
JACKSON	WV	16620	Charleston, WV.
MORGAN	WV	25180	Hagerstown-Martinsburg, MD–WV.
LINCOLN	WI	48140	Wausau-Weston, WI.
ADJUNTAS	PR	38660	Ponce, PR.
LAS MARIAS	PR	32420	Mayagüez, PR.

iv. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the new OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. In other cases, only the name of the CBSA would be modified, and none of the currently assigned counties would be reassigned to a different urban CBSA. Table 3 below lists CBSAs where we are proposing to change either the name or CBSA number only.

TABLE 3—COUNTIES THAT WOULD CHANGE NAME OR CBSA NUMBER

Proposed CBSA code	Proposed CBSA title	Current CBSA code	Current CBSA title
10540	Albany-Lebanon, OR	10540	Albany, OR.
11500	Anniston-Oxford, AL	11500	Anniston-Oxford-Jacksonville, AL.
12060	Atlanta-Sandy Springs-Alpharetta, GA	12060	Atlanta-Sandy Springs-Roswell, GA.
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock, TX.
13460	Bend, OR	13460	Bend-Redmond, OR.
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA.

TABLE 3—COUNTIES THAT WOULD CHANGE NAME OR CBSA NUMBER—Continued

Proposed CBSA code	Proposed CBSA title	Current CBSA code	Current CBSA title
14740	Bremerton-Silverdale-Port Orchard, WA	14740	Bremerton-Silverdale, WA.
15380	Buffalo-Cheektowaga, NY	15380	Buffalo-Cheektowaga-Niagara Falls, NY.
19430	Dayton-Kettering, OH	19380	Dayton, OH.
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming, MI.
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Mauldin, SC.
25060	Gulfport-Biloxi, MS	25060	Gulfport-Biloxi-Pascagoula, MS.
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT.
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Beaufort, SC.
28700	Kingsport-Bristol, TN–VA	28700	Kingsport-Bristol-Bristol, TN–VA.
31860	Mankato, MN	31860	Mankato-North Mankato, MN.
33340	Milwaukee-Waukesha, WI	33340	Milwaukee-Waukesha-West Allis, WI.
34940	Naples-Marco Island, FL	34940	Naples-Immokalee-Marco Island, FL.
35660	Niles, MI	35660	Niles-Benton Harbor, MI.
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Hayward-Berkeley, CA.
36500	Olympia-Lacey-Tumwater, WA	36500	Olympia-Tumwater, WA.
38060	Phoenix-Mesa-Chandler, AZ	38060	Phoenix-Mesa-Scottsdale, AZ.
39150	Prescott Valley-Prescott, AZ	39140	Prescott, AZ.
23224	Frederick-Gaithersburg-Rockville, MD	43524	Silver Spring-Frederick-Rockville, MD.
44420	Staunton, VA	44420	Staunton-Waynesboro, VA.
44700	Stockton, CA	44700	Stockton-Lodi, CA.
45940	Trenton-Princeton, NJ	45940	Trenton, NJ.
46700	Vallejo, CA	46700	Vallejo-Fairfield, CA.
47300	Visalia, CA	47300	Visalia-Porterville, CA.
48140	Wausau-Weston, WI	48140	Wausau, WI.
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL.

We are not discussing these proposed changes in this section because, in our view, they are inconsequential changes with respect to the hospice wage index. However, in other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In another type of change, some CBSAs have counties that would split off to become part of or to form entirely new labor market areas. Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. Table 4 below lists the urban counties that would move from one urban CBSA to a newly or modified CBSA if we adopt the new OMB delineations.

TABLE 4—COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA

Previous CBSA	New CBSA	County	State
16974	16984	COOK	IL.
16974	16984	DU PAGE	IL.
16974	16984	GRUNDY	IL.
16974	20994	KENDALL	IL.
16974	16984	MC HENRY	IL.
16974	16984	WILL	IL.
20524	39100	DUTCHESS	NY.
20524	35614	PUTNAM	NY.
26580	16620	LINCOLN	WV.
28940	34100	GRAINGER	TN.
35084	35154	SOMERSET	NJ.
35614	35154	MIDDLESEX	NJ.
35614	35154	MONMOUTH	NJ.
35614	35154	OCEAN	NJ.
35614	39100	ORANGE	NY.
38660	49500	GUANICA	PR.
38660	49500	GUAYANILLA	PR.
38660	49500	PENUELAS	PR.
38660	49500	YAUCO	PR.

2. Proposed Transition Period

As discussed above, overall, we believe that our proposal to adopt the revised OMB delineations for FY 2021 would result in hospice wage index values being more representative of the actual costs of labor in a given area. However, we also recognize that some hospices would experience decreases in their area wage index values as a result of our proposal. We also realize that many hospices would have higher area wage index values under our proposal.

To mitigate the potential impacts of proposed policies on hospices, we have in the past provided for transition periods when adopting changes that have significant payment implications, particularly large negative impacts. For example, we have proposed and finalized budget neutral transition policies to help mitigate negative

impacts on hospices following the adoption of the new CBSA delineations based on the 2010 decennial census data in the FY 2016 hospice final rule (80 FR 47142). Specifically, we implemented a 1-year 50/50 blended wage to the new OMB delineations. We applied a blended wage index for one year (FY 2016) for all geographic areas that would consist of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index was calculated equal to 50 percent of the FY 2016 wage index using the old labor market area delineation and 50 percent of the FY 2016 wage index using the new labor market area delineation, which resulted in an average of the two values. While we believed that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels, we also recognized that adopting such changes may cause some short-term instability in hospice payments, in particular for hospices that would be negatively impacted by the proposed adoption of the updates to the OMB delineations. Therefore, we are proposing a transition policy to help mitigate any significant negative impacts that hospices may experience due to our proposal to adopt the revised OMB delineations. Specifically, for FY 2021 as a transition, we are proposing to apply a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior FY. This transition would allow the effects of our proposed adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in FY 2021 (that is, no cap would be applied to the reduction in the wage index for the second year (FY 2022)). We believe a 5 percent cap on the overall decrease in a geographic area's wage index value would be appropriate for FY 2021, as it provides predictability in payment levels from FY 2020 to the upcoming FY 2021 and additional transparency because it is administratively simpler than our prior 1-year 50/50 blended wage index approach. We believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in a geographic area's wage index value for FY 2021. Because we believe that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels we are proposing to include a cap on the overall decrease in a geographic area's wage index value.

Overall, the impact between the FY 2021 wage index using the old OMB delineations and the proposed FY 2021 wage index using the new OMB delineations would be 0.0 percent due to the wage index standardization factor, which ensures that wage index updates and revisions are implemented in a budget-neutral manner. We invite comments on our proposed transition methodology.

The proposed wage index applicable to FY 2021 can be found in on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice.* The proposed hospice wage index for FY 2021 would be effective October 1, 2020 through September 30, 2021.

The wage index file also provides a crosswalk between the FY 2021 wage index using the current OMB delineations and the FY 2021 wage index using the proposed revised OMB delineations that would be in effect in FY 2021 if these proposed changes are finalized. This file shows each state and county and its corresponding proposed wage index along with the previous CBSA number, the new CBSA number or alternate identification number, and the new CBSA name.

B. Proposed Routine FY 2021 Hospice Wage Index and Rate Update

1. Proposed FY 2021 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by OMB to the Metropolitan Statistical Areas (MSAs) definitions.

In the FY 2020 Hospice Wage Index final rule (84 FR 38484), we finalized the proposal to use the current FY's hospital wage index data to calculate the hospice wage index values. In section III.A above we discuss our proposal to use the pre-floor, pre-reclassified hospital wage index data to calculate the hospice wage index values. For FY 2021, the proposed hospice wage index would be based on the FY 2021 hospital pre-floor, pre-reclassified wage index with a 5 percent cap on wage index decreases. This means that the hospital wage data used for the hospice wage index would reflect the new OMB delineations but would not take into account any geographic reclassification of hospitals including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

In the FY 2006 Hospice Wage Index final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all of the Core-Based Statistical Areas (CBSAs) within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2021, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia. The FY 2021 adjusted wage index value for Hinesville-Fort Stewart, Georgia is 0.8539.

There exist some geographic areas where there were no hospitals, and thus, no hospital wage data on which to base the calculation of the hospice wage index. In the FY 2008 Hospice Wage Index final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For FY 2021, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value

available for Puerto Rico, which is 0.4047, subsequently adjusted by the hospice floor.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. As discussed above the adjusted pre-floor, pre-reclassified hospital wage index values below 0.8 will be further adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15 which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8.

The proposed hospice wage index applicable for FY 2021 (October 1, 2020 through September 30, 2021) is available on our website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html.*

2. Proposed FY 2021 Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage increase for that FY.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage would be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP).

The proposed hospice payment update percentage for FY 2021 is based on the current estimate of the inpatient hospital market basket update of 3.0 percent (based on IHS Global Inc.'s fourth-quarter 2019 forecast with historical data through the third quarter 2019). Due to the requirements at sections 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the inpatient hospital market basket update for FY 2021 of 3.0 percent must be reduced by a MFP adjustment as mandated by Affordable Care Act (currently estimated to be 0.4 percentage point for FY 2021). In effect, the proposed hospice payment update percentage for FY 2021 would be 2.6 percent. If more recent data becomes available after the publication of this proposed rule and before the publication of the final rule (for example, more recent estimates of the inpatient hospital market basket update and MFP adjustment), we would use such data to determine the hospice payment update percentage for FY 2021 in the final rule.

Currently, the labor portion of the hospice payment rates is as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates is as follows: For RHC, 31.29 percent; for CHC, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

3. Proposed FY 2021 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP is to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in that final rule, we implemented a SIA payment for RHC when direct patient care is provided by a RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service, if certain criteria are met. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a service intensity add-on budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate in order to ensure that SIA payment are budget-neutral. At the beginning of every fiscal year, SIA utilization is compared to the prior year in order calculate a budget neutrality adjustment.

As shown in Table 5, for FY 2016 through FY 2020, there have been very minor SBNF adjustments suggesting that the utilization of the SIA from one year to the next remains relatively constant. Because the SBNF remains stable, we are proposing to remove the factor to simplify the RHC payment rate updates. Therefore, the RHC payment rates would typically only be updated by the wage index standardization factor and the hospice payment update percentage. We invite comments on this proposal.

TABLE 5—FY 2016–FY 2020 SIA BUDGET NEUTRALITY FACTORS

	Days 1–60	Days 61+
FY 2016	0.9806	0.9957
FY 2017	1.0000	0.9999
FY 2018	1.0017	1.0005
FY 2019	0.9991	0.9998
FY 2020	0.9924	0.9982

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. In order to calculate the wage index standardization factor, we simulate total payments using the FY 2020 hospice wage index and FY 2020 payment rates and compare it to our simulation of total payments using the FY 2021 wage index with a 5 percent cap on wage index decreases and FY 2020 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2020 wage index and payment rates by payments for each level of care using the FY 2021 wage index and payment

rates, we obtain a wage index standardization factor for each level of care. The wage index standardization factors for each level of care are shown in the tables below.

The proposed FY 2021 RHC rates shown in Table 6 will only be updated by the wage index standardization factor and the hospice payment update percentage as mentioned previously. The proposed FY 2021 payment rates for CHC, IRC, and GIP are shown in Table 7.

TABLE 6—PROPOSED FY 2021 HOSPICE RHC PAYMENT RATES

Code	Description	FY 2020 payment rates	Wage index standardization factor	Proposed FY 2021 hospice payment update	Proposed FY 2021 payment rates
651	Routine Home Care (days 1–60)	$194.50	× 0.9989	× 1.026	$199.34
651	Routine Home Care (days 61+)	153.72	× 0.9990	× 1.026	157.56

TABLE 7—PROPOSED FY 2021 HOSPICE CHC, IRC, AND GIP PAYMENT RATES

Code	Description	FY 2020 payment rates	Wage index standardization factor	FY 2021 hospice payment update	FY 2021 payment rates
652	Continuous Home Care Full Rate = 24 hours of care.	$1,395.63	× 0.9991	× 1.026	* $1,430.63
655	Inpatient Respite Care	450.10	× 0.9993	× 1.026	461.48
656	General Inpatient Care	1,021.25	× 0.9988	× 1.026	1,046.55

* ($59.61 per hour.)

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we implemented a HQRP as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. The proposed FY 2021 rates for hospices that do not submit the required quality data would be updated by the proposed FY 2021 hospice payment update percentage of 2.6 percent minus 2 percentage points. These rates are shown in Tables 8 and 9.

TABLE 8—PROPOSED FY 2021 HOSPICE RHC PAYMENT RATES FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2020 payment rates	Wage index standardization factor	Proposed FY 2021 hospice payment update of 2.6% minus 2 percentage points = +0.6%	Proposed FY 2021 payment rates
651	Routine Home Care (days 1–60)	$194.50	× 0.9989	× 1.006	$195.45
651	Routine Home Care (days 61+)	153.72	× 0.9990	× 1.006	154.49

TABLE 9—PROPOSED FY 2021 HOSPICE CHC, IRC, AND GIP PAYMENT RATES FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2020 payment rates	Wage index standardization factor	Proposed FY 2021 hospice payment update of 2.6% minus 2 percentage points = +0.6%	Proposed FY 2021 payment rates
652	Continuous Home Care Full Rate= 24 hours of care.	$1,395.63	× 0.9991	× 1.006	* $1,402.74
655	Inpatient Respite Care	450.10	× 0.9993	× 1.006	452.48
656	General Inpatient Care	1,021.25	× 0.9988	× 1.006	1,026.14

* ($58.45 per hour.)

4. Proposed Hospice Cap Amount for FY 2021

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014 (Pub. L. 113–185). Specifically, for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the CPI–U. The proposed hospice cap amount for the FY 2021 cap year will be $30,743.86, which is equal to the FY 2020 cap amount ($29,964.78) updated by the proposed FY 2021 hospice payment update percentage of 2.6 percent.

C. Election Statement Content Modifications and Addendum To Provide Greater Coverage Transparency and Safeguard Patient Rights

In the FY 2020 Hospice final rule (84 FR 38484), we finalized modifications to the hospice election statement content requirements at § 418.24(b) to increase coverage transparency for patients under a hospice election. In addition to the existing election statement content requirements at § 418.24(b), we finalized that hospices also would be required to include the following on the election statement:

- Information about the holistic, comprehensive nature of the Medicare hospice benefit.
- A statement that, although it would be rare, there could be some necessary items, drugs, or services that will not be covered by the hospice because the hospice has determined that these items, drugs, or services are to treat a condition that is unrelated to the terminal illness and related conditions.
- Information about beneficiary cost-sharing for hospice services.
- Notification of the beneficiary's (or representative's) right to request an election statement addendum that includes a written list and a rationale for the conditions, items, drugs, or services that the hospice has determined to be unrelated to the terminal illness and related conditions and that immediate advocacy is available through the Beneficiary and Family Centered Care Quality Improvement Organization (BFCC–QIO) if the beneficiary (or representative) disagrees with the hospice's determination.

Also in the CY 2020 hospice final rule, we finalized the requirements as set forth at § 418.24(c) for the hospice election statement addendum titled, ''Patient Notification of Hospice Non-Covered Items, Services, and Drugs'' and would include the following content requirements:

1. Name of the hospice;
2. Beneficiary's name and hospice medical record identifier;
3. Identification of the beneficiary's terminal illness and related conditions;
4. A list of the beneficiary's current diagnoses/conditions present on hospice admission (or upon plan of care update, as applicable) and the associated items, services, and drugs, not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions;
5. A written clinical explanation, in language the beneficiary and his or her representative can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the terminal illness and related conditions and not needed for pain or symptom management. This clinical explanation would be accompanied by a general statement that the decision as to whether or not conditions, items, services, and drugs is related is made for each patient and that the beneficiary should share this clinical explanation with other health care providers from which they seek services unrelated to their terminal illness and related conditions;
6. References to any relevant clinical practice, policy, or coverage guidelines.
7. Information on:
   a. The purpose of Addendum; and
   b. the patient's right to immediate advocacy.
8. Name and signature of Medicare hospice beneficiary (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the beneficiary's agreement with the hospice's determinations.

We finalized a policy requiring that the election statement modifications apply to all hospice elections. However, the addendum only would be furnished to beneficiaries, their representatives, non-hospice providers, or Medicare contractors who requested such information. Additionally, we finalized a policy that if the beneficiary (or representative) requested an addendum at the time of hospice election, the hospice would have 5 days from the start of hospice care to furnish this information in writing. Furthermore, if the beneficiary requested the election statement at the time of hospice election, but died within 5 days, the hospice would not be required to furnish the addendum as the requirement would be deemed to have been met in this circumstance. If the addendum was requested during the course of hospice care (that is, after the date of the hospice election), we finalized a policy that the hospice would have 72 hours from the date of the request to provide the written addendum.

The election statement modifications and the election statement addendum requirements will be effective for hospice elections beginning on and after October 1, 2020 (that is, FY 2021). While we finalized the content requirements for the election statement addendum, we did not finalize a specific form, and hospices will develop and design the addendum to meet their needs, similar to how hospices develop their own hospice election statement.

Additionally, we finalized a policy that the signed addendum (and any signed updates) would be a new condition for payment. However, this does not mean in order to meet this condition for payment that the beneficiary (or representative), or non-hospice provider would have to agree with the hospice's determination. For purposes of this condition for payment, we finalized the policy that the signed addendum was only an acknowledgement of the beneficiary's (or representative's) receipt of the addendum (or its updates) and this payment requirement would be met if there was a signed addendum (and any signed updates) in the requesting beneficiary's medical record with the hospice. This addendum would not be required to be submitted routinely with each hospice claim. Likewise, the hospice beneficiary (or representative) would not have to separately consent to the release of this information to non-hospice providers furnishing services for unrelated conditions, because the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule allows those doctors, nurses, hospitals, laboratory technicians, and other health care providers that are covered entities to use or disclose protected health information, such as X-rays, laboratory and pathology reports, diagnoses, and other medical information for treatment purposes without the patient's express authorization. This includes sharing the information to consult with other providers, including providers who are not covered entities, to treat a different patient, or to refer the patient (45 CFR 164.506).

We delayed the effective date of the election statement content modifications and the hospice election statement addendum until FY 2021 to allow hospices adequate time to make the necessary modifications to their current election statements, develop

their own election statement addendum, and make any changes to their current software and business processes to accommodate the requirements. Furthermore, in the FY 2020 Hospice final rule, we stated we would examine the operational and logistical issues highlighted by commenters in response to the election statement addendum to determine if any additional proposals would be required for FY 2021 rulemaking. These issues included concerns about the best way to furnish this information to patients and their representatives in the most clear and unobtrusive way; mechanisms to make necessary changes or adjustments to the addendum content; obtaining necessary signature(s) on the addendum; expected documentation in the hospice's medical record to determine whether the addendum was requested, when it was requested, whether it was present, and whether the condition for payment requirement has been met; expectations as to the auditing process by the Medicare Administrative Contractors (MACs) when an Additional Documentation Request (ADR) was made; and the provision of MAC and BFCC–QIO education.

As noted in the FY 2020 Hospice final rule (84 FR 38509), the hospice Conditions of Participation (CoPs) at § 418.52(a) require that during the initial assessment visit, in advance of furnishing care, the hospice must provide the patient or representative with verbal (meaning spoken) and written notice of the patient's rights and responsibilities in a language and manner that the patient understands. Furthermore, hospices are to inform the beneficiary of the services covered under the Medicare hospice benefit, as well as the scope of such services. The intent of this standard was to ensure that patients were aware of their potential out-of-pocket costs for hospice care, such as co-payments, so that they would not be surprised by financial concerns at this stressful time (73 FR 32097). Therefore, hospices are already tasked with providing detailed information on hospice services and limitations to those services to the patient upon election of the benefit. We believe that the addendum further complements these requirements by ensuring that the hospice informs them of any items, services, or drugs which the terminally ill individual would have to seek outside of the benefit. As we also noted in the FY 2020 Hospice final rule, we stated that we would furnish a modified model election statement and election statement addendum to provide the industry as they move forward making the changes to their own election statements and as they develop an addendum to communicate those items, services, and drugs they will not be covering because they have determined them to be unrelated to the terminal illness and related conditions. We have posted the modified model election statement and addendum on the Hospice Center web page, *https://www.cms.gov/Center/Provider-Type/Hospice-Center,* to give hospices an idea as to the requirements and how they can develop their own forms. Because we detailed the content requirements in the FY 2020 Hospice final rule, we believe that hospices have been provided with specific information in order to develop their own election statement addendum without any further proposals. We expect to issue an MLN Matters® article to accompany this proposed rule to further educate the hospice community as to the election statement and addendum content requirements effective for hospice elections beginning on and after October 1, 2020.

Regarding mechanisms to make any necessary changes or adjustments to the requested addendum content, hospices have the option to make updates to the addendum, if necessary, to include such conditions, items, services and drugs they determine to be unrelated throughout the course of a hospice election in a format that works best for their current processes. Hospices are already required to make updates to the plan of care at least every 15 days, or more often as the patient's condition warrants, in accordance with the requirements at § 418.56(d). Therefore, hospices already have systems in place to address and document the changing needs of the patient via the hospice plan of care. We would expect that hospices would adopt a similar process for making any necessary changes or adjustments to the election statement addendum. Moreover, we do not expect that there would be frequent changes to the addendum, especially as a patient continues in a hospice election and where most conditions are or become related to the terminal prognosis and therefore, the responsibility of the hospice to manage.

The hospice election statement has always required the signature of the electing individual (or their representative). This requirement has not changed with the modifications to the election statement and if the individual (or representative) requests the election statement addendum, the finalized requirements include the signature of the individual (or representative), as well as the date the addendum was signed. We would expect that the signature on the addendum would be similar to how each hospice obtains the individual's signature on the election statement itself. That is, if the individual electronically signs the election statement, there is nothing prohibiting the hospice from having the addendum electronically signed. We note that it is at the contractor's discretion as to how they address patient/representative electronic signatures in their review of medical records, so hospices should confirm with their respective Medicare contractors as to the use of electronic signatures for beneficiary (or representative) signatures. However, the addendum is required to be furnished to the individual in writing so that the individual (or representative) can understand the information provided, make treatment decisions based on that information, and share such information with non-hospice providers rendering items and services to the individual. Therefore, the format of the addendum must be usable for the patient; most often we would expect that this would be in a hard copy format that the individual can keep for his/her own records, similar to how hospices are required by the hospice CoPs at § 418.52(a)(3) to provide the individual a copy of the notice of patient rights and responsibilities.

For purposes of this condition for payment, we finalized that the signed addendum is only acknowledgement of the beneficiary's (or representative's) receipt of the addendum (or its updates) and this payment requirement would be met if there was a signed addendum (and any signed updates) in the requesting beneficiary's medical record with the hospice. The hospice CoPs at § 418.104(a)(2) says that the patient's record must include ''signed copies of the notice of patient rights in accordance with § 418.52 and election statement in accordance with § 418.24.'' As the addendum is part of the election statement as set forth in § 418.24, then it is also a required part of the patient's record, if the addendum has been requested by the beneficiary (or representative).

We believe that a signed addendum connotes that the hospice had the discussion about the addendum and its content. Likewise, in the event that the individual (or representative) did not request the addendum, we would expect hospices to document, in some fashion, that the addendum was discussed with the patient (or representative) at the time of admission, similar to how other patient and family discussions are documented in the hospice's clinical record. Hospices can develop a way to

document whether or not the addendum was requested at the time of hospice election (or at any time throughout the course of hospice care). This could be done in checklist format or as anecdotal notes by the nurse. However, we did not propose a specific format in which to document such conversations and hospices can develop their own processes to incorporate into their current workflow. We believe careful documentation that the addendum was discussed and whether or not it was requested would be an essential step hospices could take to protect themselves from possible claims denials related to any absence of an addendum (or addendum update) in the medical record. The model election form and addendum posted on the Hospice Center web page will provide one example as to how hospices can document that the addendum was discussed at the time of election. We believe that hospices are the best to determine how to assimilate this requirement into their current processes and that it is not necessary to propose a specific process, thereby creating extra burden for hospices.

For purposes of an ADR and to mitigate any concerns about situations in which there was no beneficiary (or representative) request for the addendum, hospices may submit any documentation as it relates to the presence or non-presence of the addendum, given that it is a condition for payment. That is, if the beneficiary (or representative) requested the election statement addendum, then the hospice should submit the signed addendum as part of any ADR. And if the beneficiary (or representative) did not request the election statement addendum, then the hospice can submit any documentation in response to an ADR that indicates that no beneficiary (or representative) request for an addendum was made to ensure that it is clear that the hospice addressed the addendum with the beneficiary. We believe that this situation is similar to the patient-designated attending physician requirement on the hospice election statement. That is, the hospice attending physician must be identified by the beneficiary on the hospice election statement, but only if the beneficiary designates one. We are aware that many hospices have included a checkbox on their election statement to indicate when the beneficiary has opted not to designate an attending physician. Hospices may choose to adopt a similar process for the election statement addendum to ensure that they have documented those situations when a beneficiary does not request an addendum upon having been told of their right to request one.

However, we understand stakeholder concerns regarding potential claims denials in the event that there is no signed addendum in the beneficiary's hospice clinical record because it was not requested. While we believe that a consistent, comprehensive process for documenting when a beneficiary (or representative) does not request the addendum will help mitigate claim denial issues, upon display of this proposed rule, we have posted a model hospice election statement and addendum on the Hospice Center web page (*https://www.cms.gov/Center/Provider-Type/Hospice-Center*) to assist hospices in understanding the content requirements. We remind hospices that the modifications to the election statement are effective for all hospice elections beginning on and after October 1, 2020. The model election statement posted on the Hospice Center web page illustrates how hospices can incorporate the finalized modifications into their own election statements. The model addendum, also posted on the Hospice Center web page, demonstrates how hospices can include all of the addendum requirements in a format that could assimilate into their current processes. We are soliciting comments on both of these model examples to see if they are helpful in educating hospices in how to meet these requirements effective on October 1, 2020. Additionally, we will provide education to Medicare contractors to help ensure that these finalized policies are fully understood by all relevant stakeholders.

We are not proposing any changes to the policies finalized in the FY 2020 Hospice final rule regarding the election statement content modifications or the requirements for the election statement addendum as set forth at § 418.24. These finalized policies will be effective for all hospice elections beginning on and after October 1, 2020.

Note: There are no proposals or updates in this proposed rule to the Hospice Quality Reporting Program.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of CBSAs or previously used Metropolitan Statistical Areas (MSAs), as well as any changes to the methodology for determining the per diem payment rates. This proposed rule would also update payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2021 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act.

B. Overall Impacts

We estimate that the aggregate impact of the payment provisions in this proposed rule would result in an estimated increase of $580 million in payments to hospices, resulting from the hospice payment update percentage of 2.6 percent for FY 2021. The impact analysis of this proposed rule represents the projected effects of the changes in hospice payments from FY 2020 to FY 2021. Using the most recent data available at the time of rulemaking, in this case FY 2019 hospice claims data as of January 13, 2020, we apply the current FY 2020 wage index. Then, using the same FY 2019 data, we apply the FY 2021 wage index to simulate FY 2021 payments. Finally, we apply a budget neutrality adjustment so that the aggregate simulated payments do not increase or decrease due to changes in the wage index.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of

these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability presents the costs and benefits of the rulemaking.

C. Anticipated Effects

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.5 million to $38.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The effect of the FY 2021 hospice payment update percentage results in an overall increase in estimated hospice payments of 2.6 percent, or $580 million. The distributional effects of the proposed FY 2021 hospice wage index do not result in a greater than 5 percent of hospices experiencing decreases in payments of 3 percent or more of total revenue. Therefore, the Secretary has determined that this rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will only affect hospices. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. The 2020 UMRA threshold is $156 million. This rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $156 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have reviewed this rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule.

Using the wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $107.38 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). This proposed rule consists of approximately 15,000 words. Assuming an average reading speed of 250 words per minute, it would take approximately 0.50 hours for the staff to review half of it. For each hospice that reviews the rule, the estimated cost is $53.69 (0.50 hour × $107.38). Therefore, we estimate that the total cost of reviewing this regulation is $7,946.12 ($53.69 × 148 reviewers).

D. Detailed Economic Analysis

1. Proposed Hospice Payment Update for FY 2021

The FY 2021 hospice payment impacts appear in Table 11. We tabulate the resulting payments according to the classifications (for example, provider type, geographic region, facility size), and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government,

other), facility location, facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2021 updated wage data. This represents the effect of moving from the FY 2020 hospice wage index to the FY 2021 unadjusted hospice wage index with the old OMB delineations. The fourth column shows the effect of moving from the old OMB delineations to the new OMB delineations with a 5 percent cap on wage index decreases. The aggregate impact of the changes in columns three and four is zero percent, due to the hospice wage index standardization factor. However, there are distributional effects of the FY 2021 hospice wage index. The fifth column shows the proposed FY 2021 hospice payment update percentage of 2.6 percent as mandated by section 1814(i)(1)(C) of the Act, and is consistent for all providers. The 2.6 percent hospice payment update percentage is based on an estimated 3.0 percent inpatient hospital market basket update, reduced by a 0.4 percentage point productivity adjustment. It is projected that aggregate payments would increase by 2.6 percent, assuming hospices do not change their service and billing practices. The sixth column shows the estimated total impact for FY 2021.

We note that simulated payments are based on utilization in FY 2019 as seen on Medicare hospice claims (accessed from the CCW in January of 2020) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 10, the combined effects of all the proposals vary by specific types of providers and by location.

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TABLE 10: Projected Impact to Hospices for FY 2021

Hospice Subgroup	Hospices	FY 21 Updated Wage Data	New OMB Delineations (5% Cap)	Market basket	Overall Total Impact
All Hospices	4,760	0.0%	0.0%	2.6%	2.6%
Hospice Type and Control					
Freestanding/Non-Profit	594	0.0%	0.1%	2.6%	2.7%
Freestanding/For-Profit	3,002	0.0%	0.0%	2.6%	2.6%
Freestanding/Government	39	0.2%	0.0%	2.6%	2.8%
Freestanding/Other	362	0.0%	-0.1%	2.6%	2.5%
Facility/HHA Based/Non-Profit	381	-0.1%	0.0%	2.6%	2.5%
Facility/HHA Based/For-Profit	204	0.1%	0.0%	2.6%	2.7%
Facility/HHA Based/Government	94	0.0%	0.1%	2.6%	2.7%
Facility/HHA Based/Other	84	0.2%	0.3%	2.6%	3.1%
Subtotal: Freestanding Facility Type	3,997	0.0%	0.0%	2.6%	2.6%
Subtotal: Facility/HHA Based Facility Type	763	0.0%	0.0%	2.6%	2.6%
Subtotal: Non-Profit	975	0.0%	0.0%	2.6%	2.6%
Subtotal: For Profit	3,206	0.0%	0.0%	2.6%	2.6%
Subtotal: Government	133	0.1%	0.0%	2.6%	2.7%
Subtotal: Other	446	0.0%	0.0%	2.6%	2.6%
Hospice Type and Control: Rural					
Freestanding/Non-Profit	147	0.3%	0.0%	2.6%	2.9%
Freestanding/For-Profit	335	0.1%	0.0%	2.6%	2.7%
Freestanding/Government	21	0.1%	0.0%	2.6%	2.7%
Freestanding/Other	48	0.1%	0.0%	2.6%	2.7%
Facility/HHA Based/Non-Profit	151	0.0%	0.0%	2.6%	2.6%
Facility/HHA Based/For-Profit	47	0.4%	0.0%	2.6%	3.0%
Facility/HHA Based/Government	68	0.0%	0.0%	2.6%	2.6%
Facility/HHA Based/Other	51	0.1%	0.0%	2.6%	2.7%
Facility Type and Control: Urban					
Freestanding/Non-Profit	447	0.0%	0.1%	2.6%	2.7%
Freestanding/For-Profit	2,667	0.0%	0.0%	2.6%	2.6%
Freestanding/Government	18	0.2%	0.0%	2.6%	2.8%
Freestanding/Other	314	0.0%	-0.1%	2.6%	2.5%
Facility/HHA Based/Non-Profit	230	-0.2%	0.0%	2.6%	2.4%
Facility/HHA Based/For-Profit	157	0.1%	-0.1%	2.6%	2.6%
Facility/HHA Based/Government	26	-0.1%	0.1%	2.6%	2.6%
Facility/HHA Based/Other	33	0.2%	0.4%	2.6%	3.2%

Hospice Location: Urban or Rural					
Rural	868	0.2%	0.0%	2.6%	2.8%
Urban	3,892	0.0%	0.0%	2.6%	2.6%
Hospice Location: Region of the Country (Census Division)					
New England	155	-0.9%	0.0%	2.6%	1.7%
Middle Atlantic	279	0.3%	0.1%	2.6%	3.0%
South Atlantic	562	0.1%	0.0%	2.6%	2.7%
East North Central	548	0.2%	0.0%	2.6%	2.8%
East South Central	261	0.0%	0.0%	2.6%	2.6%
West North Central	407	-0.6%	0.0%	2.6%	2.0%
West South Central	924	0.2%	0.0%	2.6%	2.8%
Mountain	484	-0.5%	0.0%	2.6%	2.1%
Pacific	1,094	0.1%	0.1%	2.6%	2.8%
Outlying	46	-0.7%	-0.1%	2.6%	1.8%
Hospice Size					
0 - 3,499 RHC Days (Small)	1,066	0.0%	0.0%	2.6%	2.6%
3,500-19,999 RHC Days (Medium)	2,142	0.0%	0.0%	2.6%	2.6%
20,000+ RHC Days (Large)	1,552	0.0%	0.0%	2.6%	2.6%

Source: FY 2019 hospice claims data from CCW accessed on January 13, 2020.

Region Key:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York;
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming P**acific**= Alaska, California, Hawaii, Oregon, Washington
Outlying=Guam, Puerto Rico, Virgin Islands

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E. Alternatives Considered

For the FY 2021 Hospice Wage Index and Rate Update proposed rule, we considered alternatives to the proposals articulated in section III.A. We considered not adopting the OMB delineations. However, we have historically adopted the latest OMB delineations as we believe that implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Additionally, we considered not implementing the 1-year 5 percent cap on wage index decreases. However, we decided that the 5 percent cap was a better option for the transition because it would mitigate potential negative impacts from the transition to the new OMB delineations and allow providers the opportunity to adjust to the changes in their wage index values gradually.

F. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 11, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 11 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this proposed rule. This estimate is based on the data for 4,408 hospices in our impact analysis file, which was constructed using FY 2019 claims available in January 2020. All expenditures are classified as transfers to hospices.

TABLE 11—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS, FROM FY 2020 TO FY 2021

Category	Transfers
Annualized Monetized Transfers	$580 million.*
From Whom to Whom?	Federal Government to Medicare Hospices.

*The net increase of $580 million in transfer payments is a result of the 2.6 percent hospice payment update compared to payments in FY 2020.

G. Regulatory Reform Analysis Under E.O. 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' It has been determined that this proposed rule is an action that primarily results in transfers and does not impose more than de minimis costs as described above and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

H. Conclusion

We estimate that aggregate payments to hospices in FY 2021 will increase by $580 million, or 2.6 percent, compared to payments in FY 2020. We estimate that in FY 2021, hospices in urban areas will experience, on average, 2.6 percent increase in estimated payments compared to FY 2020. While hospices in rural areas will experience, on average, 2.8 percent increase in estimated payments compared to FY 2020. Hospices providing services in the Middle Atlantic region would experience the largest estimated increases in payments of 3.0 percent. Hospices serving patients in areas in the New England and Outlying regions would experience, on average, the lowest estimated increase of 1.7 percent and 1.8 percent, respectively in FY 2021 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: March 24, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–07959 Filed 4–10–20; 4:15 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 18

[ET Docket No. 19–226; FCC 19–126; FRS 16643]

Human Exposure to Radiofrequency Electromagnetic Fields; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting a date that appeared in the **Federal Register** on April 6, 2020. In this document, the Commission seeks comment on expanding the range of frequencies for which its radiofrequency (RF) exposure limits apply; on applying localized exposure limits above 6 GHz in parallel to the localized exposure limits already established below 6 GHz; on specifying the conditions and methods for averaging the RF exposure, in both time and area, during evaluation for compliance with the RF exposure limits in the rules; on addressing new RF exposure issues raised by wireless power transfer (WPT) devices; and on the definition of a WPT device.

DATES: Comments are due on or before May 15, 2020, and reply comments are due on or before June 15, 2020.

ADDRESSES: Interested parties may submit comments and replies, identified by ET Docket No. 19–226, by any of the following methods:

- *Federal Communications Commission's website: http://fja_llfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Martin Doczkat, email: *martin.doczkat@fcc.gov* of the Office of Engineering and Technology Electromagnetic Compatibility Division; the Commission's RF Safety Program, *rfsafety@fcc.gov;* or call the Office of Engineering and Technology at (202) 418–2470. For information regarding the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 20–06966, appearing on page 19117 in the **Federal Register** on April 6, 2020, the following correction is made:

■ 1. On page 19117, in the first column, in DATES, the instruction ''reply comments are due on or before June 1, 2020.'' is corrected to read ''reply comments are due on or before June 15, 2020.''

Dated: April 6, 2020.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07866 Filed 4–14–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0007; FXES111302WOLF0–201–FF02ENEH00]

RIN 1018–BE52

Endangered and Threatened Wildlife and Plants; Revision to the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*); Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service, will prepare a draft environmental impact statement supplement pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), in conjunction with a proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. The revised rule and environmental impact statement supplement are being developed in response to a court-ordered remand by the District Court of Arizona of our 2015

final rule to revise the nonessential experimental population designation and management of Mexican wolves in the Mexican Wolf Experimental Population Area in Arizona and New Mexico.

DATES: We will accept public comments received or postmarked on or before 11:59 p.m. Eastern Time on June 15, 2020. We may not consider any comments we receive after the closing date in the final decision.

ADDRESSES: You may submit written comments by one of the following methods:

(1) Electronically: Go to the Federal rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R2–ES–2020–0007, which is the docket number for this notice of intent.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2020–0007; U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information.). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, 505–248–6651; or the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113 or by telephone 505–761–4704; or by facsimile 505–761–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339. Additional information can be found on the Mexican Wolf Recovery Program's website at *https://www.fws.gov/southwest/es/mexicanwolf/.*

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We established a nonessential experimental population of Mexican wolves in Arizona and New Mexico in 1998 (63 FR 1752, January 12, 1998) pursuant to section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). We published a final rule to revise the designation and management of the nonessential experimental population in 2015 (80 FR 2512, January 16, 2015) (2015 final rule). We analyzed the effects of our proposed revision in the Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) (EIS). We opened a public comment period and announced public meetings for the draft environmental impact statement on July 25, 2014 (79 FR 43358), and announced the availability of our EIS and draft Record of Decision in the **Federal Register** on November 25, 2014 (79 FR 70154). The EIS and other documents are available at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2013–0056 under Supporting Documents.

Background

The Service previously opened a public scoping period on August 5, 2013, to seek public input on the scope, issues, and alternatives under consideration in the Service's revision of the 1998 Mexican wolf nonessential experimental population designation (78 FR 47268). At that time, the Service was seeking to improve the conservation and management of the experimental population as designated in 1998, and requested input from the public on potential changes to the geographic boundaries of the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico, as well as the management provisions associated with it. In the 2015 final rule, the Service revised the designation and management of the MWEPA from its original 1998 designation by:

(1) Establishing a population objective for the experimental population of 300 to 325 wolves within the MWEPA;

(2) Expanding the area in which initial releases of Mexican wolves from captivity and translocations could occur;

(3) Extending the southern boundary of the MWEPA in Arizona and New Mexico to the United States–Mexico international border;

(4) Discontinuing the use of the ''Blue Range Wolf Recovery Area'' designation within the MWEPA, including its divisions of primary and secondary recovery zones;

(5) Establishing three management zones within the MWEPA defined as ''Zone 1,'' ''Zone 2,'' and ''Zone 3,'' each with specific provisions for Mexican wolf occupancy, initial releases, and translocations;

(6) Adopting a phased management approach for up to 12 years to minimize or avoid impacts to wild ungulate populations in western Arizona;

(7) Authorizing removal of Mexican wolves identified as coming from the experimental population that disperse to establish territories outside of the MWEPA in a revised section 10(a)(1)(A) research and recovery permit;

(8) Providing revised and additional provisions for take of Mexican wolves under certain circumstances to protect livestock and non-feral dogs, or as needed to manage wild ungulate populations (particularly elk and deer); and

(9) Providing for the development of management actions on tribal trust land or on private land in management Zones 1 and 2.

On March 31, 2018, the District Court of Arizona remanded the 2015 final rule to the Service based on the Court's finding that the 2015 final rule failed to further the long-term conservation and recovery of the Mexican wolf and that the essentiality determination was arbitrary and capricious (*Center for Biological Diversity* v. *Jewell,* No. 4:15–cv–00019–JGZ (D. Ariz.) (March 31, 2018, Order)). The Service is under a court-ordered deadline to address the remanded issues in a new revised rule by May 1, 2021. The 2015 final rule remains in place until we finalize the new revised rule.

In the interim between the 2015 final rule and the March 31, 2018, Order, the Service finalized the Mexican Wolf Recovery Plan, First Revision (2017). The revised recovery plan, which updates the original 1982 Mexican Wolf Recovery Plan, provides objective and measurable recovery criteria for the Mexican wolf, as well as management actions and time and cost estimates to achieve recovery, pursuant to section 4(f) of the Act. The recovery criteria focus on achieving specific population sizes, growth rate trends, and genetic diversity in the MWEPA and a second population in Mexico, as well as ensuring regulatory mechanisms are in place for both populations to address human-caused mortality of Mexican wolves. The recovery plan serves as our roadmap for the long-term conservation and recovery of the Mexican wolf. It is available at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2017–0036 under Supporting Documents.

Information Requested

We are currently seeking comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning specific provisions of the 2015 final rule identified by the District Court of Arizona in the March 31, 2018, Order. We will revise the 2015 final rule only

to the extent necessary to address the Court's ruling; no additional provisions of the rule are subject to revision. To the extent possible, and as described below, we will address the remanded issues by aligning the new revised rule with the revised recovery plan, which provides an overarching strategy for the long-term conservation and recovery of the Mexican wolf. We will analyze any new proposed rule revisions in a supplemental EIS to the 2014 EIS.

Due to the focus of the remand, we are seeking input from the public only on a narrow range of topics, as follows:

(1) We will make a new essentiality determination for the experimental population of Mexican wolves in the MWEPA under section 10(j) of the Act. We are interested in feedback from the public and our partners on the benefits or potential impacts to the Mexican wolf or the public and our partners of an ''essential'' versus ''nonessential'' designation.

(2) We intend to align the population objective and release recommendations in the new revised rule with the recovery criteria in the revised recovery plan for the MWEPA to ensure the new revised rule supports the long-term conservation and recovery of the Mexican wolf. We are interested in feedback from the public and our partners on any information or data available since we finalized the revised recovery plan in 2017 pertinent to establishing a population objective or release recommendations for the MWEPA. We are also interested in any other considerations related to the relationship between the population objective and release recommendations for the MWEPA and the long-term conservation and recovery of the Mexican wolf.

(3) We intend to ensure the new revised rule supports population-level genetic health for the Mexican wolf in the MWEPA as a key component of the long-term conservation and recovery of the Mexican wolf. We will ensure our management provisions facilitate our ability to achieve the genetic recovery criterion for the MWEPA, which serves as our long-term conservation and recovery target. The genetic criterion in the revised recovery plan for the MWEPA states that we will release a sufficient number of captive Mexican wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA (USFWS 2017a, pp. 18–19). As explained in the revised recovery plan (USFWS 2017a, pp. 9, 13) and the supporting Biological Report for the Mexican Wolf (USFWS 2017b, pp. 27–29, 33–34, and 36–38), the genetic criterion ensures that the threat of continuing or accelerated loss of genetic diversity of Mexican wolves in the wild is adequately alleviated. Both of these documents are available online at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2017–0036 under Supporting Documents.

In the 2015 final rule, we expanded several allowable forms of take of Mexican wolves from the 1998 rule after analyzing their effects in the 2014 EIS and determining a significant beneficial effect for the Mexican wolf (USFWS 2014, pg. ES–18). In the District Court of Arizona's March 31, 2018, Order, the judge stated that, after the Service identified loss of genetic diversity as a primary threat to the Mexican wolf, ''. . . the expanded take provisions lack protections for the loss of genetic diversity (*Center for Biological Diversity* v. *Jewell,* No. 4:15–cv–00019–JGZ (D. Ariz.), pg. 29).'' In response to the ruling, we will assess the effects of three of the expanded take provisions on the long-term conservation and recovery of the Mexican wolf, in particular as they relate to our ability to achieve the genetic criterion in the revised recovery plan. The take provisions we will evaluate include: Take on non-Federal lands in conjunction with a removal action (50 CFR 17.84(k)(7)(iv)(C)); take on Federal land (§ 17.84(k)(7)(v)(A)); and take in response to unacceptable impacts to a wild ungulate herd (§ 17.84(k)(7)(vi)). Lethal control will remain an allowable form of take under these three provisions.

For clarity, we are not assessing or considering modification to the allowable take of Mexican wolves by livestock guarding dogs on Federal or non-Federal land as specified in the 2015 final rule (§ 17.84(k)(7)(iv)(B) and § 17.84(k)(7)(v)(B), respectively), or take, including killing, on non-Federal land by a domestic animal owner or that person's agent of any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal (§ 17.84(k)(7)(iv)(A)). Finally, take in defense of human life as specified in the 2015 final rule (§ 17.84(k)(7)(i)) would remain an allowable form of take, including the potential for lethal take of a Mexican wolf.

We are interested in feedback from the public and our partners on the impact of take on non-Federal lands in conjunction with a removal action (50 CFR 17.84(k)(7)(iv)(C)), take on Federal land (§ 17.84(k)(7)(v)(A)), and take in response to unacceptable impacts to a wild ungulate herd on the genetic health of the experimental population in the MWEPA in the context of long-term conservation and recovery of the Mexican wolf. We are also interested in feedback on the social or economic benefits or impacts of modifying any of these three allowable forms of take of Mexican wolves to the public or our partners, as well as other recommendations to protect the genetic health of the experimental population in the MWEPA and achieve the genetic recovery criterion.

(4) We intend to produce a draft and final supplemental EIS to the 2014 EIS that includes updated data, information, and analyses pertinent to any of the revisions under consideration in the new revised rule. Specifically, we intend to modify the Purpose and Need of the 2014 EIS only as necessary to explain the role of the MWEPA in the recovery of the Mexican wolf, based on the revised recovery plan. We intend to evaluate and revise specific features of two alternatives from the 2014 EIS, as follows: In Alternative One (Proposed Action and Preferred Alternative), we will revise the population objective and release recommendations, and may revise any of the three forms of allowable take discussed above. In Alternative Two, we may revise any of the three forms of allowable take discussed above, consistent with revisions made in Alternative One. We do not intend to revise any of the components of Alternatives Three or Four from the 2014 EIS, and we do not intend to consider any new alternatives in the supplemental EIS that were not included in the 2014 EIS.

As necessary and based on information availability, we will provide updated data in the supplemental EIS at the relevant State or county level for Arizona and New Mexico to analyze the environmental consequences (*i.e.,* effects or impacts) of our revisions on the land use, biological resources, economic activity, health and human safety, and environmental justice in the project area. Updated data may include:

- Changes in land use such as significant shifts in land ownership, management, or special use;
- Human population census data, including information on low-income populations, racial minorities, and Indian tribes;
- The number of permitted and authorized Animal Unit Months in National Forests (An Animal Unit Month, or AUM, is a measure of the amount of forage required to sustain one cow, either dry or with calf at side up to 6 months of age, for 1 month);
- An inventory of cattle and calves, including the number of cattle and calf operations, cattle sales (including calves), and herd sizes;
- Sheep and lamb inventory;

- Big game hunting data, including the number of license holders and applicants, days spent hunting and average hunter financial expenditures, and total number of hunters, harvest, and success ratio for elk and deer;
- Incidences of human–wolf encounters; and
- Parasite or disease events related to Mexican wolves.

Therefore, we are requesting any new information from the public or our partners available since the publication of the 2014 EIS and 2015 final rule (80 FR 2487, January 16, 2015) related to these topics that is not readily available on Federal, State, tribal, or county websites.

Please note that submissions merely stating support for or opposition to the items under consideration, without providing supporting information, although noted, will not be considered. Similarly, issues raised that are outside of the scope of items under consideration will not be considered in making a determination. Please consider the following when preparing your comments:

- Be as succinct as possible.
- Organize comments beginning with general comments and then move on to specific issues.
- Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.
- State suggestions and recommendations clearly with an expectation of what you would like the Service to do.
- If you provide alternate interpretations of science from the revised recovery plan or other cited Service document, please support your analysis with appropriate citations.
- If possible, coordinate your comments with other like-minded individuals and organizations. This can strengthen the comment and help us understand the depth of concern.

References and Availability of Documents for Review

We will post information pertinent to NEPA planning on our Mexican Wolf Recovery Program website, *http://www.fws.gov/southwest/es/mexicanwolf/NEPA.* The references cited in this notice are also available at that website.

Authors

The primary authors of this notice are the staff members of the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, Interior Regions 7 and 8.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et. seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Amy Lueders,

Regional Director.

[FR Doc. 2020–07715 Filed 4–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200409–0107]

RIN 0648–BJ67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 3

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Abbreviated Framework Amendment 3 (Abbreviated Framework 3) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). If implemented, Abbreviated Framework 3 and this proposed rule would revise the commercial and recreational annual catch limits (ACLs) and recreational annual catch target (ACT) for blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. The purpose of this proposed rule is to ensure that ACLs for South Atlantic blueline tilefish are based on the best scientific information available, to achieve and maintain optimum yield (OY), and to prevent overfishing while minimizing to the extent practicable, adverse social and economic effects.

DATES: Written comments must be received by May 15, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2020–0039'' by any of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0039,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Mary Vara, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies of Abbreviated Framework 3, which includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review, may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-3-blueline-tilefish.*

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS SERO, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes blueline tilefish,

along with other snapper-grouper species. The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights described in this proposed rule are in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation.

Blueline tilefish is a single genetic stock that ranges from the Mid-Atlantic coast to the northeastern Gulf of Mexico. The South Atlantic Council manages blueline tilefish in the EEZ from the North Carolina and Virginia border southward to the South Atlantic Council's jurisdictional line in the Florida Keys. The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) manages blueline tilefish in the EEZ from the North Carolina and Virginia border northward through Maine as part of the Tilefish FMP of the Mid-Atlantic Region.

In October 2017, a Southeast Data, Assessment, and Review (SEDAR) benchmark assessment was completed for the Atlantic stock of blueline tilefish, using data through 2015. SEDAR 50 included blueline tilefish that are found in both the South Atlantic and the Mid-Atlantic Councils' jurisdictions. As data for blueline tilefish are less available north of Cape Hatteras, North Carolina, that area was assessed using a data-limited model, while the area south of Cape Hatteras was assessed using an age-aggregated production model. The South Atlantic Council's Scientific and Statistical Committee (SSC) initially was only able to provide an acceptable biological catch (ABC) recommendation for the portion of the blueline tilefish south of Cape Hatteras. Therefore, an ABC workgroup, comprised of SSC members from both the South Atlantic and Mid-Atlantic Councils and stock assessment participants, was needed to provide an ABC recommendation for the portion of the blueline tilefish stock north of Cape Hatteras and divide that ABC recommendation between the two Council's jurisdictions. Using this information, the South Atlantic Council's SSC was then able to provide an ABC recommendation for blueline tilefish to the South Atlantic Council for their entire jurisdiction.

The current total ACL for blueline tilefish is 174,798 lb (79,287 kg), and is allocated to the commercial sector (50.07 percent) and the recreational sector (49.93 percent). The final rule for Regulatory Amendment 25 to the FMP implemented these ACLs (81 FR 45245, July 13, 2016), and the current sector allocations were established in Regulatory Amendment 13 to the FMP (78 FR 36113, June 17, 2013). This proposed rule would set the total ACL equal to the total South Atlantic ABC of 233,968 lb (106,126 kg). This proposed rule would also update the commercial and recreational ACLs using the existing allocation percentages.

Management Measure Contained in This Proposed Rule

This proposed rule would revise the commercial and recreational ACLs for South Atlantic blueline tilefish based on updated information from SEDAR 50.

Currently, the blueline tilefish commercial ACL is 87,521 lb (39,699 kg) and the recreational ACL is 87,277 lb (39,588 kg).

Consistent with the results of SEDAR 50 and the ABC recommendation from the SSC and subsequently accepted by the South Atlantic Council, this proposed rule would increase the commercial and recreational ACLs for blueline tilefish.

The total ACL would equal the total South Atlantic ABC of 233,968 lb (106,126 kg). The commercial ACL would be set at 117,148 lb (53,137 kg) and the recreational ACL would be set at 116,820 lb (52,989 kg).

The proposed ACLs are consistent with the South Atlantic Council SSC's ABC recommendation, and this proposed rule would not change the sector allocations.

The blueline tilefish commercial sector has experienced in-season fishing closures every year between April and August since 2014, regardless of the value of the commercial ACL. If the catch rates of blueline tilefish in the commercial sector continue as expected in the future, the proposed commercial ACL would still be expected to result in in-season closures during the commercial season as a result of the ACL being reached. However, the proposed increase to the commercial ACL is expected to extend the commercial fishing season in future fishing years. Because of recent changes to blueline tilefish management measures and in-season closures, comparative analysis of future commercial season lengths is uncertain.

Blueline tilefish is closed to recreational harvest in the South Atlantic each year from January 1 through April 30, and September 1 through December 31. Each year since 2016, recreational landings of blueline tilefish have exceeded the current recreational ACL of 87,277 lb (39,588 kg). However, a recreational closure during the fishing year as a result of landings being projected to reach the recreational ACL has not occurred because in-season recreational landings are typically not available until after the May through August fishing season concludes. When compared to recent trends in estimated recreational landings, the proposed increase in the recreational ACL could reduce the likelihood that the ACL would be met during the fixed May through August fishing season.

Management Measure Contained in Abbreviated Framework 3 not Codified Through This Proposed Rule

In addition to the measure in this proposed rule, Abbreviated Framework 3 would update the recreational ACT for blueline tilefish in the South Atlantic EEZ. The current and proposed recreational ACT are both based on an ACT equation where the recreational ACT is equal to the recreational ACL multiplied by (1 minus the Percent Standard Error) or the recreational ACL multiplied by 0.5, whichever is greater. The current recreational ACT of 54,653 lb (24,790 kg) would be increased to 70,886 lb (32,153 kg).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Abbreviated Framework 3, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for purposes of the RFA that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

A description of the proposed rule and its purpose are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY**

section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. The objectives of this proposed rule are to ensure that ACLs for South Atlantic blueline tilefish are based on the best scientific information available to achieve and maintain OY and to prevent overfishing while minimizing to the extent practicable, adverse social and economic effects.

This proposed rule would increase the total ACL, and consequently the commercial and recreational ACLs for blueline tilefish in the South Atlantic EEZ. Abbreviated Framework 3 would increase the recreational ACT for South Atlantic blueline tilefish. Thus, this proposed rule applies to entities that harvest South Atlantic blueline tilefish. Recreational anglers fishing for South Atlantic blueline tilefish would be directly affected by the proposed rule. However, anglers are not considered entities under the RFA and thus would not be directly regulated by this proposed rule.

This proposed rule is expected to directly regulate commercial and charter vessel and headboat (for-hire) businesses (vessels) that harvest or have the ability to harvest South Atlantic blueline tilefish. In 2018, there were 549 vessels with valid or renewable Federal South Atlantic snapper-grouper unlimited permits and 110 vessels with valid or renewable 225-lb (102-kg) trip limited permits. Any vessel with a valid Federal South Atlantic snapper-grouper unlimited permit or 225-lb (102-kg) trip limited permit may commercially harvest blueline tilefish. In 2018, there were 2,176 for-hire vessels that possessed a valid or renewable Federal charter vessel/headboat South Atlantic snapper-grouper permit. Any for-hire vessel with a valid Federal charter vessel/headboat South Atlantic snapper-grouper permit may harvest South Atlantic blueline tilefish. The number of charter vessels with valid permits that harvest South Atlantic blueline tilefish cannot be determined with available data. Based on the information above, it is determined that this proposed rule may directly regulate 659 commercial fishing businesses and 2,176 for-hire fishing businesses.

From 2014 through 2018, an average of 143 vessels per year landed blueline tilefish in the South Atlantic. Taken together, these vessels averaged 716 trips per year in the South Atlantic on which blueline tilefish were landed, and an additional 4,400 trips in the South Atlantic that did not land any blueline tilefish or were taken outside the South Atlantic regardless of the species caught. In 2018 dollars, the average annual total revenues were approximately $0.03 million from blueline tilefish, $1.89 million from other species co-harvested with blueline tilefish on the same trips, and $8.95 million from trips in the South Atlantic on which no blueline tilefish were harvested or trips that occurred outside the South Atlantic. Average annual gross revenue from all species landed by vessels harvesting blueline tilefish in the South Atlantic was approximately $11.15 million. Thus, average annual gross revenue per vessel was about $78,000 per vessel. For federally permitted charter vessels and headboats in the South Atlantic, average annual gross revenue is $123,064 per charter vessel and $267,067 per headboat in 2018 dollars.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in it field of operations (including its affiliates). From 2014 through 2018, the maximum average annual gross revenue for a single vessel in the commercial snapper-grouper fishing industry was about $1.6 million in 2018 dollars. Based on this information, all directly regulated commercial fishing businesses are determined, for the purpose of this analysis, to be small entities.

The SBA has established size standards for all other major industry sectors in the U.S., including for-hire fishing businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of $8 million for all its affiliated operations worldwide. In 2017, the maximum annual gross revenue for a single headboat in the South Atlantic was about $765,200 in 2018 dollars. On average, annual gross revenue for headboats is more than double the annual gross revenue for charter vessels. Thus, it is assumed the maximum annual gross revenue for charter vessels is less than $765,200. Based on this information, all directly regulated for-hire fishing businesses are determined, for the purpose of this analysis, to be small entities.

This proposed rule would increase the total ACL from 174,798 lb to 233,968 lb (79,287 kg to 106,126 kg), the commercial ACL from 87,521 lb to 117,148 lb (39,699 kg to 53,137 kg), and the recreational ACL from 87,277 lb to 116,820 lb (39,588 kg to 52,989 kg). Abbreviated Framework 3 would increase the recreational ACT from 54,653 lb to 70,886 lb (24,790 kg to 32,153 kg). The recreational ACT does not constrain harvest in the recreational sector and therefore is not relevant with respect to determining effects on small entities.

The increase in the commercial ACL is expected to increase annual gross revenue for commercial snapper-grouper fishing entities harvesting blueline tilefish by a total of $96,979, or by about $678 per active vessel, while profits for all commercial snapper-grouper fishing entities harvesting blueline tilefish is expected to increase by $23,134, or about $162 per vessel, in 2018 dollars. Because the recreational ACL is shared between private anglers and for-hire vessels, but without an established allocation, it is not possible to determine how much of the increase in the recreational ACL would accrue to the for-hire snapper-grouper vessels that harvest blueline tilefish. However, the higher recreational ACL would be expected to at least minimally increase the number of for-hire trips harvesting blueline tilefish, which in turn would be expected to minimally increase the for-hire vessels' profits.

Based on the information above, this proposed rule would positively affect small commercial and for-hire fishing entities in the South Atlantic snapper-grouper fishery that harvest blueline tilefish. Therefore, this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Blueline tilefish, Fisheries, Fishing, South Atlantic.

Dated: April 9, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.193, revise the first sentence in paragraphs (z)(1)(i), (2)(i), and (3) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(z) * * *

(1) * * *

(i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 117,148 lb (53,137 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) * * *

(i) If recreational landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 116,820 lb (52,989 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. * * *

* * * * *

(3) The combined commercial and recreational sector ACL (total ACL) is 233,968 lb (106,126 kg), round weight.

[FR Doc. 2020–07891 Filed 4–14–20; 8:45 am]

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Notices

Federal Register

Vol. 85, No. 73

Wednesday, April 15, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0010]

Availability of an Environmental Assessment for Field Testing of a Clostridium Perfringens Type A Vaccine, Live Salmonella Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed *Clostridium Perfringens* Type A Vaccine, Live Salmonella Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before May 15, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2020-0010.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0010, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0010* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment or the risk analysis with confidential business information removed, Dr. Barbara J. Sheppard, Senior Staff Veterinary Medical Officer, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, Ames, IA; phone (515) 337–6100, fax (301) 337–6120.

The alternative contact is Dr. Matthew Erdman, Senior Staff Veterinary Medical Officer, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Huvepharma, Inc.

Product: Clostridium Perfringens Type A Vaccine, Live Salmonella Vector.

Possible Field Test Locations: Alabama, Arkansas, Georgia, Mississippi, and North Carolina, among others.

The above-mentioned product consists of a live, recombinant, attenuated *Salmonella enterica* vector containing genes from *C. perfringens* type A. So that the vaccine will be effective against necrotic enteritis associated with *C. perfringens* type A, the chickens will be vaccinated twice, once at the hatchery by spray route and 11 days later in a grow-out house by drinking water application.

APHIS' review and analysis of the potential environmental impacts associated with the proposed field tests are documented in detail in an EA entitled ''Environmental Assessment for Field Testing of a Clostridium Perfringens Type A Vaccine, Live Salmonella Vector.'' We are making this EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the **DATES** section at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et*

seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

(Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4)

Done in Washington, DC, this 8th day of April 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–07914 Filed 4–14–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0005]

Decision To Authorize the Importation of Fresh Citrus From China Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of five species of commercially produced fresh citrus fruit (pummelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin) from China into the continental United States. Based on the findings of the pest risk analysis, which we made available to the public to review and comment through a previous notice, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of these five species of citrus fruit from China.

DATES: The articles covered by this notification may be authorized for importation after April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a notice-based process based on established performance standards for authorizing the importation of fruits and vegetables. The performance standards, known as designated phytosanitary measures, are listed in paragraph (b) of that section. Under the process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on the findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of that fruit or vegetable.

In accordance with that process, we published a notice [1] in the **Federal Register** on May 1, 2019 (84 FR 18474–18475, Docket No. APHIS–2014–0005), in which we announced the availability, for review and comment, of a pest risk assessment (PRA) that evaluated the risks associated with the importation into the continental United States of five species of commercially produced citrus fruit from China into the continental United States. These citrus fruits were: *Citrus grandis* (L.) Osbeck cv. Guanximiyou, referred to in this document as pummelo; *Citrus kinokuni* Hort. ex Tanaka, referred to in this document as Nanfeng honey mandarin; *Citrus poonensis* Hort. ex Tanaka, referred to in this document as ponkan; *Citrus sinensis* (L.) Osbeck, referred to in this document as sweet orange; and *Citrus unshiu* Marcov., referred to in this document as Satsuma mandarin.

In the notice, PRA, and RMD published previously, we referred to *Citrus grandis* (L.) Osbeck cv. Guanximiyou, as pomelo; however, the preferred spelling of the common name for this fruit is pummelo. We have corrected the spelling in this document and in our revised RMD.

The PRA identified the following 15 quarantine pests as potentially following the pathway on the importation of these citrus species from China into the continental United States: The mites *Brevipalpus junicus* and *Tuckerella knorri;* the fruit flies *Bactrocera correcta, B. cucurbitae, B. dorsalis, B. minax, B. occipitalis, B. pedestris, B. tau,* and *B. tsuneonis;* and the moths *Carposina niponensis, C. sasakii, Ostrinia furnacalis, Cryptoblabes gnidiella,* and *Rosseliella citrifrugis.*

The PRA also identified *Xanthomonas citri,* the causal agent of citrus canker, and *Phyllosticta citricarpa,* the causal agent of citrus black spot, as existing in China. These pathogens, present in the United States, are considered quarantine pests since they have limited distribution and are under official control in the United States.

Based on the conclusions of the PRA, APHIS prepared a risk management document (RMD) recommending mitigations for the 15 quarantine pests and 2 pathogens the PRA had identified as potentially following the pathway on the importation of citrus from China into the continental United States.

We solicited comments on the PRA and RMD for 60 days ending on July 1, 2019. We received 11 comments by that date. They were from the national plant protection organization (NPPO) of China, the NPPO of Ghana, two State departments of agriculture, four organizations representing domestic citrus producers, a domestic citrus producer, and private citizens.

The issues raised by the commenters are addressed below, by topic.

[1] To view the notice, PRA, RMD, supporting documents, and the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0005.*

General Comments

Several commenters requested that we retain our prohibition on the importation of citrus from China into the United States.

As a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence, and will not be maintained without sufficient scientific evidence. The PRA and RMD that accompanied the initial notice demonstrated scientific evidence in support of removing the prohibition in favor of our proposed systems approach.

The NPPO of China requested that this notice authorize the importation of all species of citrus from China into the continental United States, rather than just pummelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin.

If a fruit is not currently authorized for importation into the United States, the process for requesting its authorization, and the information required of such a request, are specified in 7 CFR 319.5. The NPPO only submitted information pursuant to this process for those five species. Accordingly, the PRA only identified quarantine pests of concern that could follow the pathway of importation for those five species, and the mitigations in the RMD were only developed for those five species. We note, in this regard, that the plant pest risk can increase or decrease from species to species within a genus, and the plant pest risk associated with one species should not necessarily be considered indicative of the plant pest risk associated with another species. For these reasons, we cannot grant the NPPO's request for importation of all citrus from China.

Several commenters stated that the NPPO of China could not be trusted to abide by the systems approach. The commenters cited multiple instances where goods exported from China did not meet U.S. conditions for importation.

Like APHIS, the NPPO of China is also a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from China when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The PRA that accompanied the notice provided evidence of such a need. That being said, all consignments of citrus fruit from China will be inspected at ports of entry into the United States for quarantine pests. If consignments are determined to be infested, they will be subject to appropriate remedial measures to address this plant pest risk, and APHIS will evaluate whether remedial measures are warranted for the export program itself.

A commenter stated that the only appropriate mitigation for the importation of pummelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin is fumigation with methyl bromide.

For the reasons specified in the RMD and this final notice, we have determined that mitigations other than fumigation with methyl bromide address the insects of quarantine significance that could follow the pathway on the importation of citrus from China.

A commenter stated that the wooden pallets on which citrus from China would be shipped could also be infested with plant pests. The commenter stated that pallets from China often are infested with plant pests.

APHIS requires all wood packaging material imported into the United States from countries other than Canada to be treated in accordance with 7 CFR part 305, which contains APHIS' regulations governing phytosanitary treatments. All wood packing material accompanying consignments of plants or plant products that are imported into the United States is inspected at ports of entry for compliance with these regulations, as well as for evidence of quarantine pests.

Finally, a commenter stated that the mitigations APHIS proposed for the importation of citrus from China were significantly less stringent than the import requirements for apples and sand pears from China, even though the number of quarantine plant pests that could potentially follow the pathway on the importation of citrus from China, and their severity, was greater than the pest complex associated with either of these two commodities.

The commenter's stated assumption for this assertion was that bagging of fruit, which is required for both apples and sand pears, is a more stringent mitigation than production of fruit in an area of low pest prevalence (ALPP), as determined by APHIS. This is incorrect. The requirement for pest-free areas or pest-free places of production (PFPPs) that will be used for *Bactrocera minax* and *B. tsuneonis* are very restrictive requirements. Pest-free areas and PFPPs require adherence to appropriate trapping guidelines, having buffer areas, requirements for field treatments if flies are trapped, and restrictions on exports if flies are trapped. For a pest-free area and for PFPPs, China will have to follow the appropriate international standards for phytosanitary measures (ISPMs) including ISPM No. 4 ''Requirements for the establishment of pest-free areas,'' ISPM No. 8 ''Determination of pest status in an area,'' ISPM No. 10 ''Requirements for the establishment of pest-free places of production and pest free production sites,'' ISPM No. 22 ''Requirements for the establishment of areas of low pest prevalence,'' ISPM No. 26 ''Establishment of pest-free areas for fruit flies (Tephritidae),'' and ISPM No. 29 ''Recognition of pest-free areas and areas of low pest prevalence.'' APHIS will require bagging for pummelos and appropriate commodity treatments for other citrus for *Bactrocera dorsalis* and several other *Bactrocera* species. APHIS points out that no fruit flies have ever been intercepted in commercial shipments of fruit from China, whether bagged (pears) or cold treated (litchi and longans). APHIS believes that the measures proposed for China citrus will provide equivalent measures of protection as the measures currently required for apples and pears from China.

Comments Regarding Pest Risk

Several commenters stated that the plant pest risk associated with the importation of citrus from China into the continental United States was too great.

For the reasons set forth in the RMD that accompanied our initial notice, the initial notice itself, and this final notice, we have determined that measures exist which can mitigate this plant pest risk.

A commenter expressed concern that the importation of citrus from China could serve as a pathway for the introduction of Asian citrus psyllid, the primary vector of citrus greening, into the continental United States.

In order for us to consider a consignment of citrus from China to be commercially produced, it must be, among other things, washed, brushed, and disinfected during packinghouse procedures. We consider washing and brushing sufficient to remove Asian citrus psyllid, a surface feeder, from citrus fruit intended for export to the United States.

Two commenters expressed concern that the importation of citrus from China could serve as a pathway for the introduction of citrus greening into the continental United States.

Citrus greening is primarily vectored by Asian citrus psyllid; fruit is not

considered by APHIS to be an epidemiologically significant pathway. As we explained above, we consider packinghouse procedures sufficient to remove Asian citrus psyllid from citrus fruit intended for export to the United States. Commercially produced and packed fruit itself is not an epidemiologically significant pathway for the transmission of citrus greening, and we do not regulate it domestically.

Two commenters expressed concern that the importation of citrus from China could serve as a pathway for the introduction of citrus black spot into the continental United States.

Commercially produced and packed fruit is not an epidemiologically significant pathway for the transmission of citrus black spot. Nonetheless, for the sake of consistency with APHIS' domestic regulations regarding citrus black spot, all citrus fruit intended for export to the continental United States from China must be surface disinfected and also fungicide treated. This will further reduce the citrus black spot risk.

Several commenters expressed concern that the importation of citrus from China could serve as pathway for the introduction of two species of fruit fly, *Bactrocera minax* and *B. tsuneonis,* into the United States.

APHIS believes that the systems approach proposed will prevent both *B. minax* and *B. tsuneonis* from following the pathway of China citrus to the continental United States. The systems approach requires that all places of production exporting to the United States must be from approved PFPPs for *B. minax* and *B. tsuneonis.* APHIS and the NPPO of China will jointly agree to the process for approval of PFPPs within the context of development of the operational workplan.

Comments on the Pest Risk Assessment

As noted above, the PRA identified eight species of fruit fly, *Bactrocera correcta, B. cucurbitae, B. dorsalis, B. minax, B. occipitalis, B. pedestris, B. tau,* and *B. tsuneonis,* as quarantine pests that occur in China and that could follow the pathway of the importation of citrus from China into the continental United States.

The NPPO of China stated that another fruit fly, *B. orientalis,* was included in the notice as a quarantine pest that exists in China and could follow the pathway of the importation of citrus from China into the continental United States. The commenter stated that they are not aware that such a species exists, and that this was likely a typographical error.

The reference in the notice was such an error, and should have referred to *B. occipitalis.*

The NPPO of China also stated that *B. occipitalis* does not exist in China.

In compiling the PRA, APHIS found four references reporting the occurrence of this species of fruit fly in China. The NPPO did not provide any evidence that suggests the references were in error.

The NPPO of China also stated that APHIS had overstated the economic consequences of the introduction of *B. occipitalis* into the United States, and cited an article in support of their position.[2]

Doorenweerd et al. states that the pest status of *B. occipitalis* is uncertain and ''may possibly have been overrated based on a few obscure rearing records cited in'' a 1994 article.[3]

While we agree that *B. occipitalis* is not as economically significant a pest as some other species in the *B. dorsalis* complex to which it belongs, we disagree with *Doorenweerd et al.* that its pest status is uncertain. As we mentioned in the PRA that accompanied the initial notice, fruit flies in *B. dorsalis* complex have proven to be major pests where introduced, and the United States has climates that are hospitable to their introduction. We note, moreover, that the PRA derived its rating for *B. occipitalis* from references other than *Drew and Hancock;* one of these references predates *Drew and Hancock,*[4] while another is a technical document drafted by the NPPO of China itself.[5]

For these reasons, we are maintaining *B. occipitalis* as a quarantine pest that could follow the pathway on citrus from China imported into the continental United States.

Finally, the NPPO of China suggested that, because the taxonomy of *B. pedestris* is uncertain, it should not be considered a quarantine pest that could follow the pathway on citrus imported into the continental United States.

While the taxonomy of *B. pedestris,* like that of many species in the *B. dorsalis* complex, is somewhat uncertain, the complex is considered to be of quarantine significance. We also found multiple references indicating that it is a unique species within the complex that occurs in China, and the NPPO of China provided no trapping records or technical information contradicting these references.

For these reasons, we are maintaining *B. pedestris* as a quarantine pest that could follow the pathway on citrus from China imported into the continental United States.

One commenter suggested that the PRA had underestimated the risk associated with citrus greening, citrus canker, citrus yellowing, and *Phyllosticta* spp. The commenter stated climate change has created anomalies in temperature and rainfall within the United States that are more conducive to the establishment of these pathogens. The commenter was particularly concerned that we had mischaracterized the likelihood of establishment of the pathogens in the State of California.

Changes in climate within the United States pertain to likelihood of establishment, if a pathogen is introduced, and are not germane to whether commercially produced and packed fruit is an epidemiologically significant pathway for the introduction of the pathogen. Commercially produced and packed fruit which has been surface disinfected and treated with fungicide, is an epidemiologically insignificant pathway for the introduction of citrus greening, citrus canker, and *Phyllosticta* spp.

We found no evidence that citrus yellowing is a different disease than citrus greening; in our literature review, these names were used interchangeably to describe the disease.

One commenter noted that, in the PRA, *Phyllosticta citrichinaensis* was not considered a quarantine pest that could follow the pathway on the importation of citrus from China into the continental United States. The commenter pointed out that the PRA's discussion of *P. citrichinaensis* cites two articles[6] in support of this conclusion,

[2] Doorenweerd, C. et al. 2018. *A global checklist of the 932 fruit fly species in the tribe.* Accessible at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5799784/.* Referred to in the body of this document as *Doorenweerd et al.*

[3] Drew RAI, Hancock DL. 1994. *The Bactrocera dorsalis complex of fruit flies (Diptera: Tephritidae: Dacinae) in Asia.* Bulletin of Entomological Research Supplement Series 2: 1–68. *https://doi.org/10.1017/S1367426900000278.* Referred to in the body of this document as *Drew and Hancock.*

[4] Chen, C.C. and Y.H. Tseng. 1993. *Monitoring and Survey of Insect Pests with the Potential to Invade the Republic of China. Plant Quarantine in Asia and the Pacific: Report of an APO Study Meeting 17th–26th March, 1992, Taipei, Taiwan, Republic of China.* Asian Productivity Organization (APO), Tokyo, pgs. 42–52.

[5] IQPRC. 2011. *Risk Analysis Technical Information for Chinese Mangoes Exported to the U.S. General Administration of Quality Supervision (GAQS), Inspection and Quarantine of the People's Republic of China (IQPRC).* 41 pp.

[6] The former article is: Wang, X., G. Chen, F. Huang, J. Zhang, K. Hyde, and H. Li. 2012. *Phyllosticta species associated with citrus diseases in China.* Fungal Diversity 59(1): 209–224.

The latter article is: Stammler, G., G.C. Schutte, J. Speakman, S. Miessner, and P.W. Crous. 2013. *Phyllosticta species on citrus: risk estimation of resistance to QoI fungicides and identification of species with cytochrome b gene sequences.* Crop Protection 48: 6–12.

but stated that one of these articles appears to suggest that commercially produced and packaged fruit is a pathway for *P. citrichinaensis,* while the other article is silent on the matter. The commenter suggested that APHIS had disregarded the former article and given undue weight to that the latter article's silence. The commenter stated that APHIS should not allow the importation of citrus from China without further analysis of *P. citrichinaensis* transmissibility.

Wang et al., the former article cited in the PRA, discusses finding spots associated with *P. citrichinaensis* on commercially produced and packaged fruit, without the presence of pycnidia, or asexual fungal fruiting bodies. Pycnidia do not play a significant role in the disease cycle for *Phyllosticta* spp.; ascospores, the sexual stage of the fungus, which are associated with plant parts other than fruit, are the primary means of transmission. Transmission via pycnidia to a new host would take a very unlikely confluence of events. Jointly, these two facts form the primary basis for why we consider commercially produced and packed fruit to be an epidemiologically insignificant pathway for the transmission of *P. citricarpa,* which can result in pycnidia, but not ascospores, on fruit. However, for asymptomatic fruits, the likelihood that it will serve as a pathway of transmission of a *Phyllosticta* species to new hosts is even lower. It follows that commercially produced and packaged fruit is an even less viable pathway for the transmission of *P. citrichinaensis* than it is for *P. citricarpa.*

The same commenter stated that the PRA had overlooked a 2018 doctoral thesis on the transmission of *P. citrichinaensis.*

We were unable to find a 2018 thesis with the title cited by the commenter. We were able to find a 2017 thesis with such a title; however, this thesis primarily focuses on *P. citricarpa,* and its one reference to *P. citrichinaensis* cites *Wang et al.* As we mentioned in the above response, *Wang et al.* does not suggest that commercially produced and packaged fruit is an epidemiologically significant pathway for the transmission of *P. citrichinaensis.*

The same commenter stated that elements of the risk rating in the PRA for *Carposina niponensis* and *C. sasakii* were in error. The commenter stated that, in the risk rating, APHIS had assigned a medium likelihood of the pests surviving post-harvest processing, and a medium likelihood of the pests surviving post-harvest transport and storage, but had cited no information in support of that assumption. The commenter stated that, in the absence of information, a high rating should be assigned to these elements.

We agree and have revised the PRA accordingly.

The same commenter stated that this revision should change the overall rating for *C. niponensis* and *C. sasakii* from Medium to High.

APHIS' risk ratings are multiplicative, rather than additive. Because other elements of the risk rating for *C. niponensis* and *C. sasakii* remain Medium, the overall rating remains Medium.

The same commenter stated that APHIS' overall risk ratings for pests should be additive, rather than multiplicative, and a single risk element that we rate High should make the overall rating High.

Such an approach would result in ratings that distort the actual pest risk associated with a given pathway. For example, a pest that would have High likelihood of establishment, but a Low likelihood of entry would receive a Medium likelihood of introduction under our approach (it would receive a High rating under the commenter's approach). We have been using the multiplicative approach since 2012. This approach gives us a more accurate assessment of the risk associated with a particular pest and allows program managers to assign the appropriate risk mitigation measures that are technically and scientifically justified for the pests identified in the PRA. Therefore, we do not agree with the commenter's suggested change.

A commenter stated that the PRA should be revised to reevaluate the likelihood that *Brevipalpus junicus* (*B. junicus*) could be introduced and become established in California.

The PRA already identifies California as a State in which *B. junicus* could become established, if introduced. We are uncertain what further revisions are requested by the commenter.

The same commenter stated that PRA should be revised to reevaluate the consequences of *B. minax* or *B. tsuneonis* establishment in California. The commenter stated that these pests are difficult to detect, and there are no effective control options once they become established.

In the PRA, we determined that both *B. minax* and *B. tsuneonis* would have unacceptable consequences (the highest rating a pest can receive for the Consequences portion of a risk rating) if introduced into and established within the United States. Reevaluating this element relative to the consequences of establishment in California would not change the element's rating.

Comments Regarding the Risk Management Document

In the RMD that accompanied the initial notice, we proposed a systems approach, or combination of mitigation measures, for addressing the risk associated with the importation of citrus from China into the continental United States. The proposed measures were:

- Importation in commercial consignments only.
- Registration of places of production and packinghouses with the NPPO of China.
- Certification by the NPPO of propagative material used at places of production as being free of quarantine pests.
- Periodic inspections of places of production throughout the shipping season.
- Grove sanitation.
- PFPPs for *Bactrocera minax* and *B. tsuneonis.*
- PFPPs for *B. correcta, B. cucurbitae, B. dorsalis, B. occipitalis, B. pedestris,* and *B. tau;* or determination that places of production are located in areas of low pest prevalence for these species of fruit fly based on trapping, and in-transit cold treatment as an additional phytosanitary safeguard; except for pummelo which requires bagging.
- Maintaining the identity and origin of the lot of fruit throughout the export process to the United States.
- Safeguarding of harvested fruit.
- Post-harvest visual inspection of fruit by the NPPO or officials authorized by the NPPO according to a biometric sample.
- Cutting a portion of the fruit in the sample to inspect for quarantine pests.
- Washing, brushing, and treatment with surface disinfectant and fungicide.
- Issuance of a phytosanitary certificate with an additional declaration.
- Port of entry inspections.
- Importation under a permit issued by APHIS.
- Possible remedial measures in the event of detection of quarantine pests at registered places of production or packinghouses, or in/on consignments of citrus fruit from China at ports of entry into the United States.

A commenter stated that the systems approach was overly complex and dependent on many actions taken in China without APHIS oversight, and would be difficult to implement and maintain.

We disagree with the commenter's assertion that the complexity of a systems approach is correlated with its ability to be implemented and maintained. For systems approaches,

APHIS has long relied on operational workplans, which sets forth in detail the day-to-day activities that the NPPO of the exporting region, and growers, packinghouses, and persons commercially involved in chain of production of the commodity must undertake in order to implement and maintain the systems approach. APHIS and NPPO of the exporting region must jointly approve all such workplans, and APHIS reserves the right to monitor implementation of the operational workplan as well as activities specified within the operational workplan. We have successfully relied on operational workplans in order to implement and monitor several complex systems approaches, such as that for Hass avocadoes from Mexico and lemons from Argentina.

In requirement 2 of the RMD, we stated that we would be directly involved in monitoring and auditing the implementation of the operational workplan. A commenter interpreted this to mean that, following implementation, the NPPO of China would assume responsibility for monitoring ongoing adherence to the operational workplan by Chinese producers, packinghouses, and other persons commercially involved in the chain of production. The commenter expressed concern that the NPPO of China would continue to do so.

Following initial implementation of operational workplan, the NPPO of China will assume primary responsibility for monitoring adherence to the workplan by parties within China. We consider this to be consistent with the International Plant Protection Convention's (IPPC) ISPM No. 35, ''Systems approach for pest risk management of fruit flies (Tephritidae),'' which both the United States and China have adopted as members of the IPPC.[7] The ISPM recommends that the NPPO of the exporting country assume responsibility for monitoring an operational workplan developed as part of a systems approach for fruit flies.

That being said, we will inspect all consignments of citrus from China for quarantine pests at ports of entry in the United States, as well as for adherence the provisions of the systems approach. As stated in the RMD, if we detect quarantine pests on consignments of citrus from China, we will conduct an investigation and may prohibit the further importation of citrus from the place of production or province where the citrus was produced until we and the NPPO of China jointly agree that appropriate remedial measures have been put in place. Deviations from the systems approach that are detected at a port of entry may also result in heightened APHIS oversight of the export program for citrus from China to the United States, or similar remedial actions to detection of a quarantine pest. This approach is consistent with general APHIS policy regarding systems approaches.

A commenter stated that we had provided no indications that Chinese producers and packinghouses can follow a complex systems approach.

As we mentioned above, one of the purposes of an operational workplan is to set forth the day-to-day activities that growers and packinghouses must undertake in order to implement and monitor the requirements of an APHIS systems approach. APHIS will not agree to an operational workplan until we consider these day-to-day activities to be sufficiently delineated for growers and packinghouses.

The same commenter suggested that APHIS maintain direct oversight in China of the export program for citrus to the United States for the first 2 years of the program until it establishes a ''track record'' of clean shipments.

This would be tantamount to mandating a preclearance program for the importation of citrus from China to the continental United States during that 2-year time period. To date, we have only required such preclearance when detections of quarantine pests on a commodity at ports of entry in the United States have been frequent enough to suggest that the exporting country may be experiencing a regulatory failure of the export program for the commodity.

A commenter stated that China has historically done a poor job of monitoring export programs for commodities to the United States, and stated that this suggests the NPPO of China is unlikely to meaningfully monitor the export program for citrus to the United States.

As a signatory to the SPS Agreement, China has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from China when the United States demonstrates the need to impose these measures in order to protect plant health within the United States; as a country that has implemented ISPM No. 35, China has similarly agreed to monitor continual adherence to systems approaches for fruit flies that are associated with its export programs. We will, however, inspect all consignments of citrus from China at ports of entry in the continental United States for quarantine pests, and will conduct an investigation to determine appropriate remedial actions if any such quarantine pests are detected.

In requirement 6 of the RMD, we specified that all propagative material introduced into registered places of production would have to be certified free of quarantine pests.

The NPPO of Ghana stated that they are unaware of a certification protocol for freedom of fruit flies for propagative material.

Within the context of the RMD, we believe it was clear that the certification would be for quarantine pathogens, particularly pathogens with latency periods, rather than fruit flies. Regardless of instar, fruit flies are easily detectable on propagative material; fruit is the primary host of such fruit flies.

In requirement 8 of the RMD, we specified that all production sites exporting to the United States would have to be approved PFPPs for *Bactrocera minax* and *B. tsuneonis.*

A commenter stated that *B. minax* is widely prevalent in China, and the PRA had provided no indication that producers have adopted practices to suppress the population density of *B. minax* in places of production. The commenter questioned how APHIS had therefore determined that PFPPs for *B. minax* exist in China.

We disagree with the commenter's assertion that *B. minax* is widely prevalent in China such that PFPPs do not exist; in fact, about half of Chinese citrus production occurs outside of the current range of *B. minax.* Additionally, in areas where *B. minax* is known to occur, populations have been found primarily in hilly regions.

The same commenter stated that the distribution of *Bactrocera* spp. in an affected area tends to be very dynamic, and asked how APHIS would stay continually abreast of the current distribution of *B. minax* and *B. tsuneonis* in China.

APHIS will require continual surveillance for fruit flies through trapping protocols in order to determine the presence or absence of *B. minax* and *B. tsuneonis* in a place of production that wishes to participate in the export program for citrus to the United States.

A commenter pointed out that, in one instance, the RMD referred to pest-free areas for

B. minax and *B. tsuneonis,* and asked whether APHIS would require pest-free areas or PFPPs for these pests.

The lone reference in the RMD to pest-free areas used the term broadly to

[7] To view this ISPM, go to *https://www.ippc.int/static/media/files/publication/en/2018/10/ISPM_35_2012_En_FF_Post-CPM-13_InkAm_2018-10-01.pdf.*

refer to any geographical area, including a place of production, that has been determined to be free of a plant pest, rather than the technical sense of that term. The requirement will be for PFPPs, rather than pest-free areas.

Several commenters cited an article [8] that, they stated, indicated that there is not an effective lure for *B. minax.* The commenters questioned how the NPPO would conduct surveillance for *B. minax* in the absence of such a lure.

Xia et al. states that the most common kairomone lures for *Bactrocera* spp., cuelure and methyl eugenol, are not attractive for *B. minax,* and questions the efficacy of the most common homemade lures producers have employed: Hydrolyzed protein, sugar and vinegar mixture, and waste brewer's yeast. *Xia et al.* does not foreclose the possibility that hydrolyzed protein could be used as a lure for *B. minax,* noting that, even in homemade usage, it was ''the most effective lure.''

APHIS and other countries have found that protein baits may be used reliably to trap for fruit flies in the absence of species-specific lure; the absence of the lure is accounted for by adjusting the trapping protocol itself, such as by increasing trap density and servicing. This approach is evidenced in the trapping protocols used extensively throughout Central and South America for *Anastrepha* spp., and in the trapping protocol used in Japan for *B. tsuneonis.*

The same commenters stated that *Xia et al.* had indicated that there is no effective lure for early detection of and emergency response for *B. minax.*

Contextually, *Xia et al.* refers to the absence of a long-range kairomone lure that could be used within the United States to detect a small population of *B. minax* that might have been introduced into the United States through a non-commercial means, such as smuggled fruit or passenger baggage. This is not germane to whether a protein-based trap could be used as part of an extensive trapping protocol to survey for *B. minax* in a geographical area.

The same commenters stated that *Xia et al.* questions the efficacy of trapping in determining PFPPs and areas of low pest prevalence for *B. minax* within China.

Xia et al. does state that ''determining *B. minax* pest-free areas in China can be especially challenging'' and also states that ''trapping for this species is not very effective.'' However, *Xia et al.* reaches this conclusion by evaluating the lures currently in use within China. We agree that the lures currently used in China are of limited efficacy in trapping for *B. minax.* However, we disagree with *Xia et al.* that trapping for this species, regardless of how it is conducted, would prove to be ineffective. As we noted above, there is extensive evidence that protein baits may be used reliably to trap for fruit flies in the absence of species-specific lure. Finally, we note that *Xia et al.* recommends biometric sampling at packinghouses, including fruit cutting, as a means of verifying that a place of production is free of *B. minax,* and such biometric sampling and fruit cutting is part of the systems approach.

Several commenters pointed out that *Xia et al.* recommends that APHIS follow international standards in recognizing pest-free areas and ALPPs for *B. minax.*

We have followed international standards in recognizing pest-free areas and ALPPs, and will continue to do so.

Several commenters stated that, in the absence of a species-specific lure, trapping cannot be used to determine the prevalence of a *Bactrocera* species reliably enough to use it as a phytosanitary measure. One commenter compared trapping for a *Bactrocera* species without a male lure to trapping for Asian citrus psyllid (ACP) that is conducted within the United States using panel traps. The commenter stated that the detection of a single psyllid in the traps is usually an indicator of a much larger established population.

We disagree that trapping cannot be used reliably to determine the prevalence of a *Bactrocera* species in the absence of species-specific lure. There is extensive evidence that protein baits may be used reliably to trap for fruit flies in the absence of species-specific lure, and Japan has used such protein baits effectively to trap for *B. tsuneonis.*

We also disagree that the comparison made by the commenter is biologically appropriate. The traps used domestically for ACP rely on ACP's short distance attraction to color. In contrast, *Bactrocera* spp. rely on protein to produce eggs as part of the mating cycle and are attracted to the odor of protein for this reason.

One commenter asked if one trap and lure will be used for all *Bactrocera* species that exist in China.

The trap used will vary from species to species, depending on the existence of a species-specific lure for that species.

The same commenter asked which traps and lures would be used.

APHIS will use the traps and lures that we deem to be most appropriate based on our review of international standards, scientific literature, and our own operational experience; the traps and lures to be used for a particular species will be set forth in the operational workplan. That being said, operational workplans most commonly specify the use of Jackson traps, multilure traps, and/or sticky spheres.

Several commenters stated that the trapping protocol needed to be set forth in the RMD or notice itself.

APHIS provides specific trapping protocols in operational workplans, rather than RMDs and **Federal Register** documents, for several reasons. This practice allows us to adjust the protocols in an expeditious manner in response to changes in pest distribution and/or population density within a particular region of a foreign country. Similarly, it allows for regional variances in trapping protocols that may be necessary due to differing pest distribution or population density among regions of the country. Finally, it allows the protocols to keep pace with the development of more effective traps and species-specific lures.

We proposed that citrus fruit would have to be from approved PFPPs for *B. correcta, B. cucurbitae, B. dorsalis, B. occipitalis, B. pedestris,* and *B. tau;* or we would have to determine that places of production are located in ALPPs for these species of fruit fly based on trapping, and the citrus would have to receive in-transit cold treatment as an additional phytosanitary safeguard.

A commenter stated that PFPPs differ significantly from pest-free areas in terms of how they are delineated and how they must be maintained. The commenter suggested that APHIS amend 7 CFR 319.56–5, which sets forth our process for recognizing pest-free areas in foreign regions, in order to set forth conditions for the establishment of PFPPs.

Section 319.56–5 currently provides that APHIS' determination of pest-free areas relies on the criteria set forth in ISPM No. 4, ''Requirements for the establishment of pest-free areas,'' as well as on our evaluation of the adequacy of the region's survey protocol for delineating the pest-free area. If APHIS determines that the area is indeed pest-free, we publish a notice or rule in the **Federal Register** announcing that the area in question meets the above criteria; this notice requests public comment. Following the comment period, APHIS announces its final decision in a subsequent **Federal Register** notice.

[8] Xia, Y., Ma, X.L., Hou, B.H. and Ouyang, G.C. (2018). *A Review of Bactrocera minax (Diptera: Tephritidae) in China for the Purpose of Safeguarding.* Advances in Entomology, 6, 35–61. Referred to in the body of this document as *Xia et al.*

As a procedural matter, we cannot amend § 319.56–5 in this notice; a notice may not be used to amend regulations. We are also uncertain how the commenter suggests that this section be amended. If the commenter is suggesting that we apply the notice-based process for recognizing pest-free areas to PFPPs, we consider this to be impracticable. A pest-free area is usually a geopolitical entity or large geographical area within a country; no country currently has more than 50 such areas recognized by APHIS, and most have less than 20. In contrast, a single country may have hundreds of PFPPs. Using **Federal Register** notices to recognize or decertify each such place of production cannot feasibly be done. If the commenter is suggesting that we amend § 319.56–5 to specify the criteria that APHIS relies on to make a determination that an area is a PFPP, we will take this into consideration for future rulemaking.

The same commenter pointed out that two ISPMs exist which pertain to the establishment and maintenance of pest-free areas, Nos. 10 and 35. Since the RMD had made no reference to these ISPMs, the commenter inferred that APHIS would not follow these standards for purposes of the systems approach.

The United States has agreed to both of these ISPMs, and we will adhere to them within the context of the systems approach.

The same commenter pointed out that both of these ISPMs recommend the use of buffer areas around pest-free places of production, but saw no reference to such zones within the RMD.

Consistent with these ISPMs, we will require such zones be established in order to recognize a place of production as pest-free. The specific parameters for such zones will be set forth in the operational workplan.

One commenter stated that citrus fruit should only be allowed from pest-free areas, as outlined in § 319.56–6, as a risk management measure for *Bactrocera* spp. The commenter stated that PFPPs are not an appropriate risk mitigation measure for *Bactrocera* spp.

APHIS disagrees with the commenter that only pest-free areas provide an appropriate level of protection against *Bactrocera* spp. APHIS has used systems approaches with PFPPs for a number of commodities with high risk pests. A systems approach can provide an alternative to single measures to meet the appropriate level of phytosanitary protection, or can be developed to provide phytosanitary protection in situations, in which no single measure is available (IPPC, 2002). As part of this systems approach, PFPPs satisfy requirements for the appropriate level of protection (IPPC, 1996, 1999; NAPPO, 2003).

The NPPO of Ghana stated that they are not aware that China has submitted information to the IPPC on ALPPs for fruit flies since 2009.

APHIS will work with China to develop an operational workplan which will include all of the requirements for development of PFPPs and ALPPs. APHIS will require appropriate trapping and survey data before allowing exports from pest-free places of production or before recognizing ALPPs in China.

Three commenters stated that ALPP thresholds are not indicated in the RMD.

Requirement 12 of the risk management document specifies that if more than 0.7 FTD (number of fruit flies captured per trap per day) of any species of fruit fly is trapped, APHIS-approved pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export fruit. Pesticide treatments must be applied weekly until fruit fly numbers drop below 0.7 FTD.

One commenter stated that the ALPP FTD thresholds are too high and that if a trap finds adult flies, the likelihood of finding immature flies inside the fruit is much higher.

If APHIS finds that this threshold is too high, we can lower the threshold in the operational workplan. This is a systems approach with additional measures for fruit flies including bagging and cold treatment. This threshold will not apply to the flies *B. minax* and *B. tsuneonis,* which will require pest-free places of production.

Four commenters stated that monitoring procedures that will be used to establish ALPP are not indicated in the RMD.

Requirements 12 through 14 in the RMD specify the monitoring procedures for fruit fly populations.

Requirement 14 in the RMD specified that citrus fruit to be imported into the United States would have to be treated with an APHIS-approved treatment. One commenter stated that requirement 9 in the RMD is inconsistent with requirement 14 as to when a treatment is required to export fruit from China.

APHIS recognizes that those two requirements may be confusing. As we explained in the notice, if the place of production is a PFPP for the species of fruit fly, then treatment for that species is not required. If the commodity is bagged pummelos, treatment is not required as long as the area is an ALPP for *B. correcta, B. cucurbitae, B. dorsalis, B. occipitalis, B. pedestris,* and *B. tau* and a PFA for *B. minax* and *B. tsuneonis.*

Two commenters expressed concern that cold treatment efficacy data is lacking. One of the commenters stated that research should be carried out to validate the efficacy of cold treatment on fruit flies found in Chinese production areas before any imports from China are approved. These commenters and several others stated that cold treatment is not effective for *B. minax* and *B. tsuneonis.*

APHIS agrees that cold is not effective for *B. minax* and *B. tsuneonis,* but we are not proposing stand-alone cold treatments for these two species. APHIS does expect, that while cold treatments are not 100 percent effective for *B. minax* and *B. tsuneonis,* there will be some mortality which will help the effectiveness of the systems approach.

APHIS notes that we are using a systems approach to mitigate risk from China citrus pests. APHIS has used systems approaches for a number of commodities with high risk pests. A systems approach can provide an alternative to single measures to meet the appropriate level of phytosanitary protection, or can be developed to provide phytosanitary protection in situations, in which no single measure is available.[9] As part of this systems approach, pest-free places of production satisfy requirements for the appropriate level of protection (IPPC, 1996, 1999; NAPPO, 2003).[10]

One commenter expressed concern that even if cold treatment schedules are approved, China may not apply them correctly.

China has more than 10 years' experience in applying cold treatments in transit to various types of fruits. The operational workplan and APHIS treatment manuals will spell out the requirements to apply the treatment.

[9] IPPC. 2002. The use of integrated measures in a systems approach for pest risk management. International Standards for Phytosanitary Measures No. 14. Rome: Secretariat of the International Plant Protection Convention, United Nations Food and Agriculture Organization.

[10] IPPC. 1996. Requirements for the establishment of pest free areas. International Standards for Phytosanitary Measures No. 4. Rome: Secretariat of the International Plant Protection Convention, United Nations Food and Agriculture Organization.

IPPC. 1999. Requirements for the establishment of pest free places of production and pest free places of production. International Standards for Phytosanitary Measures No. 10. Rome: Secretariat of the International Plant Protection Convention, United Nations Food and Agriculture Organization.

NAPPO. 2003. Guidelines for the establishment, maintenance and verification of areas of low pest prevalence for insects. NAPPO Regional Standards for Phytosanitary Measures No. 20. Ottawa: Secretariat of the North American Plant Protection Organization.

APHIS gives other NPPOs including China training in applying cold treatments. Cold treatment temperatures are monitored at ports of entry so if they are improperly applied the shipments may be rejected. APHIS has never intercepted fruit flies in any cold treated commercial shipments of fruit from China

One commenter stated that China should be allowed to cold treat in China rather than in transit.

Under 7 CFR part 305, an approved cold treatment may be conducted for any imported regulated article prior to shipment to the United States if certified facilities are available. At this time there are no APHIS-certified cold treatment facilities in China.

One commenter stated that irradiation is the only phytosanitary treatment approved for all of the listed species. The commenter asked if that is what is meant by APHIS-approved treatment.

APHIS agrees that irradiation is an effective treatment against the listed species, but a phytosanitary treatment is not the only approach. As we explained above, APHIS is using a systems approach to mitigate risk from China citrus pests and the initial notice, the PRA and RMD that accompanied it, and this final notice provide evidence in support of the efficacy of the systems approach.

One commenter stated that APHIS should require irradiation for citrus from China.

APHIS is not requiring irradiation because a systems approach; including pest-free places of production, fruit bagging, and cold treatment in addition to other measures, will provide an appropriate level of phytosanitary protection.

The same commenter cited the example of fresh bananas from Ghana, which must be irradiated as a condition of entry into the United States to mitigate the risk of *Bactrocera dorsalis.* The commenters stated that to not require irradiation for citrus from China would be a violation of the SPS Agreement which requires members to ensure that sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail. The commenter also stated that bananas are regarded as unusual host for *Bactrocera* spp. as they do not infest when unripe, and cited an article in support of their position.[11]

As we explained above, APHIS believes that a systems approach for citrus from China will provide an appropriate level of phytosanitary protection. We also disagree with the commenter that not requiring irradiation for citrus from China violates the SPS Agreement; the SPS Agreement also allows exporting countries to request equivalent mitigation strategies to that proposed by an importing country; thus a commodity from one country may have very different import requirements from those for a commodity from another country, even if the pest complexes for the commodities are identical or similar.

With regard to the article cited by the commenter, we note that at least one author has reported green bananas as a host of *B. dorsalis* (*invadens*) in Africa. *Rwomushana et al.* reported rearing *B. invadens* from banana (Musaceae), and stated that banana is known to be a major host of *Bactrocera* species. *Rwomushana et al.* also reported that *B. invadens* can infest green banana both in the laboratory and field.[12]

Finally, while making changes to the requirements for the importation of bananas from Ghana is outside the scope of this action, the NPPO of Ghana may request such a revision pursuant to 7 CFR 319.5.

Requirement 15 in the RMD specified that fruit would have to be washed, brushed, surface disinfected in accordance with 7 CFR part 305 and according to treatment schedules listed in the PPQ Treatment Manual, and treated with fungicide at labeled rates. The RMD stated that these mitigations would minimize the likelihood of Lepidoptera, Acari, other Diptera, and other pests being present on the fruit. One commenter stated that Lepidoptera and Diptera are internal feeders and will not be mitigated by these measures. The commenter stated that *Bactrocera minax* and *B. tsuneonis* in particular will not be mitigated by these measures.

We agree that washing and brushing will remove some Lepidoptera, but may not remove Diptera. We have removed the references to Diptera from requirement 15; the revised RMD is available on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*). We do note, however, that Lepidoptera and Diptera are mitigated by other aspects of the systems approach, as well. These include PFPPs, ALPPs, and inspections of fruit, including fruit cutting to detect internally feeding fruit fly larvae.

Requirement 16 in the RMD specified that if pummelo fruit are bagged on trees with double-layered paper bags no more than 2 months prior to harvest, no further treatment would be required. One commenter stated that instead of ''no more than 2 months prior to harvest,'' the requirement should be ''at least 2 months prior to harvest.''

We agree with the commenter and have made this change to the RMD.

One commenter stated that a requirement for a hypergeometric sample, similar to that which applies to the importation of Chinese and Japanese pears, should be included in the RMD.

The sampling plan for fruit in China will be spelled out in the operational workplan. APHIS often uses the hypergeometric distribution to develop sampling plans.

The RMD stated that Lepidoptera pests leave obvious feeding damage and are readily detected by inspection and standard industry packinghouse procedures including culling. One commenter asked if there is evidence *Carposina* spp. are easily inspected for and can be culled.

Lepidoptera pests leave obvious feeding damage. Inspection in the packing house, culling fruit, and inspection at port of entry are standard measures for Lepidoptera larvae in citrus. If pests are frequently intercepted other measures can be added. Citrus is not a primary host for *Carposina* spp. moths which mainly attack and infest stone fruit.

One commenter stated that Chinese citrus imports should be limited to cold weather climates and ports of entry for a minimum three-year trial period in which APHIS can monitor compliance with the fruit fly trapping protocol, evaluate pest-free areas, packinghouse disease mitigation compliance, cold treatment performance, and interceptions at points of entry.

This request is predicated on the assumption that the NPPO of China lacks the ability and intent to abide by systems approach requirements. For reasons discussed above, we disagree with those assumptions. We have determined, for the reasons described in the RMD that accompanied the notice, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of citrus from China. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

[11] Jayanthi, K.P.D. & Verghese, A. 2002. A simple and cost effective mass rearing technique for the tephritid fruit fly, *Bactrocera dorsalis* (Hendel). *Current Science* 82(3): 266–268

[12] Rwomushana, I., S. Ekesi, I. Gordon, and C. K.P.O. Ogol. 2008. Host Plants and Host Plant Preference Studies for *Bactrocera invadens* (Diptera: Tephritidae) in Kenya, a New Invasive Fruit Fly Species in Africa. Ann. Entomol. Soc. Am. 101(2): 331–340. Accessible at *https://academic.oup.com/aesa/article/101/2/331/8452.* Referred to in the body of this document as *Rwomushana et al.*

For the reasons specified in the initial notice, the PRA and RMD that accompanied it, and this final notice, we do not consider such restrictions to be necessary.

Economic Effects

One commenter stated that Chinese production figures are low because of recent citrus greening outbreaks but are likely to swell following identification of citrus greening management tools.

Citrus greening management tools of that magnitude are still very much in the methods development stage, or we would be using them domestically.

One commenter expressed concern that imports will adversely impact the domestic pummelo industry.

China produced 4.9 million metric tons of pummelos and exported 200,000 during the 2018/19 season. Major export destinations for Chinese pummelos include Netherlands, Russia, Hong Kong, and other European countries.[13] It is unlikely that China would divert a significant portion of the pummelo exports to the U.S. markets.

Two commenters stated that China cannot be trusted to engage in fair trade.

China is a signatory to the IPPC and, as such, has pledged to abide by the import requirements of other member countries.

Two commenters expressed concern that China will manipulate prices.

We acknowledge that China is a Northern-Hemisphere producer and there is some overlap with China's shipping season with the marketing season in the United States. However, the citrus imports from China are likely to be small. Overall, Southeast Asia, Europe, and Russia remain the largest export markets for citrus from China.

Miscellaneous

In the initial RMD, we specified that in those areas with low prevalence for *Bactrocera* species that are not cold-tolerant, cold treatment according to treatment schedule T107–b would be required. That treatment schedule is designed as a stand-alone treatment, not as part of a systems approach. We have therefore approved a new cold treatment schedule, T107–o, to be used as part of a systems approach for Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin from China and have updated the RMD accordingly. This new schedule has the same time and temperature requirements as T107–b, but specifies that it must be administered as part of a systems approach.

[13] USDA, Foreign Agricultural Service (FAS), Citrus: ''World Markets and Trade,'' June 2019.

Some citrus classification systems differ in how certain commodities are recognized. APHIS has consulted with USDA taxonomists and have clarified the classifications of the commodities. The results of the consultation is as follows:

- *Citrus grandis* = *C. maxima*) cv. *guanximiyou* (pomelo) is recognized and accepted by USDA as the pummelo under the name *C. maxima* cv. 'Guanxi Miyou,' also named *Citrus* cv. 'Guanxi Miyou.'
- *Citrus poonensis* (ponkan) is recognized and accepted by USDA as the mandarin Ponkan *Citrus x poonensis* hort. ex Tanaka, also named *Citrus* cv. 'Poonensis.'
- *Citrus kinokuni* (Nanfeng honey mandarin) is recognized and accepted by USDA as the mandarin Nanfeng honey mandarin *Citrus x aurantium* cv. *'Kinokuni',* also named *Citrus* cv. *'Kinokuni.'*
- *Citrus sinensis* is recognized and accepted by USDA as the sweet orange *Citrus x aurantium* var. *sinensis,* also named *Citrus x aurantium* var. *sinensis.*
- *Citrus unshiu* is recognized and accepted by USDA as the Satsuma *Citrus x aurantium* cv. 'Unshiu,' also named *Citrus* cv. 'Unshiu.'

Therefore, in accordance with § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh pummelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin fruit from China into the continental United States subject to the following phytosanitary measures:

- Importation in commercial consignments only.
- Registration of places of production and packinghouses with the NPPO of China.
- Certification by the NPPO of propagative material used at places of production as being free of quarantine pests.
- Periodic inspections of places of production throughout the shipping season.
- Grove sanitation.
- PFPPs for *Bactrocera minax* and *B. tsuneonis.*
- PFPPs for *B. correcta, B. cucurbitae, B. dorsalis, B. occipitalis, B. pedestris,* and *B. tau;* or determination that places of production are located in areas of low pest prevalence for these species of fruit fly based on trapping, and in-transit cold treatment as an additional phytosanitary safeguard, except for pummelo which requires bagging.
- Maintaining the identity and origin of the lot of fruit throughout the export process to the United States.
- Safeguarding of harvested fruit.
- Post-harvest visual inspection of fruit by the NPPO or officials authorized by the NPPO according to a biometric sample.
- Cutting a portion of the fruit in the sample to inspect for quarantine pests.
- Washing, brushing, and treatment with surface disinfectant and fungicide.
- Issuance of a phytosanitary certificate with an additional declaration.
- Port of entry inspections.
- Importation under a permit issued by APHIS.
- Possible remedial measures in the event of detection of quarantine pests at registered places of production or packinghouses, or in/on consignments of citrus fruit from China at ports of entry into the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notice are covered under the Office of Management and Budget (OMB) control number 0579–0049. The estimated annual burden on respondents is 5,420 hours, which will be added to OMB control number 0579–0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of April 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–08059 Filed 4–14–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Certain Timber Sale: Contracts; Finding of Substantial Overriding Public Interest

AGENCY: Forest Service, USDA.

ACTION: Notice of contract extensions.

SUMMARY: The Under Secretary for Natural Resources and Environment, Department of Agriculture has determined in accordance with paragraph 14(c) of the National Forest Management Act of 1976 (NFMA) and Forest Service regulations that it is in the substantial overriding public interest (SOPI) to extend certain National Forest System timber sales, sale of property stewardship contracts, and forest product permits. This finding applies to timber sale, sale of property stewardship contracts, and forest product permits that were awarded or issued, before April 1, 2020, and upon award to sales with a bid opening prior to April 1, 2020. Extensions will be granted upon written request of the contract or permit holder, unless the Contracting Officer determines the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed or other critical public resource. The Under Secretary finds in accordance with Forest Service regulations that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result by extending certain contracts and permits. Therefore, contract length may exceed 10 years as a result of this SOPI.

DATES: The SOPI determination was made on April 10, 2020, by the Under Secretary for Natural Resources and Environment, Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Carl Maass, Forest Management Staff, 970–295–5961 or John Gary Church, Forest Management Staff 202–205–1732; 1400 Independence Ave. SW, Mailstop 1103, Washington, DC 20250–1103. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Extension of certain contracts and permits is necessary due to a combination of factors impacting the national economy and the timber market. As one measure of the timber market, beginning in the 4th quarter of 2018 the Softwood Lumber Producer Price Indices (PPI) declined enough to qualify for some relief for timber purchasers under Market Related Contract Term Additions (MRCTA) provision of 36 CFR 223.52 (MRCTA). A similar downward trend occurred in the Hardwood Lumber PPI in the 2nd Quarter of 2018, but it did not qualify for MRCTA. Then, beginning in the 4th Quarter of 2019, trade disputes impacted the export of hardwood lumber to Pacific-rim nations. US hardwood lumber exports to China were valued in 2018 at approximately $2 billion prior to tariffs being imposed. In March of 2020 indications are that impacts from the general economic slowdown attributed to the novel coronavirus pandemic (COVID–19) are adding to these economic disruptions, affecting a wide range of the forest products industry, including direct effects on timber purchasers and contractors across the country. In addition, mill closures and curtailment of timber harvests under Forest Service contracts appear to be a reflection of market declines over the past 24 months.

Due to the complex factors involved, recovery is expected to be a protracted process. Looking at historically significant downturns in timber markets (early 1980's, early 1990's and late 2000's) recovery from the current market shocks is expected to be a prolonged process over two or more years. By way of illustration, recovery after the recession between 2005 and 2009 required substantial improvement in the domestic housing market before pre-recession production levels could be obtained. See, GTR NRS–P–105, USDA Forest Service Northern Research Station from 2012, for detailed information on how recovery proceeded after the economic downturn between 2005 and 2009. This SOPI will provide time needed for markets to stabilize and for purchasers, and contractors to resume operations currently disrupted by these unprecedented global conditions.

Pursuant to this SOPI, and except as discussed herein, most contracts may be extended for a maximum of two years, including MRCTA time that has previously been provided under 36 CFR 223.52. Based on past experience a two-year time period should allow time for substantial market adjustments and any broad scale market assessment the Forest Service may find necessary to make. Market conditions in Alaska are exceptionally disrupted, resulting from its dependence on log exports to international markets, so timber sale contracts and permits in Alaska may receive up to 3 years of additional time through a combination of MRCTA and this SOPI.

The intent of this SOPI is not to be duplicative of relief previously provided, or relief that may be available in the future, under contract provisions for MRCTA. In the event MRCTA triggers in the future, any MRCTA time added to contracts and permits, will be limited to the amount of time that exceeds additional time authorized under this SOPI. For example, sales that have previously received 1 year and 6 months of MRCTA shall only receive an additional 6 months of extension under this SOPI, for a total of 24 months of combined MRCTA and SOPI, except sales in Alaska will receive up to 3 years of additional time through a combination of MRCTA and this SOPI. Thus, sales in Alaska that have previously received 1 year and 6 months of MRCTA are eligible to receive up to an additional 18 months of extension under this SOPI for a combined total of 36 months. If MRCTA is triggered in the future, MRCTA time will be reduced by the amount time granted under this SOPI. The combination of additional time from previous MRCTA and this SOPI will be limited to a maximum of two years, except that timber sale contracts and permits in Alaska may receive up to 3 years of additional time through a combination of MRCTA and this SOPI. International markets for logs exported from Alaska are governed by market demand and foreign restrictions largely outside the control of US domestic policy. The additional year of extension may be required by Alaska producers to resolve international market disruptions without requiring additional relief measures.

Sales where the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed, or other critical public resource that is determined to be in urgent need of harvest will not be extended. The Forest Service will continue to monitor market conditions to determine if and when additional time may be needed.

MRCTA procedures were adopted by the USDA Forest Service in the early 1990's to avert contract defaults, mill closures and associated impacts to dependent communities when there is a drastic decline in wood product prices (36 CFR 223.52). Most Forest Service timber sale contracts over 1-year in length include MRCTA procedures. Salvage sales and sales of products not covered in a Bureau of Labor Statistics (BLS) Producer Price Index (PPI) used to

determine when MRCTA triggers are examples of contracts that do not include a MRCTA provision.

The effects of international trade disputes and the novel coronavirus 2019 (COVID–19) pandemic have not yet been fully accounted for in the way the Forest Service uses the PPIs to calculate when MRCTA is triggered. As a result, MRCTA is not providing timely or adequate relief for many producers that are experiencing the effects of tariffs imposed by other countries, particularly China, that affect United States exports and the effects of COVID–19 pandemic on domestic and global forest products markets. The effects include disruptions in international trade and interruptions in domestic production, distribution of forest products as well as demand for forest products as a result of national and local COVID–19 containment measures such as ''stay-at-home'' or ''shelter-in-place'' orders.

A unique combination of world market conditions, the COVID–19 pandemic and a massive bark beetle epidemic in central Europe has created an unprecedented worldwide instability in timber industries and associated markets. Data and available information indicate the volatility and speed of changes concurrent with the COVID–19 pandemic are introducing extreme uncertainty for timber purchasers and stewardship contractors regarding investment decisions about current and future operations. The number of people seeking unemployment benefits in March 2020 shot up to over 10 million in a few weeks, providing a great deal of uncertainty for housing starts and the mortgage industry. Sawmills in Oregon and elsewhere are curtailing operations, halting operations on National Forest timber sales as markets for the logs shut down. Impending contract termination dates on existing Forest Service timber sales can limit purchasers' options in these turbulent and uncertain times. When members of the timber industry must decide whether to harvest timber during severely depressed markets or risk defaulting contracts, such decisions can and previously have led to bankruptcies, loss of infrastructure and loss of jobs. This adversely affects stability in rural communities and future management of National Forests, as important opportunities for accomplishing forest management objectives are lost. Providing additional contract time during previous significant downturn market conditions has allowed timber purchasers additional flexibility to navigate the crisis and sustain long-term business viability, providing tools to support Forest Service land management goals and providing future employment opportunities.

The intended effects of this SOPI finding and contract extensions are, again, to allow timber purchasers, contractors, and permit holders time to navigate through the COVID–19 crisis and other market conditions, minimize contract defaults, mill closures, and bankruptcies, and sustain employment opportunities. The Government benefits if timber sale contract defaults, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous economically viable, timber purchasers and contractors increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Act of June 4, 1897 (Ch. 2, 30 Stat. 11, as amended, and 16 U.S.C. 475) (Organic Administration Act). Having numerous economically viable timber purchasers is also essential as employment and the national economy recovers following the COVID–19 pandemic.

The Forest Service sells timber and forest products from National Forest System lands to individuals and companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA); the Stewardship End Result Contracting Projects Act, 16 U.S.C. 6591c; and implementing regulations in 36 CFR part 223. Each sale is formalized by execution of a contract for the sale of property between the timber purchaser or Stewardship Contractor and the Forest Service. The contract sets forth the explicit terms of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction, and logging requirements. The average contract period is approximately 2 to 3 years, although some contracts may have terms up to 10 years. The contract term is established by the Forest Service based on the estimated time an average prudent timber contractor would need to mobilize and complete the timber harvest under the conditions of the contract. The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more unless the Secretary finds that the purchaser has diligently performed in accordance with an approved plan of operations, or that the ''substantial overriding public interest'' justifies the extension.

On December 7, 1990, the Forest Service published a final rule (55 FR 50643) establishing procedures in 36 CFR 223.52 for extending contract termination dates in response to adverse conditions in timber markets. These procedures, known as Market Related Contract Term Additions (MRCTA), authorize extensions of timber sale contracts when qualifying market conditions are met. Subsequent amendments have provided that the total contract period may be extended up to 10 years as the result of MRCTA when specified criteria are met. When the MRCTA procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger market related contract term additions generally coincide with low numbers of housing starts and substantial economic dislocation in the wood products industry. Such economic distress broadly affects rural community stability, the short-term capacity of the domestic industrial supply chain, and threatens long-term industrial capacity needed to meet future Forest Service land management objectives and the demand for wood products from domestic sources.

When MRCTA was designed, the focus was on domestic disruptions in forest product markets and not the effects of world trade restrictions or a global pandemic. In promulgating the MRCTA rule the Department determined that a drastic reduction in wood product prices can result in a substantial overriding public interest sufficient to justify a contract term extension for existing contracts, as authorized by the National Forest Management Act of 1976 (16 U.S.C. 472a(c)) and existing regulations at 36 CFR 223.115(b).

The three Bureau of Labor Statistics (BLS) Producer Price Indices (PPI) the Forest Service currently uses to gauge most market conditions include Hardwood Lumber 0812, Softwood Lumber 0811, and Chips (not field chips) PCU32113321135. However, these indices are not able to address all forest products and market conditions. For example, biomass material, which is a large component of many stewardship contracts, is not covered by these indices. Also, because the indices are national in scope, they may fail to address drastic declines in local markets or products and, more importantly at this time, markets affected by tariffs and the evolving COVID–19 pandemic. Furthermore, the indices as used in Forest Service contracts are not able to reflect rapidly declining market conditions since the formulas used to

trigger MRCTA require measuring PPI decline over two consecutive calendar quarters. Current market conditions are very volatile and will not be reflected in the MRCTA formulas for several months.

The Bureau of Labor Statistics (*https://www.bls.gov/ppi/home.htm*) describes the effects of tariffs on the producer price index in March 2020, as follows:

24. ''Does the PPI include tariffs in its estimates of price change? The Producer Price Index (PPI) measures the average change in prices U.S. producers receive for the sale of their products. Since tariffs and taxes are not retained by producers as revenue, they are explicitly excluded from the PPI. However, pricing decisions producers make in reaction to tariffs are included in the PPI. For example, if a domestic producer is manufacturing a product that is subject to import competition and tariffs are placed on those imports, the domestic producer may increase its own prices in order to maximize revenue. In this case, the price increase for the domestic producer would be included in the PPI. Similarly, if a domestic producer exports products to a foreign country that placed tariffs on U.S. products and the domestic producer lowered its prices either to better compete in the export market or to sell domestically excess inventory that resulted from those tariffs, those price decreases would also be reflected in the PPI.''

The above description provides a general overview that tariffs are not captured in the PPI. Only the impact of tariffs on pricing decisions of individual firms are recognized through this method.

Hardwood Lumber Markets

Hardwood industry data suggests that U.S. prices are severely depressed by tariffs imposed by China on imports of hardwood lumber and logs from the United States. Although tariff relief on hardwoods is occurring, an oversupply of logs in China and the effects of containing COVID–19 by stopping manufacturing operations in China will delay the reopening of the Chinese export market. The Forest Service currently has 192 sales awarded that are tied to the Hardwood Lumber PPI, with 55 of those sales terminating in calendar year 2020, and an additional 51 sales terminating in 2021. It is estimated that as many as one third of these sales may be directly affected. The hardwood lumber market is complex with multiple interconnections and relies on demand for finished furniture, which ebbs and flows as US tariffs are applied to goods imported to the US, and Chinese tariffs applied to hardwood logs exported to China. These market disruptions can affect the entire market and would have some variable ripple effect on potentially all the active sales. Some specifics regarding the variable effects observed to date are described below.

Eastern Hardwood Lumber Markets

- Hardwood Review Weekly (*http://www.hardwoodreview.com*) indicates that export volume for all hardwood species is down by 39% compared to a year ago.
  - Hardwood total export value is down 42.2% compared to a year ago.
  - Product unit values are down by an average of −5%, with variation by species from −2.8% Yellow Poplar to −12% for Cherry.
- About ⅓ of the active timber sales on the National Forests of North Carolina (NC), about 34,000 Hundred Cubic Feet (CCF), are in jeopardy of default due to poor market conditions. This represents about 76% of all timber sale contracts in North Carolina with a combined value of nearly $1 million.
- A hardwood sawmill has already closed in Jackson County, NC, and there are reports that another one has curtailed production, idling around 70 workers.
- A finished furniture mill in Western North Carolina closed last fall.
- Local Forest Service officials report that mills are struggling in several other locations including Haywood and Graham Counties, NC.
- Sales in Tennessee are in danger of default due to:
  - Restrictive delivery quotas;
  - restrictions on certain species of hardwood logs; and
  - newly imposed increases in minimum sawlog sizes are diverting some logs to lower quality, lower value products as a result of reduced demand.

During the period of September 2005 through December of 2008 the Hardwood Lumber PPI 0812 did not decline enough to authorize MRCTA, and, in the absence of triggering MRCTA, qualifying hardwood sales received additional time through a SOPI in 2007, the 2008 Farm Bill and a 2008 SOPI.

The hardwood lumber PPI 0812 began declining after May 2018, and with adjustments for inflation, has declined 15.2 points or 13% as of January 2020. But, similar to the situation during the period between September 2005 and December 2008, PPI 0812 declines for two consecutive quarters have not been sufficient to trigger MRCTA. Consequently if hardwood prices do not begin to recover soon, or if conditions for MRCTA do not trigger, some hardwood purchasers are expected to face severe hardships and potential defaults as contract termination dates approach.

China began eliminating tariffs on most North American hardwood lumber imports for one year beginning February 28, 2020. Despite the change in tariffs, reliable information from news reports and industry publications indicate that business disruptions related to efforts to contain COVID–19 are stalling shipments to China. The effects of the COVID–19 pandemic on other export markets is still unclear but has potential to become significant.

Softwood Lumber Markets

The softwood lumber PPI 0811 triggered MRCTA during four consecutive quarters including the 4th quarter 2018 through the 3rd quarter 2019. Contracts tied to the softwood lumber PPI sold prior to the 1st quarter 2019 have been eligible to receive MRCTA time. Sales tied to the softwood lumber index sold during the 2nd quarter 2019 and later have not been eligible for MRCTA time.

There is no indication that foreign tariffs on softwood logs and lumber exported from the United States will be lifted any time soon. Furthermore, China has been severely limiting or rejecting imports of softwood lumber and logs due to excess inventory at processing facilities. Even before the tariffs and the COVID–19 pandemic, the Chinese softwood lumber manufacturers were flooded with inexpensive spruce from a major spruce beetle epidemic in central Europe. The oversupply situation has been exacerbated by China's response to the COVID–19 situation, which led to a general stopping of manufacture and related decline in demand for a log supply and further restricted imports. This is having a significant impact on Alaska timber producers where market conditions are driven by log exports to China. While the effects of these conditions are partially mitigated by MRCTA, it is apparent that MRCTA alone will not provide adequate time for the Alaska export markets to recover before contracts there begin terminating.

Softwood log exports from Federal lands are limited to areas east of the 100th meridian (USFS Regions 8 and 9) and Alaska (USFS Region 10). Although sales subject to the Softwood Lumber PPI have received additional MRCTA time, sales in Alaska may require additional time due to the very limited markets available for economically viable softwood exports from Alaska.

Alaska Market

- Major exporters of softwood timber from Alaska have experienced a loss of

about 50% of their Freight on Board (FOB) price to China in the last 18 months.

- Alaskan exporters are estimated to lose $250 per thousand board feet (MBF) on all of their National Forest Young Growth (YG) sales.
- With the current 20% tariff imposed by China on Alaska wood products, exporters stopped shipping to China in August of 2019.
- Large inventories of logs destined for export are awaiting resolution of tariffs and market limitations.

Market demand and tariff conditions are delaying the start of all operations in the estimated $100 million dollar forest product industry in Alaska (2015 data). As discussed above, purchasers of softwood sales throughout the rest of the country are coming under increasing pressure from market and manufacturing conditions affected by actions and responses to the COVID–19 pandemic and the general slowing of economic activity. This situation continues to be very volatile. Providing extra time to those sales will provide those purchasers with additional flexibility as they adjust to the changing market situation.

Biomass and Wood Chip Markets

Little information is currently available on the effects of the COVID–19 pandemic on biomass and wood chip markets, but as the general economy slows down, it is likely that those markets will also be affected. The forest products industry is interconnected among dimension lumber, pulp, chips and biomass. Each part of the industry supports other parts. For example, most biomass and chip sales include a component of sawtimber and some of the outputs from sawtimber support pulp, chips and biomass. Consequently, contracts where biomass or wood chips the primary timber product will also be eligible for an extension of up to 2 years under this SOPI determination.

Determination of Substantial Overriding Public Interest: The Government benefits if timber sale contract defaults, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous economically viable, timber purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures, and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages. Timber sales play a major role in maintaining healthy forests and restoring watersheds that produce clean water and are resilent to insects and diseases. Maintaining a healthy forest products industry allows the Forest Service to continue this vital work while supporting hundreds of thousands of meaningful jobs throughout the country.

By preventing defaults, better utilization of various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result if contracts are extended beyond 10 years as a result of this finding.

Therefore, pursuant to 16 U.S.C. 472a, I have determined that it is in the substantial overriding public interest to extend up to two years certain National Forest System timber sale contracts awarded and timber product permits issued before April 1, 2020, and sales with a bid opening date of prior to April 1, 2020 that have not yet been awarded, subject to the following conditions:

1. The combination of additional time from previous MRCTA and this SOPI will be limited to a maximum of two years. For example, sales that have previously received 1 year and 6 months of MRCTA shall only receive an additional 6 months of extension, for a total of 24 months under this SOPI, except market conditions in Alaska are such that sales in Alaska will receive up to 3 years of additional time through a combination of MRCTA and this SOPI. For example, sales in Alaska that have previously received 1 year and 6 months of MRCTA are eligible to receive up to an additional 18 months of extension under this SOPI for a combined total of 36 months.

2. In the event MRCTA triggers in the future, additional time will be limited to that exceeding the amounts authorized under this SOPI.

3. Contracts shall not be extended under this SOPI when the Contracting Officer determines the wood products are in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed or other critical public resource.

4. Notwithstanding the preceding conditions, contracts or portions of contracts that are in breach are not eligible for extension under this SOPI determination until such breach is remedied.

5. This SOPI does not apply to stewardship contracts determined to be for the procurement of services under 36 CFR 223.300(b)(1) or (3)—Stewardship Agreements.

6. Forest Product Permits shall be extended for up to 2 years upon request when product removal limits shown on the permit have not been met.

Total contract length may exceed 10 years as a result of receiving a SOPI extension under this determination.

Any periodic payment due dates that have not been reached as of the date the Contracting Officer receives a request for a SOPI extension shall be adjusted one day for each additional day of contract time granted. Periodic Payments with determination dates from March 1, 2020 to the date this SOPI is published shall be adjusted by adding one day for each additional day of contract time granted, when the request for SOPI extension is received within 30 days of publication of the SOPI.

To receive an extension and periodic payment deferral pursuant to this SOPI, purchasers must make written request and agree to release the Forest Service from all claims and liability if a contract extended pursuant to this finding is suspended, modified or terminated in the future.

The Forest Service shall continue to monitor market conditions to determine if additional relief measures may be needed in the future.

James E. Hubbard,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2020–07973 Filed 4–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest; Cook County; Minnesota; Lutsen Mountains Ski Area Expansion Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Lutsen Mountains Corporation (LMC) has submitted a proposal to the Superior National Forest (SNF) to implement select projects at Lutsen Mountains Resort (Lutsen Mountains). All projects are identified within the Lutsen Mountains 2016 Master Development Plan (MDP). The SNF is initiating the preparation of an Environmental Impact Statement (EIS) to analyze and disclose the potential environmental effects of implementing the projects.

DATES: Comments concerning the scope of the analysis must be received by May 15, 2020. One public open house meeting regarding this proposal will be

scheduled. Time, date, and location of the open house will be posted at *https://www.fs.usda.gov/project/?project=52440.* The draft EIS is expected in November 2020, and the final EIS is expected June 2021.

ADDRESSES: Send written comments to: Constance Cummins, Forest Supervisor, c/o Michael Jimenez, Project Leader, Superior National Forest, 8901 Grand Avenue Place, Duluth, MN 55808; or by email to: *comments-eastern-superior@usda.gov* (please include ''Lutsen Mountains Ski Area Expansion Project'' in the subject line). Comments can also be submitted online at: *https://www.fs.usda.gov/project/?project=52440.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Michael Jimenez, Project Leader, Superior National Forest. Mr. Jimenez can be reached by phone at (218) 626–4383 or by email at *michael.jimenez@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

LMC has applied to the SNF for a SUP under the National Forest Ski Area Permit Act of 1986 that would authorize LMC to construct, operate, and maintain an expansion to a winter sports resort onto approximately 495 acres of NFS lands. Federal regulations at 16 U.S.C. 497b and 36 CFR 251b specifically identify ski areas and associated facilities as permissible uses of NFS lands.

The purpose of, and need for, the Forest Service's action is to respond to the proposal from Lutsen Mountains Corporation to implement select projects at the Lutsen Mountain Resort on the Superior National Forest. The 2004 Land and Resource Management Plan (Forest Plan) identifies Forest-wide Desired Conditions which guide management direction across the SNF. The Proposed Action could help achieve D–REC–3, which states ''the [SNF] provides developed sites, facilities, trails, water access sites, and other recreation opportunities within health and safety, resource protection, cost, and maintenance requirements.'' (2004 Forest Plan, Chapter 2, Page 39) The Forest Supervisor will use the EIS to inform the decision regarding: (1) Whether to issue a SUP under the National Forest Ski Area Permit Act of 1986; (2) the selection of a preferred alternative; (3) any need to amend the Forest Plan; and (4) what specific terms and conditions should apply if a SUP is issued.

LMC's overall purpose of the proposed project and associated SUP application is to improve the guest experience at Lutsen Mountains, which cannot be accommodated on adjacent private land controlled by LMC. Specifically, LMC has identified a need to:

- Construct additional traditionally cleared alpine ski trails and undeveloped, minimally maintained lift-served terrain to address the current deficit in beginner and expert terrain and to enhance the existing terrain variety and skiing experiences at Lutsen Mountains.
- Improve skier circulation and reliable snow conditions, particularly on Eagle Mountain and Moose Mountain.
- Improve base area, parking, guest services, and operational facilities to meet the ever-increasing expectations of the local, regional, and destination skier markets.

Additional detail on the existing conditions driving the project Purpose and Need as well as the Objectives can be found at: *https://www.fs.usda.gov/project/?project=52440.*

Proposed Action

The Proposed Action includes the following seven elements:

- Authorization of an approximately 495-acre SUP;
- Construction of seven new chairlifts and one surface lift;
- Development of 324 acres of additional ski terrain, including approximately 175 acres of developed ski trails and 149 acres of gladed terrain;
- Expansion of guest services including two new base facilities, maintenance facilities, and a mountain-top chalet;
- Expansion of ski patrol operations, including construction of an interim ski patrol duty station located in a similar location with the mountain-top chalet;
- Development of approximately 1,260 additional parking spaces, construction of approximately 5 miles of permanent access roads, and construction of approximately 0.9 miles of temporary access roads; and
- Installation of snowmaking coverage on all 175 acres of developed ski trails and construction of two snowmaking reservoirs with a combined capacity of 13 million gallons.

A full description of each element can be found at: *https://www.fs.usda.gov/project/?project=52440.*

Responsible Official

The Responsible Official is Constance Cummins, Forest Supervisor for the SNF.

Nature of Decision To Be Made

Given the purpose and need, the Responsible Official will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether to approve, approve with modifications, or deny the application for the creation of a SUP and associated expansions.
- Whether to prescribe conditions needed for the protection of the environment on NFS lands.

Permits or Licenses Required

- Forest Service SUP.
- Minnesota Department of Natural Resources Water Appropriations Permit.
- Minnesota Pollution Control Agency Wastewater Permit.
- Other permits as identified through scoping and the EIS analysis process.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Tribal consultation is ongoing and will continue. One public open house meeting regarding this proposal will be held during the comment period. Time, date, and location of the open house will be posted at *https://www.fs.usda.gov/project/?project=52440.* Representatives from the SNF and Lutsen Mountains will be present to answer questions and provide additional information on this project.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Submitting timely, specific written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR parts 218 A and B. Additional information and maps of this proposal can be found at: *https://www.fs.usda.gov/project/?project=52440.* Details of the project proposal can also be viewed through an online interactive viewer here: *https://storymaps.arcgis.com/collections/be4d0cbd60f24bef8d5360f064edd4f0/present.*

It is important that reviewers provide their comments at such times and in

such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

Lisa A. Northrop,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–07940 Filed 4–14–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee To Discuss Civil Rights Topics in the State

AGENCY: U.S. 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 that the Alabama Advisory Committee (Committee) will hold a meeting on Thursday, April 9, 2020, at 1:00 p.m. (Central) for the purpose discussing edits to the final draft of the Voting Rights report. Additionally, the Committee may discuss future topics of study.

DATES: The meeting will be held on Thursday, April 30, 2020, at 1:00 p.m. (Central).

Public Call Information: Dial: 800–458–4148, Conference ID: 5698655.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 800–458–4148, conference ID: 5698655. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*https://www.facadatabase.gov/FACA/FACAPublicCommittee?id=a10t0000001gzlLAAQ*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of edits to the Barriers to Voting Report
Committee Vote on Report
Discussion of Next Topics for study
Next Steps
Public Comment
Adjournment

Dated: April 9, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07907 Filed 4–14–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts 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 Massachusetts Advisory Committee to the Commission will convene by conference call on Thursday, April 16, 2020 at 2:00 p.m. (EDT). The purpose of the meeting is to discuss a Statement of Concern to the Commission regarding incarceration issues.

DATES: Thursday, April 16, 2020, at 2:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–866–575–6539 and conference ID: 8533643.

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

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–575–6539 and conference ID: 8533643. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–866–575–6539 and conference ID: 8533643.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. 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 *ero@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=a10t0000001gzllAAA, click 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 meetings. 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 numbers, email or street address.

Agenda

Thursday, April 16, 2020; 2:00 p.m. (EDT)

I. Roll Call
II. Statement of Concern
III. Other Business
IV. Open Comment
V. Adjournment

Dated: April 9, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07906 Filed 4–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–77–2019]

Foreign-Trade Zone (FTZ) 65—Panama City, Florida; Authorization of Production Activity; Oceaneering International, Inc., (Sub-Sea Distribution Parts and Systems), Panama City, Florida

On December 11, 2019, Oceaneering International, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 65, in Panama City, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 70932, December 26, 2019). On April 9, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: April 9, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07938 Filed 4–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Court Decision not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On March 12, 2020, the United States Court of International Trade (CIT) issued a final judgment in *Can Tho Import-Export Joint Stock Co.* v. *United States,* Consol. Court No. 16–00071 (*Can Tho II*), sustaining the Department of Commerce's (Commerce's) remand results for the 11th administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam), covering the period of review (POR) August 1, 2013 through July 31, 2014. Commerce is notifying the public that the CIT's final judgment is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to a certain exporter.

DATES: Applicable March 22, 2020.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

During the 10th administrative review of the AD order on fish fillets from Vietnam, Commerce denied Can Tho Import-Export Joint Stock Company (Caseamex) separate-rate status. On appeal, the CIT affirmed this determination in *An Giang Fisheries.*[1] In the 11th administrative review, Caseamex submitted a separate rate application which stated that the company had no material changes in company structure, shareholdings, or operations.[2] As a result, we continued to deny Caseamex separate-rate status.[3]

Caseamex challenged the final results, asserting that it should be given a separate rate because Commerce's decision to deny it a separate rate relied on a memorandum from the prior administrative review. On October 15, 2018, the CIT remanded the *Final Results* and ordered Commerce to reconsider the separate rate issue.[4]

On April 1, 2019, Commerce issued the *First Remand Results.*[5] Commerce explained that it considers Vietnam to be a non-market economy (NME) country under section 771(18) of the Tariff Act of 1930, as amended (Act). In AD proceedings involving NME countries, such as Vietnam, the rebuttable presumption is that the export activities of all firms within the country are subject to government control and influence.[6] On remand, Commerce considered all of the record evidence, including Caseamex's 2012 Articles of Association, and found that the totality of the evidence continued to demonstrate the government of Vietnam had the potential to take an active role as the second largest shareholder of the company.[7]

On October 17, 2019, the CIT issued the *Second Remand Order,* which considered Caseamex's continued challenge that it should be given separate rate status.[8] The CIT held that Commerce's remand redetermination was not supported by substantial evidence. The CIT found that Caseamex's 2012 Articles of Association rebutted the presumption of government control.[9] The CIT ordered that

[1] *See An Giang Fisheries Import and Export Joint Stock Company et al.* v. *United States,* Court No. 15–00044, Slip Op. 18–4 (CIT 2018) (*An Giang Fisheries*).

[2] *See* Caseamex's Letter, ''Can Tho Import-Export Seafood Joint Stock Company (CASEAMEX) Separate Rate Application: Antidumping Administrative Review of Certain Frozen Fish Fillets from The Socialist Republic of Vietnam: Review Period—8/1/2013–7/31/2014,'' dated December 1, 2014.

[3] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 17435 (March 29, 2016) (*AR11 Final Results*), and accompanying Issues and Decision Memorandum (IDM) at Comment VI.

[4] *See Can Tho Import-Export Joint Stock Company* v. *United States,* Court No. 16–00071, Slip Op. 16–71 (October 15, 2018) (*First Remand Order*).

[5] *See* Final Results of Redetermination Pursuant to *Can Tho Import-Export Joint Stock Company* v. *United States,* Court No. 16–00071 (October 15, 2018) (*First Remand Results*).

[6] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015), and accompanying IDM.

[7] *See First Remand Results.*

[8] *See Can Tho Import-Export Joint Stock Company* v. *United States,* Court No. 16–00071, Slip Op. 19–129 (October 17, 2019) (*Second Remand Order*).

[9] *Id.* at 8–12.

Commerce's determination not to grant Caseamex a separate rate be remanded for further consideration consistent with its opinion.[10] In the *Second Remand Results,*[11] under respectful protest, Commerce determined that Caseamex was entitled to a separate rate because no further evidence existed beyond the evidence that Commerce had reviewed in the *First Remand Results.* On March 12, 2020, the CIT issued a final judgment in *Can Tho II* sustaining the *Second Remand Results.*

Amended Final Results

Because there is now a final court decision, Commerce is amending the *AR11 Final Results* with respect to Caseamex. The separate rate assigned to Caseamex during the period August 1, 2013 through July 31, 2014 is as follows:

Exporter	Weighted-average dumping margin (dollars per kilogram)
Can Tho Import-Export Joint Stock Company (Caseamex) ..	0.69

Assessment Instructions

Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Caseamex using the assessment rates listed above.

Cash Deposit Requirements

The cash deposit rate for Caseamex has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on fish fillets from Vietnam. Thus, we will not alter its cash deposit rate.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: April 3, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07934 Filed 4–14–20; 8:45 am]

BILLING CODE 3510–DS–P

[10] *Id.* at 12.

[11] *See* Final Results of Redetermination Pursuant to *Can Tho Import-Export Joint Stock Company,* v. *United States,* Consol. Court No. 16–00071 (December 16, 2019) (*Second Remand Results*).

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders To Improve Systems Serving Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On February 13, 2020, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2020 Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders to Improve Systems Serving Children with Disabilities competition, Catalog of Federal Domestic Assistance (CFDA) number 84.325L. The NIA established a deadline date of April 13, 2020, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until May 13, 2020, and extends the date of intergovernmental review until July 12, 2020.

DATES:

Deadline for Transmittal of Applications: May 13, 2020.

Deadline for Intergovernmental Review: July 12, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Allen, U.S. Department of Education, 400 Maryland Avenue SW, Room 5160, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7875. Email: *Sarah.Allen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 13, 2020, we published the NIA for the FY 2020 Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders to Improve Systems Serving Children with Disabilities competition in the **Federal Register** (85 FR 8255). We are extending the deadline date for transmittal of applications in order to allow applicants more time to prepare and submit their applications. Applicants that have already timely submitted applications under the FY 2020 Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders to Improve Systems Serving Children with Disabilities competition may resubmit applications, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1462 and 1481.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–07944 Filed 4–13–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0021]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application and Employment Certification for Public Service Loan Forgiveness

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application and Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: 1845–0110.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 801,261.

Total Estimated Number of Annual Burden Hours: 400,631.

Abstract: The Department is consolidating the forms that borrowers must complete if they want to ultimately receive the Public Service Loan Forgiveness (PSLF) & Temporary Expanded PLSF (TESPLF). There will now be a single form for these programs. The form is being renamed the Public Service Loan Forgiveness (PSLF) & Temporary Expanded PLSF (TESPLF) Certification and Application. This revised form includes the Employment Certification Form which is already part of this collection. This consolidation of forms will remove the need for borrowers to separately complete the PSLF application and submit a separate email for the TEPSLF program. This combining will also aid the Department in streamlining the forgiveness determination process.

Dated: April 10, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–07932 Filed 4–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0059]

Agency Information Collection Activities; Comment Request; Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 15, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0059. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees.

OMB Control Number: 1845–0085.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 43.

Total Estimated Number of Annual Burden Hours: 43.

Abstract: The regulations in 34 CFR 682.302(f) assure the Secretary that the integrity of the program is protected from fraud and misuse of funds. These regulations require a State, not-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead, signed by the State or non-profit's Chief Executive Officer, which states the basis upon which the entity meets the regulations. The submission must include the name and lender identification number(s) for which the eligible designation is being certified. Once an entity is approved it must provide an annual recertification notice identifying the name and lender identification number(s) for which designation is being requested.

Dated: April 9, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–07894 Filed 4–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 15–90–LNG]

Cameron LNG, LLC; Request for Extension of Commencement Deadline for Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of request.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of a request (Request), filed on March 6, 2020, by Cameron LNG, LLC (Cameron LNG). Cameron LNG seeks to amend its existing authorization to export domestically produced liquefied natural gas (LNG) to non-free trade agreement countries set forth in DOE/FE Order No. 3846. Specifically, Cameron LNG requests an extension to commence its export operations. Cameron LNG filed the Request under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 30, 2020.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*.

Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–6978, *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On July 15, 2016, in Order No. 3846, DOE/FE authorized Cameron LNG to export domestically produced LNG in a volume equivalent to 515 billion cubic per year (Bcf/yr) of natural gas.[1] DOE/FE authorized Cameron LNG to export this LNG by vessel from Trains 4 and 5 to be constructed at the existing Cameron LNG Terminal, located in Cameron and Calcasieu Parishes, Louisiana (the Expansion Project), to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. As relevant here, Order No. 3846 requires Cameron LNG to ''commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of this Order''—*i.e.,* by July 15, 2023.[2] In this Request, Cameron LNG asks DOE/FE to extend this deadline until May 5, 2026.[3]

We take administrative notice that, on March 25, 2020, the Federal Energy Regulatory Commission (FERC) issued an order granting Cameron LNG's request for an extension of time until May 5, 2024, to construct and operate the Expansion Project. Additionally, in support of this Request, Cameron LNG identifies the actions it has taken to proceed with the construction and operation of the Expansion Project to date. Cameron LNG states that, due to circumstances that have affected the timing of the project, it is unable to complete construction and place the export facilities into service by the existing deadline.[4] Accordingly, Cameron LNG requests an extension until May 5, 2026, to commence commercial LNG exports from the Expansion Project. Additional details can be found in the Request, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/03/f72/Cameron%20LNG%20-%20Request%20for%20Extensions%20of%20Time%20%283.6.20%29.pdf.*

DOE/FE Evaluation

In reviewing Cameron LNG's Request, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own

[1] *Cameron LNG, LLC,* DOE/FE Order No. 3846, FE Docket No. 15–90–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Trains 4 and 5 of the Cameron LNG Terminal Located in Cameron and Calcasieu Parishes, Louisiana, to Non-Free Trade Agreement Nations (July 15, 2016).

[2] *See id.* at 132 (Ordering Para. D).

[3] Cameron LNG, LLC, Request for Extension of Time Under Order Nos. 3680 and 3846, FE Docket Nos. 15–36–LNG and 15–90–LNG, at 2 (Mar. 6, 2020) [hereinafter Request]. The Request also applies to Cameron LNG's existing FTA order in FE Docket No. 15–36–LNG, but DOE/FE will address that portion of the Request separately pursuant to NGA section 3(c), 15 U.S.C. 717b(c).

[4] Request at 3–4.

trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[5] and DOE/FE's response to public comments received on that Study.[6]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[7]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[8] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[9]

Parties that may oppose this Request should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Request.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. DOE/FE will disregard comments or protests that do not bear directly on the Request.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Request will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Request. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–90–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–90–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Request will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Request and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Request is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Request and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on April 9, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–07956 Filed 4–14–20; 8:45 am]

BILLING CODE 6450–01–P

[5] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), available at: *https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[6] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[7] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[8] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[9] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

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: ER18–1770–003.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Compliance filing: ISO–NE & NEPOOL; Tariff Modifications to Reflect Rejection of Economic Life Rev to be effective 8/10/2018.
Filed Date: 4/9/20.
Accession Number: 20200409–5079.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER19–1924–002.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Compliance filing: Errata to Compliance Filing to Order No. 845 Compliance Filing-Amendments to be effective 5/22/2019.
Filed Date: 4/9/20.
Accession Number: 20200409–5096.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER19–1925–002.
Applicants: Black Hills Colorado Electric, LLC.
Description: Compliance filing: Errata to Compliance Filing to Order No. 845 Compliance Filing-Amendments to be effective 5/22/2019.
Filed Date: 4/9/20.
Accession Number: 20200409–5097.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER19–1926–002
Applicants: Black Hills Power, Inc.
Description: Compliance filing: Errata to Filing to Order No. 845 Compliance Filing-Amendments to be effective 5/22/2019.
Filed Date: 4/9/20.
Accession Number: 20200409–5098.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1045–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Service Agreement No. 608 to be effective 6/8/2020.
Filed Date: 4/8/20.
Accession Number: 20200408–5154.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1519–000.
Applicants: Little Bear Solar 4, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence Shared Gen-Tie Facilities Common Ownership Agreement to be effective 4/9/2020.
Filed Date: 4/8/20.
Accession Number: 20200408–5141.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1520–000.
Applicants: Neighborhood Sun Benefit Corp.
Description: Compliance filing: Refile Baseline Tariff Neighborhood Sun Tariff to be effective 4/8/2020.
Filed Date: 4/8/20.
Accession Number: 20200408–5144.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1521–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 4598, Queue No. AA1–047 re: Suspension to be effective 1/12/2020.
Filed Date: 4/8/20.
Accession Number: 20200408–5145.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1522–000.
Applicants: Little Bear Solar 5, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence Shared Gen-Tie Facilities Common Ownership Agreement to be effective 4/9/2020.
Filed Date: 4/8/20.
Accession Number: 20200408–5146.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1523–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2881R10 City of Chanute, KS NITSA NOA to be effective 4/1/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5020.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1524–000.
Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Joint 205 re: NYISO & Con Edison—LGIA SA2520—East River 1 to be effective 3/26/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5021.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1525–000.
Applicants: Eastern Landfill Gas, LLC.
Description: Waiver Request of Eastern Landfill Gas, LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5201.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1526–000
Applicants: New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: Joint 205 re: LGIA SA2521 between NYISO & Consolidated Edison—East River 2 to be effective 3/26/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5057.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1527–000.
Applicants: Mississippi Power Company.
Description: Waiver Request of Mississippi Power Company.
Filed Date: 4/9/20.
Accession Number: 20200409–5066.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1528–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5612; Queue No. AF1–185 to be effective 3/10/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5067.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1529–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended GIA & DSA Tehachapi Plains Wind, LLC, Windland Refresh 2 SA Nos. 812–813 to be effective 6/9/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5087.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1530–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 32, Service Schedule F to be effective 6/9/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5107.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1531–000
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5621; Queue No. AF1–195 to be effective 3/10/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5113.
Comments Due: 5 p.m. ET 4/30/20.

Docket Numbers: ER20–1532–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5622; Queue No. AF1–196 to be effective 3/10/2020.
Filed Date: 4/9/20.
Accession Number: 20200409–5115.
Comments Due: 5 p.m. ET 4/30/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–5–000.
Applicants: Riverstone Holdings LLC.
Description: Self-Certification of Riverstone Holdings LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5191.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: FC20–6–000.
Applicants: Riverstone Holdings LLC.
Description: Self-Certification of Riverstone Holdings LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5192.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: FC20–7–000.
Applicants: Riverstone Holdings LLC.
Description: Self-Certification of Riverstone Holdings LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5193.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: FC20–8–000.
Applicants: Riverstone Holdings LLC.
Description: Self-Certification of Riverstone Holdings LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5194.
Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: FC20–9–000.
Applicants: Riverstone Holdings LLC.
Description: Self-Certification of Riverstone Holdings LLC.
Filed Date: 4/8/20.
Accession Number: 20200408–5195.
Comments Due: 5 p.m. ET 4/29/20.

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: April 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07926 Filed 4–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission118

[P–2458–236]

Great Lakes Hydro America, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

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

a. *Type of Application:* Non-capacity amendment of license.

b. *Project No.:* 2458–236.

c. *Date Filed:* January 24, 2020 and supplemented March 26, 2020.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Penobscot Mills Hydroelectric Project.

f. *Location:* The project is located on the West Branch of the Penobscot River and Millinocket Stream in Piscataquis and Penobscot counties, Maine.

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

h. *Applicant Contact:* Mr. Kevin Bernier, 1024 Central Street, Millinocket, ME 04462, (207) 723–4341, ext. 118.

i. *FERC Contact:* Korede Olagbegi, (202) 502–6268, *Korede.Olagbegi@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2458–236. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As part of its long-term generator maintenance and restoration plans of the Penobscot Mills Project, the applicant proposes to replace three 40 Hertz (Hz) generating units with three 60 Hz units at the Millinocket Development, and rewind one unit at the Dolby Development, converting it from 40 Hz to 60 Hz. The applicant also proposes to amend the project license to remove unit 2 at the Millinocket Development, and to remove units 1, 2, 3, and 4, at the Dolby Development. The applicant indicates that these units have been removed from service and describes the actions taken that have rendered the units incapable of grid connection. The proposed actions would reduce the total authorized installed capacity of the project from 70.8 to 67.9 megawatts, while leaving the hydraulic capacity unchanged. The applicant states that in order to accommodate the frequency conversions, upgrades to transmission equipment will be necessary, but the connection points to the electrical grid will remain the same. The applicant does not propose changes to normal operations, or any other aspects of the project.

l. *Locations of the Applications:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's 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. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov or call toll free,* (866) 208–3676 or TTY, (202) 502–8659.

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

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

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant 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. 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: April 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07928 Filed 4–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–16–000]

Commission Information Collection Activities (FERC–922); Comment Request; Correction

March 18, 2020.

On January 24, 2020, the Commission issued a notice soliciting public comment for 30 days on the reinstatement and revision of FERC–922 (Performance Metrics for ISOs, RTOs, and Regions Outside ISOs and RTOs; OMB Control No. 1902–0262), in Docket No. AD19–16–000. The notice was published in the **Federal Register** on

January 30, 2020 (85 FR 5418), and the comment period ended on March 2, 2020.

This Errata Notice corrects multiple figures in the table that was included in the 30-day notice. All of the changes described here stem from the estimated number of burden hours per response in Column 5 of the table. In the 30-day notice, the burden hours per response were not differentiated sufficiently among the categories of respondents. Despite varying requirements for collecting, analyzing, and reviewing data, the 30-day notice reports 401 hours per response for each existing category of respondents, and 427 hours per response for each potential new respondent.

We have re-considered these estimates in order to describe with greater precision the burdens of each category of existing respondents in this information collection. We now estimate 97 burden hours per response for Category 1 metrics for all 11 respondents. Additional estimated burden hours per response apply to some of those respondents, and affect their burden hours as follows:

- 263 burden hours per response for Category 2 respondents (*i.e.,* the 97 hours per response that apply to all respondents, plus an additional 166 hours per response); and
- 401 burden hours per response for Category 3 respondents (*i.e.,* the 97 hours per response that apply to all respondents, plus the 166 hours per response that apply to Category 2 respondents, plus 138 hours per response that apply only to Category 3 respondents).

These data are included in the following corrected table and in the submittal to the Office of Management and Budget. Besides showing the number of burden hours per response for each type of response, the table shows sub-totals for each existing category of respondents, as well as for the category identified as ''possible new respondents.''

Correction

In the **Federal Register** of January 30, 2020, in FR Doc. 2020–01692, on page 5420, correct the table to read:

FERC-922--Metrics Category and Function	No. of Respondents	No. of Responses in Yrs. 1 & 2	Annual Frequency of Filing	Total No. of Annual Responses	Estimated Burden Hrs. Per Response	Estimated Cost ($) Per Response	Estimated Total Annual Burden Hrs.	Estimated Total Annual Cost ($)
	(1)	(2)	(3)	(2)*(3)=(4)	(5)	(6)	(4)*(5)=(7)	(4)*(6)=(8)
Category 1 Metrics for All Respondents								
Metrics Data Collection					65	$ 5,391	701	$ 57,796
Write Performance Analysis					17	$ 1,393	181	$ 14,929
Management Review					14	$ 2,274	155	$ 24,374
Sub-Total for Category 1	11	16	0.67	10.72	97	$ 9,058	1,038	$ 97,098
Category 2 Metrics for Respondents with Energy Markets (who also Complete Category 1 Metrics [listed separately])								
Metrics Data Collection					112	$ 9,242	451	$ 37,154
Write Performance Analysis					29	$ 2,387	116	$ 9,597
Management Review					25	$ 3,898	100	$ 15,669
Sub-Total for Category 2	6	6	0.67	4.02	166	$ 15,527	667	$ 62,420
Category 3 Metrics for Respondents with Capacity Markets (who also Complete Categories 1 and 2 Metrics [listed separately])								
Metrics Data Collection					93	$ 7,702	250	$ 20,641
Write Performance Analysis					24	$ 1,989	65	$ 5,332
Management Review					21	$ 3,248	55	$ 8,705
Sub-Total for Category 3	4	4	0.67	2.68	138	$ 12,940	371	$ 34,678
Possible New Respondent (We assume they complete only Category 1 Metrics.)								
Metrics Data Collection					70	$ 5,741	47	$ 3,846
Write Performance Analysis					18	$ 1,483	12	$ 994
Management Review					15	$ 2,421	10	$ 1,622
Sub-Total for Possible New Respondent	1	1	0.67	0.67	103	$ 9,645	69	$ 6,462
Estimated Total Annual Burden Hrs. & Cost ($)							2,144	**$ 200,658**

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07901 Filed 4–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1515–000]

Milligan 1 Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Milligan 1 Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 29, 2020.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the

President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07927 Filed 4–14–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0823; FRS 16602]

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 and recommendations for the proposed information collection should be submitted on or before May 15, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the 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: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure 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, 201–205, 218, 226 and 276.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $768,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers. The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for

tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07868 Filed 4–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1240; FRS 16656]

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

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

DATES: Written comments should be submitted on or before June 15, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1240.

Title: FCC Form 2100, Application for Media Bureau Video Service Authorization, Schedule 387 (Transition Progress Report).

Form Number: FCC Form 2100, Schedule 387 (Transition Progress Report Form).

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,000 respondents; 3,333 responses.

Estimated Time per Response: 2 hours (1 hour to complete the form, 1 hour to respond to technical questions).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,666 hours.

Total Annual Costs: No costs.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, § 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

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: By Public Notice released January 10, 2017, The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations, MB Docket No. 16–306, Public Notice, 32 FCC Rcd 256 (IATF/Med. Bur. 2017). The Incentive Auction Task Force and Media Bureau described the information that must be provided in the adopted FCC Form 2100, Schedule 387 (Transition Progress Report Form) to be filed by Reimbursable Stations and when and how the Transition Progress Reports must be filed. We also proposed to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund (Non-Reimbursable Stations), but must transition to new channels as part of the Commission's channel reassignment plan, to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal. By Public Notice released May 18, 2017. The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition Progress Report Form by Stations That Are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund, MB Docket No. 16–306, Public Notice, DA 17–484 (rel. May 18, 2017) (referred to collectively with Public Notice cited above as Transition Progress Report Public Notices). We concluded that Non-Reimbursable Stations will be required to file Transition Progress Reports following the filing procedures adopted for Reimbursable Stations.

The Commission is seeking a three-year extension for this information collection from the Office of Management and Budget (OMB) approval for FCC Form 2100, Schedule 387 (Transition Progress Report).

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–07867 Filed 4–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0065; FRS 16603]

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 June 15, 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: 3060–0065.

Title: Applications for New Authorization or Modification of Existing Authorization Under Part 5 of the FCC Rules-Experimental Radio Service.

Form Number: FCC Form 442.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions, Individuals or households, State, Local or Tribal Government.

Number of Respondents and Responses: 405 respondents; 655 responses.

Estimated Time per Response: 15–663 hours.

Frequency of Response: On occasion reporting requirements; Recordkeeping requirements; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 302, 303, 307 and 336 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,474 hours.

Total Annual Cost: $52,150.

Privacy Act Impact Assessment: This information collection affects individuals or households. The Commission has a System of Records, FCC/OET–1 ''Experimental Radio Station License Files'' which covers the personally identifiable information (PII) that individual applicants may include in their submissions for experimental radio authorizations. The system of records notice (SORN) was published in the **Federal Register** on June 11, 2019, *see* 84 FR 27115. The SORN may be viewed at *https://www.fcc.gov/general/privacy-act-information.*

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, *e.g.,* granted confidentiality, pursuant to 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. On March 15, 2019, the Commission adopted a First Report and Order, in ET Docket No. 18–21; FCC 19–19, which updates a section of Part 5 of the CFR—Experimental Radio Service (ERS). The Commission recent R&O adopts a new subpart to the existing part 5 rules for a new and unique license type—the Spectrum Horizons Experimental Radio license (or ''Spectrum Horizons License''). Specifically, the Spectrum Horizons License will be available for experiments and demonstrations of equipment designed to operate exclusively on any frequency above 95 GHz.

Sec. 5.59 Forms To Be Used

(a) *Application for conventional, program, medical, compliance testing, and Spectrum Horizons experimental radio licenses.* (1) *Application for new authorization or modification of existing authorization.* Entities must submit FCC Form 442.

Sec. 5.77 Change in Equipment and Emission Characteristics

(a) The licensee of a conventional, broadcast, or Spectrum Horizons experimental radio station may make any changes in equipment that are deemed desirable or necessary provided:

* * *

(b) For conventional or Spectrum Horizons experimental radio stations, the changes permitted in paragraph (a) of this section may be made without prior authorization from the Commission provided that the licensee supplements its application file with a description of such change. If the licensee wants these emission changes to become a permanent part of the license, an application for modification must be filed.

Sec. 5.121 Station Record Requirements

(a)(1) For conventional, program, medical testing, compliance testing experimental radio stations, the current original authorization or a clearly legible photocopy for each station shall be retained as a permanent part of the station records but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

(a)(2) For Spectrum Horizons experimental radio stations, the licensee is solely responsible for retaining the current authorization as a permanent part of the station records but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

Sec. 5.702 Licensing Requirement—Necessary Showing

Each application must include a narrative statement describing in detail how its experiment could lead to the development of innovative devices and/or services on frequencies above 95 GHz and describe, as applicable, its plans for marketing such devices. This statement must sufficiently explain the proposed new technology/potential new service and incorporate an interference analysis that explains how the proposed experiment would not cause harmful interference to other services. The statement should include technical details, including the requested frequency band(s), maximum power, emission designators, area(s) of operation, and type(s) of device(s) to be used.

Sec. 5.703 Responsible Party

(a) Each Spectrum Horizons experimental radio applicant must identify a single point of contact responsible for all experiments conducted under the license and ensuring compliance with all applicable FCC rules.

(b) The responsible individual will serve as the initial point of contact for all matters involving interference resolution and must have the authority to discontinue any and all experiments being conducted under the license, if necessary.

(c) The license application must include the name of the responsible individual and contact information at which the person can be reached at any time of the day; this information will be listed on the license. Licensees are required to keep this information current.

Sec. 5.704 Marketing of Devices Under Spectrum Horizons Experimental Radio Licenses

Unless otherwise stated in the instrument of authorization, devices operating in accordance with a Spectrum Horizons experimental radio license may be marketed subject to the following conditions:

(a) Marketing of devices (as defined in § 2.803 of this chapter) and provision of services for hire is permitted before the radio frequency device has been authorized by the Commission.

(b) Licensees are required to ensure that experimental devices are either rendered inoperable or retrieved by them from trial participants at the conclusion of the trial. Licensees are required to notify experiment participants in advance of the trial that operation of the experimental device is subject to this condition.

Each device sold under this program must be labeled as ''Authorized Under An Experimental License and May be Subject to Further Conditions Including Termination of Operation'' and carry a licensee assigned equipment ID number.

(c) The size and scope of operations under a Spectrum Horizons experimental license are subject to limitations as the Commission shall establish on a case-by-case basis.

Sec. 5.705 Interim Report

Licensee must submit to the Commission an interim progress report 5 years after grant of its license. If a licensee requests non-disclosure of proprietary information, requests shall follow the procedures for submission set forth in § 0.459 of this chapter.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07865 Filed 4–14–20; 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.: 201315–001.

Agreement Name: NYSA–ILA Assessment Agreement.

Parties: New York Shipping Association and the International Longshoremen's Association, AFL–CIO.

Filing Party: Richard Ciampi; The Lambos Firm, LLP.

Synopsis: The amendment reflects the reduction of the assessment on Barge Containers from $25 to $10 effective March 1, 2020.

Proposed Effective Date: 4/8/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/22427.

Agreement No.: 201339.

Agreement Name: CINS Agreement.

Parties: CMA CGM S.A.; COSCO Shipping Lines Co., Ltd.; Crowley Caribbean Services LLC and Crowley Latin America Services LLC (acting as a single party); Emirates Shipping Line FZE; Evergreen Line Joint Service Agreement; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Maersk A/S; MSC Mediterranean Shipping Company S.A.; Nile Dutch Africa Line B.V.; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; Pacific International Lines (PTE) Ltd.; Wan Hai Lines Ltd.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to discuss, agree upon, and take steps to detect and prevent the non-declaration and/or misdeclaration of cargo, and/or non-compliance with international standards and regulations related to cargo handling and operations, all for the purpose of protecting the environment and the safety and security of vessels, crews, and cargo.

Proposed Effective Date: 5/24/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/28487.

Dated: April 10, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–07919 Filed 4–14–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

March 1, 2020 Thru March 31, 2020

03/02/2020		
20200696	G	Spotify Technology S.A. ; William J. Simmons III ; Spotify Technology S.A.
03/04/2020		
20191021	G	Olympus Growth Fund VI, L.P. ; DS Smith plc ; Olympus Growth Fund VI, L.P.
20200619	G	Marlin Equity V, L.P. ; H.I.G. Capital Partners V, L.P. ; Marlin Equity V, L.P.
20200772	G	A.P. Moller—Maersk A/S ; Craig F. Kaplan and D'Lynda D. Kaplan ; A.P. Moller—Maersk A/S.
20200777	G	Madison Dearborn Capital Partners VII–B, L.P. ; TCFI AEVEX Holdings LLC ; Madison Dearborn Capital Partners VII–B, L.P.
03/06/2020		
20200755	G	Raul Marcelo Claure ; Softbank Group Corp. ; Raul Marcelo Claure.
20200757	G	Nebula Acquisition Corp. ; Open Lending, LLC ; Nebula Acquisition Corp.
20200787	G	SLP BHN Investor, L.L.C. ; Marshall W. Reavis IV ; SLP BHN Investor, L.L.C.
20200788	G	Stripes III, LP ; Udemy, Inc. ; Stripes III, LP.
20200794	G	Vista Equity Partners Fund V, L.P. ; Ousland Holdings, Inc. ; Vista Equity Partners Fund V, L.P.
20200800	G	Wells Fargo & Company ; Udemy, Inc. ; Wells Fargo & Company.
20200802	G	Naspers Limited ; Udemy, Inc. ; Naspers Limited.
20200810	G	Francisco Partners V, L.P. ; J M Smith Corporation ; Francisco Partners V, L.P.
20200821	G	Royal Dutch Shell plc ; Shell Midstream Partners, L.P ; Royal Dutch Shell plc.
20200822	G	ArcLight Energy Partners Fund VII, L.P. ; Higherstar IV SWG Holdings LLC ; ArcLight Energy Partners Fund VII, L.P.
03/09/2020		
20200758	G	Ferguson plc ; Columbia Pipe & Supply Co. ; Ferguson plc.
20200771	G	BDC Fund I Coinvest 1 LP ; Belden Inc. ; BDC Fund I Coinvest 1 LP.
20200785	G	J.P.J.S. SCA ; Eric Fisk ; J.P.J.S. SCA.
03/13/2020		
20200733	G	RELX PLC ; Emailage Corp. ; RELX PLC.
20200796	G	FaceBank Group, Inc. ; fuboTV, Inc. ; FaceBank Group, Inc.
20200798	G	Regions Financial Corporation ; Warburg Pincus Private Equity XII, L.P. ; Regions Financial Corporation.
20200808	G	New Mountain Partners V, L.P. ; P. Wiley Curran ; New Mountain Partners V, L.P.
20200816	G	Mubadala Investment Company PJSC ; Ari Ojalvo ; Mubadala Investment Company PJSC.
20200817	G	Energy Capital Partners IV–D, LP ; Energy Capital Partners IV–A, LP ; Energy Capital Partners IV–D, LP.
20200826	G	Costco Wholesale Corporation ; Edward S. Lampert ; Costco Wholesale Corporation.
20200827	G	Patrick Drahi ; The Edward Walson 2011 Revocable Trust ; Patrick Drahi.
20200828	G	Fidelity National Financial, Inc. ; FGL Holdings ; Fidelity National Financial, Inc.
20200836	G	Softbank Group Corp. ; The We Company ; Softbank Group Corp.
20200838	G	Neenah, Inc. ; MSouth Equity Partners, L.P. ; Neenah, Inc.
20200839	G	Lars Wingefors ; Mathew Karch ; Lars Wingefors.
20200846	G	Sycamore Partners III, L.P. ; L Brands, Inc. ; Sycamore Partners III, L.P.
20200847	G	Newhouse Broadcasting Corporation ; Scopely, Inc. ; Newhouse Broadcasting Corporation.
20200850	G	Valor Equity Partners IV L.P. ; Bird Rides Inc. ; Valor Equity Partners IV L.P.
20200851	G	TSG8 L.P. ; Pathway Vet Alliance Holding LLC ; TSG8 L.P.
20200857	G	Mondelez International, Inc. ; GG Foods Holding Corporation ; Mondelez International, Inc.
03/19/2020		
20191090	S	Danaher Corporation ; General Electric Company ; Danaher Corporation.
03/30/2020		
20200803	G	Comcast Corporation ; Newco ; Comcast Corporation.
20200805	G	AT&T Inc. ; NewCo ; AT&T Inc.
03/31/2020		
20200741	G	Silgan Holdings, Inc. ; Hercule PAI Holdings S.a.r.l. ; Silgan Holdings, Inc.
20200840	G	CC KDC Co-Invest LP ; DH IV. 1 No. 1, LP ; CC KDC Co-Invest LP.
20200849	G	RB CNS AIV B, LP ; Andrew Heaner ; RB CNS AIV B, LP.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry (202–326–3100), Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–07913 Filed 4–14–20; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MR–2020–01; Docket No. 2020–0002; Sequence No. 16]

Modernizing Services for Regulation Management

AGENCY: Office of Regulation Management, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice of Public Meeting and request for comment.

SUMMARY: The General Services Administration's (GSA) Office of Regulation Management within the Office of Government-wide Policy is announcing amendments to notice MR–2019–01, dated December 30, 2019. The public meeting that was originally announced for March 25, 2020, has been rescheduled to April 30, 2020. The meeting will be held via web conference. The comment period has also been extended from April 30, 2020, to June 3, 2020. GSA is seeking public comment on any matters related to the modernization of Electronic Rulemaking Management. Background information on specific topics will be provided in electronic format through the *regulations.gov* docketing system to help inform the public on known issues around which to focus their input. Comments will be accepted electronically.

DATES: The public meeting originally announced for March 25, 2020 will be conducted on Thursday, April 30, 2020. The meeting will be held from 2 p.m. to 4 p.m. Eastern Time (ET).

Comments related to any aspect of modernization of Electronic Rulemaking Management must be submitted no later than Wednesday, June 3, 2020. This represents an extension of the deadline of April 30, 2020 originally announced in notice published in the **Federal Register** at 84 FR 72364.

ADDRESSES: The public meeting will no longer take place at GSA's Central Office at 1800 F Street NW, Washington, DC 20006. The meeting will be held solely through a web conference with instructions provided during registration.

Pre-register to attend the public meeting at *https://regulatorydata.eventbrite.com.*

GSA is no longer accepting proposals for meeting panelists at *eRulemaking@gsa.gov.* The panelists have been selected.

FOR FURTHER INFORMATION CONTACT: For further information, please contact *eRulemaking@gsa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Electronic Rulemaking Management

OGP's Office of Regulation Management manages two programs that deliver shared regulatory IT services. The eRulemaking Program Management Office manages *regulations.gov* and the Federal Docket Management System (FDMS). The Regulatory Information Service Center (RISC) manages *RegInfo.gov* and the RISC/OIRA Consolidated Information System (ROCIS).GSA's strategy for Rulemaking Modernization is three-fold:

1. Better integrate data and information technology among Federal regulatory information systems to support data analytics, both for rulemakers and members of the public.

2. Apply innovative approaches to promote public access, accountability, and transparency.

3. Reduce duplication and increase efficiency across the Federal rulemaking landscape through improved processes and technologies.

Docket No. GSA–2020–0002; Sequence No. 16 at *regulations.gov* will contain background documents on various topics on the regulatory process within a docket.

You can discover more about the Office of Regulation Management and its regulatory work at: *https://www.gsa.gov/policy-regulations/regulations/how-you-can-improve-regulations.*

You can discover more about e-Rulemaking, including FDMS and *www.Regulations.gov* at: *https://www.fdms.gov/fdms/public/aboutus and https://www.regulations.gov/aboutProgram.*

You can discover more about the Regulatory Information Service Center at: *https://www.gsa.gov/about-us/organization/office-of-governmentwide-policy/office-of-acquisition-policy/governmentwide-acq-policy/regulatory-information-service-center and https://www.reginfo.gov/public/.*

II. Public Meetings

GSA will be conducting a virtual public meeting on April 30, 2020, from 2 p.m. to 4 p.m., ET. This is a rescheduled meeting originally announced in notice 84 FR–72364 for March 25, 2020. GSA has selected presenters on topics that relate to:

- General challenges and opportunities for analysis across multiple regulations, including use cases. For example, a single regulated entity may be subject to requirements from multiple overlapping or inconsistent regulations.
- How desirable is it to enhance public participation across the entire life cycle of a rulemaking, from law, to regulation, to U.S. Code? What are the benefits?
- What types of data analysis tools or reports would be useful for the public?
- What types of regulatory trends or information should be analyzed to benefit the regulatory process?
- What technologies or policies could assist with sharing of data or interoperability of regulatory management systems across the Federal government?
- What are the challenges and opportunities for third party service providers to use regulatory information alone or in combination with other data to deliver services or analysis?
- What technologies or policies could assist with increasing public access to data for or through third party applications?

Check for additional information regarding meeting logistics on *regulations.gov,* ''Docket No. GSA–2020–0002; Sequence No. 16.'' as dates approach. Updates will also be on the EventBrite registration page at *https://regulatorydata.eventbrite.com.* Questions may be directed to *eRulemaking@gsa.gov.*

Meeting Accommodations: A full transcript of the meeting will be made available on *regulations.gov* within two weeks.

Closed captioning is available during the meeting and will be automatically presented through your browser. Technical support will be available in the webinar chat room should anyone have difficulty.

III. Written Comments

To assist GSA in planning for the modernization of the Electronic Rulemaking Management process, GSA is inviting interested parties to submit written comments.

Instructions for submitting comments: The referenced electronic docket in *regulations.gov* is a collection of

documents related to this request for comment. Interested members of the public may comment on any individual document, whether or not addressed in one of the public meetings. The public may also contribute scholarly articles or other information that is appropriate to the topic. The public may also comment on any matter relating to modernization of Electronic Rulemaking Management by commenting on the primary document for this notice, referenced in the docket as Notice-MR–2020–01.

From the home page of *regulations.gov,* search for ''Docket No. GSA–2020–0002; Sequence No. 16.'' Identify the specific document within the docket that you would like to comment on, select the link ''Comment Now,'' and follow the instructions provided at the screen. Attendance at this meeting is not required to provide comments. The public meeting is intended to supplement the background materials in the docket and provide additional insight into specific topics related to Electronic Regulation Management. Transcripts and any presentations from the meeting will be publicly posted to the docket within two weeks in order to enable the public to comment prior to Wednesday, June 3, 2020.

Those in attendance at the meeting will have an opportunity to ask questions or make comments through the chat feature in the web conferencing platform for the virtual public meeting, as time permits. However, the virtual public meeting is not a formal comment process. For formal consideration, all comments must be submitted to *regulations.gov* at the referenced docket. Comments may be submitted by June 3, 2020, on any topic related to Electronic Rulemaking Modernization.

GSA may publicly post all presentations submitted to the public meetings, all transcripts associated with the public meetings, and any comments received to the docket on *regulations.gov* without change. Read the *regulations.gov* notifications below regarding sharing of personally identifiable and/or business confidential information.

In general, GSA is seeking input on the business/mission needs of you or your organization as a participant or interested stakeholder in the rulemaking process. Specifics on proposed services or service improvements, including benefits and costs, would be helpful. Specific suggestions on service management, including performance measures and approaches for ongoing customer engagement would also be helpful.

Comments are also welcome on related technology services, including any specific recommendations for how technology can be applied to achieve specific business needs for regulatory management.

GSA also welcomes any references to existing research, processes, services, or technologies directly related to regulation management or related to functions that can be applied to regulation management.

Please note that comments on individually proposed rulemakings or other agency actions should be addressed to the specific agency and any dockets that they have created for that action. The role of GSA is that of a shared service provider for supporting public participation and government efficiencies in the regulatory process.

Tobias Q. Schroeder,

Director, eRulemaking Program Management Office,Office of Regulation Management, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2020–07943 Filed 4–14–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces a modification and extension of the No Sail Order and Other Measures Related to Operations that was previously issued on March 14, 2020—subject to the modifications and additional stipulated conditions set forth in this Order. The Order shall continue in operation until the earliest of the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; the CDC Director rescinds or modifies the order based on specific public health or other considerations; or 100 days from the date of publication in the **Federal Register**.

DATES: This action is effective on April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS V18–2, Atlanta, GA 30329. Phone: 404–498–1600. Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION:

On March 14, 2020, the Director of the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Other Measures Related to Operations. CDC published a notice announcing that Order on March 24, 2020 (85 FR 16628). The March 14, 2020 Order was scheduled to expire April 13, 2020. This notice announces the renewal of the No Sail Order and Other Measures Related to Operations signed by the CDC Director on March 14, 2020—subject to the modifications and additional stipulated conditions as set forth in this Order. This Order shall continue in operation until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the **Federal Register**. The findings and other evidence relied upon in issuing the March 14, 2020 Order are adopted herein by reference. Any ambiguity between the March 14, 2020 Order, as modified by the current Order, shall be resolved in favor of the current Order.

A copy of the order is provided below and a copy of the signed order can be found at *https://www.cdc.gov/quarantine/cruise/index.html.*

U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC)

Order Under Sections 361 & 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 Code of Federal Regulations Part 70 (Interstate) and Part 71 (Foreign):

Modification and Extension of No Sail Order and Other Measures Related to Operations

Previous Order and Incorporation by Reference

This Order renews the No Sail Order and Other Measures Related to Operations signed by the CDC Director on March 14, 2020—subject to the modifications and additional stipulated conditions as set forth in this Order. This Order shall continue in operation until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19

constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the **Federal Register**. The findings and other evidence relied upon in issuing the March 14, 2020 Order are incorporated herein by reference. Any ambiguity between the March 14, 2020 Order, as modified by the current Order, shall be resolved in favor of the current Order.

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following paramount objectives:

- Preservation of human life;
- Preventing the further introduction, transmission, and spread of COVID–19 into and throughout the United States;
- Preserving the public health and other critical resources of Federal, State, and local governments;
- Preserving hospital, healthcare, and emergency response resources within the United States; and
- Maintaining the safety of shipping and harbor conditions, including safety of personnel.

Applicability

This Modification and Extension of No Sail Order and Other Measures Related to Operations shall apply only to the subset of carriers [1] described below and hereinafter referred to as ''cruise ships:''

All commercial, non-cargo,[2] passenger-carrying vessels operating in international, interstate, or intrastate waterways and subject to the jurisdiction of the United States with the capacity to carry 250 [3] or more individuals (passengers and crew) with an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew.[4]

This Order shall additionally apply to any cruise ship that was previously excluded from the March 14, 2020 Order, by virtue of having voluntarily suspended operations.

''Operations'' for purposes of this Order means any action by a cruise ship operator to bring or cause a cruise ship to be brought into or transit in or between any international, interstate, or intrastate waterways (*e.g.,* shifting berths, moving to anchor, discharging waste, making port, or embarking or disembarking passengers or crew) subject to the jurisdiction of the United States.

''Operator'' for purposes of this Order means the Master of the vessel (cruise ship) and any other crew member responsible for cruise ship operations and navigation, as well as any person or entity (including a corporate entity) that authorizes or directs the use of a cruise ship (*e.g.,* as owner, lessee, or otherwise). A cruise ship operator may be either the cruise ship captain or the cruise line to which the cruise ship belongs, or both. The term ''Operator'' as used in this Order further incorporates the terms ''company,'' ''designated person,'' and ''responsible person'' as defined in 33 CFR. § 96.120.

Events Since the Issuance of March 14, 2020 Order

On March 14, 2020, the CDC Director issued a No Sail Order and Other Measures Related to Operations directing cruise ships not voluntarily suspending operations to comply with measures outlined by the CDC and U.S. Coast Guard. This followed a March 13, 2020, announcement by Cruise Lines International Association (CLIA), the leading industry trade group, that its members would voluntarily suspend cruise ship operations. On March 17, 2020, CDC issued a Level 3 Travel Warning that all travelers defer cruise travel worldwide based on widespread ongoing transmission of COVID–19.[5] The suspension of a global tourism industry, such as the cruise line industry, does not happen instantaneously or easily. During the suspense of operations, the cruise line operators worked with both Federal, State, and local governments to disembark of over 250,000 passengers from more than 120 vessels. The cruise line operators continue discussions with Federal, State and local governments regarding the 114 vessels with over 93,000 crew either in or near U.S. ports. However, COVID–19 clusters and outbreaks continue to occur on and in connection with cruise ships.

There are a number of recent incidences of reported COVID–19 spread onboard cruise ships including the Costa *Magica,* Costa *Favolosa,* Celebrity *Eclipse,* Disney *Wonder,* Holland America *Zaandam,* and Celebrity *Coral Princess.* The *Costa Magica* and the *Costa Favolosa,* reported at least 88 ill crew members on board with respiratory symptoms of COVID–19. On March 26, 2020, in coordination with U.S. Coast Guard and public health personnel, four infected crew members were evacuated off the *Magica* and seven from the *Favolosa* for life-critical care at Jackson Memorial Hospital in Miami, Florida. The *Zaandam* cruise ship reported illness consistent with COVID–19 in at least 250 persons onboard—guests and crew members; 76 of these persons remain symptomatic. Four passengers onboard the *Zaandam* have died (one for non-COVID–19 related reasons).[6]

As of April 1, 2020, four crew members onboard the *Eclipse* have tested positive for COVID–19, three of whom remain on the ship. One passenger onboard the *Eclipse* required emergency medical evacuation and is currently hospitalized in San Diego, California after having tested positive for COVID–19. The *Wonder* reported four crew members who have tested positive for COVID–19. Two of the four are now hospitalized, the two others are isolated on the ship; an additional three former passengers (from the last voyage who disembarked) are also positive. Most recently, the *Coral Princess* reported 12 persons (seven passengers and five crew members) onboard who are confirmed positive for COVID–19 and an additional 43 suspected cases in persons with influenza-like illness. As of April 3, 2020, there are four patients on oxygen in the ship's medical center.

There are approximately 50 cruise ships that remain at sea off the East

[1] Carrier is defined by 42 CFR 71.1 to mean, ''a ship, aircraft, train, road vehicle, or other means of transport, including military.''

[2] Given the substantial risk of person-to-person transmission of COVID–19, as opposed to transmission via indirect contact, this Order is currently limited to passenger, non-cargo vessels.

[3] Based on substantial epidemiological evidence related to congregate settings and mass gatherings, this Order suspends operation of vessels with the capacity to carry 250 individuals or more. Evidence shows that settings as small as nursing homes or movie theaters can proliferate the spread of a communicable disease. As the numbers of passengers and crew onboard a ship increases, certain recommended mitigation efforts such as social distancing become more difficult to implement. In light of the demonstrated rapid spread of this communicable disease in current cruise ship settings, application of this Order to vessels carrying 250 or more individuals is a prudent and warranted public health measure. Moreover, the management of current coronavirus cases in addition to existing seasonal care needs (*e.g.,* influenza) has placed an extreme burden on the public health and healthcare systems and this Order will help avoid further stressing those systems.

[4] This order shall not apply to vessels operated by a U.S. Federal or State government agency. Nor shall it apply to vessels being operated solely for purposes of the provision of essential services, such as the provision of medical care, emergency response, activities related to public health and welfare, or government services, such as food, water, and electricity.

[5] CDC, Traveler's Health, *COVID–19 and Cruise Ship Travel,* at: *https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship* (originally posted, March 17, 2020).

[6] ''President of Holland America cruise line pleads for compassion while Florida debates allowing ships to dock,'' Fox News, March 31, 2020, available at: *https://www.foxnews.com/travel/zaandam-holland-america-cruise-president-florida-debate.*

Coast of the United States and in the Bahamas with an estimated 47,800 crew onboard; off the West Coast and Gulf Coast there are approximately 45 cruise ships with an estimated 32,000 crew onboard. Some of these crew are not critical to maintain the seaworthiness or basic safe operation of the cruise ships; many are part of the hotel and hospitality crew. CDC is currently aware of 15 cruise ships at port or anchorage in the United States with known or suspected COVID–19 infection among the crew who remain onboard. CDC is currently tracking two cruise ships with passengers that are expected to make port in the United States.

There are several public health concerns when crew members become ill while onboard these ships and the cruise lines seek the aid of the United States in disembarking them, as has already occurred on numerous occasions. The intensive care requirements for infected crew in need of life-critical care greatly stresses an already overburdened healthcare system facing shortages of masks, test kits, beds, and ventilators needed to respond to COVID–19. The addition of further COVID–19 cases from cruise ships places healthcare workers at substantial increased risk. Moreover, safely evacuating, triaging, and repatriating cruise ship crew involves complex logistics, incurs financial costs at all levels of government, and diverts resources away from larger efforts to suppress or mitigate COVID–19.

Critical Need for Further Cooperation and Response Planning

CDC and other Federal agencies engaged with CLIA representatives in early March. On March 13, 2020, CLIA and their associated members announced that all member cruise lines would voluntarily suspend cruise ship operations from U.S. ports of call for 30 days as public health officials and the Federal government continue to address COVID–19. Several cruise lines followed CLIA's example and similarly voluntarily suspended operations.

CLIA also drafted a response plan, ''On Course: Cruise Industry COVID–19 Response and Protocols'' (hereinafter, ''On Course''). The plan proposed ''industry management of suspected or confirmed cases of COVID–19 without burden on the U.S. government.'' [7] CLIA stated that it could implement this plan within 7 days.[8] In response to a suspected or confirmed case of COVID–19, ''industry would be responsible for transporting the [exposed or infected] individuals in appropriate buses, cars, or ambulances.'' [9] Furthermore, CLIA averred that, ''contracts for predesignated facilities though Global Rescue [a firm with purported experience and expertise in mass medical incidents] [would] receive COVID–19 patients, including arrangements [that] will be executed following plan approval.'' [10] CLIA further stated that it had planned for ''multiple redundancies'' in its response efforts. Specifically, ''CLIA commits to making five ships available for temporary housing purposes. They would be tasked with sailing to any affected ship and taking affected guests and crew aboard for the self-isolation period.'' [11]

On April 3, 2020, CLIA drafted a new response plan, ''Framework: For Cruise Industry Care of Crew and other Persons on Board while Ships Remain Idle during the Global COVID–19 Pandemic'' (hereinafter, ''Framework''). The Framework plan must go further to reduce industry reliance on government and shoreside hospital resources. For example, while the Framework states that a ship will maintain its medical staff, it must provide further details of how the industry will provide for the acute care needs of the critically ill. The Framework must also address industry assistance to COVID–19 affected cruise ships by deploying additional ships for cohort separation of those who are exposed, infected, and in need of hospitalization. Furthermore, laboratory sampling and testing, onboard mitigation and prevention strategies, disinfection protocols, personal protective equipment, repatriation of foreign nationals, and onshore transportation, including through contract medivac helicopter, must be addressed in further detail, including how the industry proposes to acquire, staff, and operationalize this plan, with minimal burden on Federal, State, or local government entities or the healthcare system.

Findings and Immediate Action

Accordingly, and consistent with 42 CFR 70.2, 71.31(b) and 71.32(b), the Director of CDC (''Director'') finds that cruise ship travel exacerbates the global spread of COVID–19 and that the scope of this pandemic is inherently and necessarily a problem that is international and interstate in nature and has not been controlled sufficiently by the cruise ship industry or individual State or local health authorities. As described in the March 14, 2020 Order, cruise ship travel markedly increases the risk and impact of the COVID–19 disease outbreak within the United States. If unrestricted cruise ship passenger operations were permitted to resume, infected and exposed cruise ship cases would place healthcare workers at substantial increased risk. Specifically, these cases would divert medical resources away from persons with other medical problems and other COVID–19 cases, consuming precious diagnostics, therapeutics, and protective equipment. Ongoing concerns with cruise ship transmission would further draw valuable resources away from the immense Federal, State, and local effort to contain and mitigate the spread of COVID–19. Further, the current ongoing non-passenger operation of cruise ships has not sufficiently abated the public health concern, as ship crew become sick and require medical care drawing on otherwise engaged Federal, State, and local resources. As operators of non-U.S. flagged vessels sailing in international waters, it is imperative that the cruise ship industry and cruise lines themselves take responsibility for the care of their crew and do not further tax limited U.S. resources during a public health emergency.

The Director also finds evidence to support a reasonable belief that cruise ships are or may be infected or contaminated with a quarantinable communicable disease.[12] This reasonable belief is based on information from epidemiologic and other data regarding the nature and transmission of COVID–19 on cruise ships, including the information described in the March 14, 2020 Order and evidence from the *Costa Magica, Costa Favolosa, Eclipse, Wonder, Zaandam, Coral Princess,* and other cruise ships. As a result, persons onboard cruise ships may be infected with or exposed to COVID–19 by virtue of being onboard at a time when cases of COVID–19 are being reported in increasingly significant numbers globally [13] and specifically on cruise ships, when testing is available.

Accordingly, under 42 CFR 70.2, the Director determines that measures taken

[7] (On Course, pages 1, 10).

[8] *Id.* at 2.

[9] *Id.* at 1–2.

[10] *Id.* at 7.

[11] *Id.* at 13.

[12] COVID–19 is a communicable disease for which quarantine is authorized under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.1, 71.1, as listed in Executive Order 13295, as amended by Executive Orders 13375 and 13674.

[13] Since the March 14, 2020 Order, the number of global cases of COVID–19 reported by the World Health Organization (WHO) has risen from 142,534 to 1,051,635 as of April 4, 2020, with 56,985 deaths. *See* Situation Reports, WHO, *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports.*

by State and local health authorities regarding COVID–19 onboard cruise ships are inadequate to prevent the further interstate spread of the disease.

This Order is not a rule within the meaning of the Administrative Procedure Act (''APA''), but rather an emergency action taken under the existing authority of 42 CFR 70.2, 71.31(b) and 71.32(b). In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date.[14] Considering the public health emergency caused by COVID–19 based, among other things, on its continued spread on board cruise ships, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order. Similarly, if this Order qualifies as a rule per the definition in the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule, but there would not be a delay in its effectiveness as the agency has invoked the good cause provision of the APA.

If any provision in this Order, or the application of any provision to any carriers, persons, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any carriers, persons or circumstances other than those to which it is held invalid, shall remain valid and in effect.

In accordance with 42 U.S.C. 264(e), this Order shall supersede any provision under State law (including regulations and provisions established by political subdivisions of States), that conflict with an exercise of Federal authority, including instructions by U.S. Coast Guard (USCG) or HHS/CDC personnel permitting ships to make port or disembark persons under stipulated conditions, under this Order.

This Order shall be enforceable through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18, 71.2.

Therefore, in accordance with sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b), for all cruise ships for the period described below, *it is ordered*:

1. As a condition of obtaining controlled free pratique to continue to engage in any cruise ship operations in any international, interstate, or intrastate waterways subject to the jurisdiction of the United States, cruise ship operators shall immediately develop, implement, and within seven (7) days of the signing of this Order operationalize, an appropriate, actionable, and robust plan to prevent, mitigate, and respond to the spread of COVID–19 on board cruise ships.

2. As a condition of obtaining controlled free pratique to continue to engage in any cruise ship operations in any international, interstate, or intrastate waterways subject to the jurisdiction of the United States, the cruise ship operator shall make the plan described in paragraph 1, above, available to HHS/CDC and USCG personnel within seven (7) days of the signing of this Order.

3. An appropriate plan is one that adequately prevents, mitigates, and responds to the spread of COVID–19 on board cruise ships and that, at a minimum, must address the following elements:

a. Onboard surveillance of passengers and crew with acute respiratory illnesses, influenza-like illnesses, pneumonia, and COVID–19, including reporting to HHS/CDC on a weekly basis on overall case counts, methods of testing, and number of persons requiring hospitalization or medical evacuation;

b. Reports on the number of persons onboard the cruise ship and any increase in the numbers of persons with COVID–19 made to HHS/CDC and USCG on a daily basis for as long as the cruise ship is within waters subject to the jurisdiction of the United States.

c. Onboard monitoring of passengers and crew through temperature checks and medical screening, including addressing frequency of monitoring and screening;

d. Training of all crew on COVID–19 prevention, mitigation, and response activities;

e. Protocols for any COVID–19 testing, including details relating to the shore-side transport, administration, and operationalization of laboratory work if onboard laboratory work is not feasible;

f. Onboard isolation, quarantine, and social distancing protocols to minimize the risk of transmission and spread of COVID–19;

g. Onboard medical staffing, including number and type of staff, and equipment in sufficient quantity to provide a hospital level of care (*e.g.,* ventilators, facemasks, personal protective equipment) for the infected without the need for hospitalization onshore;

h. An outbreak management and response plan to provision and assist an affected cruise ship that relies on industry resources, *e.g.,* mobilization of additional cruise ships or other vessels to act as ''hospital'' ship for the infected, ''quarantine'' ship for the exposed, and ''residential'' ship for those providing care and treatment, including the ability to transport individuals between ships as needed;

i. Categorization of affected individuals into risk categories with clear stepwise approaches for care and management of each category;

j. A medical care plan addressing onboard care versus evacuation to on-shore hospitals for critically ill individuals, specifying how availability of beds for critically ill at local hospitals will be determined in advance and how the cruise ship operator will ensure acceptance at local medical facilities to treat the critically ill in a manner that limits the burden on Federal, State, and local resources and avoids, to the greatest extent possible, medivac situations. If medical evacuation is necessary arrangements for evacuation must be made with commercial resources (*e.g.,* ship tender, chartered standby vessel, chartered airlift) and arrangements made with a designated medical facility that has agreed to accept such evacuees. All medical evacuation plans must be coordinated with the U.S. Coast Guard;

k. Detailed logistical planning for evacuating and repatriating, both U.S. citizens and foreign nationals, to their respective communities and home countries via foreign government or industry-chartered private transport and flights, including the steps the cruise ship operator will take to ensure those involved in the transport are not exposed; (the use of commercial flights to evacuate or repatriate individuals, both within or from the United States, is prohibited);

l. The projected logistical and resource impact on State and local government and public health authorities and steps taken to minimize the impact and engage with these authorities; all plans must provide for industry/cruise line management of suspected or confirmed cases of COVID–19 without resource burden on Federal, State, or local governments;

m. Plan execution in all U.S. geographical areas—all plans must be capable of being executed anywhere in international, interstate, or intrastate waterways subject to the jurisdiction of the United States; and

n. Cleaning and disinfection protocols for affected cruise ships.

4. An appropriate plan shall be designed to minimize, to the greatest extent possible, any impact on U.S. government operations or the operations

[14] *See* 5 U.S.C. 553(b)(B), (d)(3).

of any State or local government, or the U.S. healthcare system.

5. The cruise ship operator shall further ensure that the plan is consistent with the most current CDC recommendations and guidance for any public health actions related to COVID–19. Where appropriate, a cruise ship operator may coordinate the development, implementation, and operationalization of a plan with other cruise ship operators, including an industry trade group.

The terms and conditions of the No Sail Order and Other Measures Related to Operations signed on March 14, 2020, as modified and extended by this *order, shall remain in effect*. Consequently, *it remains ordered*:

1. Cruise ship operators shall not be allowed to disembark passengers and crew members at ports or stations, except as directed by the USCG, in consultation with HHS/CDC personnel and, as appropriate, as coordinated with Federal, State, and local authorities.

2. Cruise ship operators shall not reembark any crew member, except as approved by USCG, in consultation with HHS/CDC personnel, until further notice.

3. Cruise ship operators shall not embark any new passengers or crew, except as approved by USCG, or other Federal authorities as appropriate, in consultation with HHS/CDC personnel.

4. Cruise ship operators shall not commence or continue operations (*e.g.,* shifting berths, moving to anchor, or discharging waste), except as approved by USCG, in consultation with HHS/CDC personnel, until further notice.

5. While in port, the cruise ship operator shall observe health precautions as directed by HHS/CDC personnel.

6. The cruise ship operator shall comply with all HHS/CDC, USCG, and other Federal agency instructions to follow CDC recommendations and guidance for any public health actions relating to passengers, crew, ship, or any article or thing on board the ship, as needed, including by making ship's manifests and logs available and collecting any specimens for COVID–19 testing.

7. This order does not prevent the periodic reboarding of the ship by HHS/CDC personnel and/or USCG and/or other Federal, State, or local agencies or the taking on of ships' stores and provisions under the supervision of HHS/CDC personnel and/or USCG.

8. This order does not prevent the ship from taking actions necessary to maintain the seaworthiness or safety of the ship, or the safety of harbor conditions, such as movement to establish safe anchorage, or as otherwise directed by USCG personnel.

This Order is effective upon publication in the **Federal Register** and shall continue in operation until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the **Federal Register**.

Authority

The authority for these orders is Sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b).

Robert K. McGowan,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2020–07930 Filed 4–10–20; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 84 FR 65981, dated December 12, 2019) is amended to reorganize the Center for Preparedness and Response, Deputy Director for Public Health Service and Implementation Science, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and functional statements for *Division of State and Local Readiness (CBCB)* insert the following:

Division of State and Local Readiness (CBCB). The Division of State and Local Readiness (DSLR): (1) Provides program support, technical assistance, guidance, technical integration, and capacity building of preparedness planning across public health, healthcare, and emergency management sectors; and (2) provides fiscal oversight to state, local, tribal, and territorial public health department Cooperative Agreement recipients for the development, monitoring, and evaluation of public health capabilities, plans, infrastructure, and systems to prepare for and respond to terrorism, outbreaks of disease, natural disasters, and other public health emergencies.

Office of the Director (CBCB1). (1) Provides national leadership and guidance that supports and advances the work of state, local, tribal, and territorial public health emergency preparedness programs; (2) coordinates the development of guidelines and standards for programmatic materials within the division to provide technical assistance and program planning at the state, local, tribal, and territorial level; (3) represents and communicates the interests and needs of the state, local, tribal, and territorial jurisdictions on state and local preparedness and response issues; (4) develops and ensures effective partnerships with national stakeholders and preparedness and response partners; (5) provides oversight and management of division contracts, recipient awards and fiscal accountability; and (6) manages the IT strategy and infrastructure to support recipient programmatic and fiscal activities.

Program Implementation Branch (CBCBB). (1) Provides consultation, technical assistance, and training to state, territorial, tribal, and local health departments in management and operation of activities to support public health emergency preparedness programs and recovery, including the infrastructure and systems necessary to manage and use deployed medical countermeasure assets; (2) facilitates partnerships between public health preparedness programs at federal, state, and local levels to ensure their consistency, sharing of promising practices, and integration; (3) collaborates with and supports other divisions in CPR and other national centers across CDC to ensure high quality technical assistance is available to the grantees on preparedness capabilities; (4) monitors programmatic activities of cooperative agreements of state, local, tribal, and territorial organizations to assure program objectives and key performance indicators are achieved, including reviews of Cities Readiness Initiative response plans; (5) provides assistance to state and local governments and public health agencies to prepare for effective responses to large scale public health events; (6) evaluates and identifies gaps in jurisdictional operational readiness and facilitates plans and develops tools to address identified gaps; (7) maintains an

information sharing platform to post resources and facilitate the sharing of best practices across CDC and jurisdictions; (8) improves the delivery of technical assistance to the public health entities; (9) serves as an agent of information to improve recipient access to healthcare preparedness tools and expertise and (10) collaborates with the Department during exercises or upon a federal deployment of assets.

Evaluation and Analysis Branch (CBCBC). (1) Assesses the effectiveness of the Public Health Emergency Preparedness (PHEP) Cooperative Agreement via performance measurement and evaluation; (2) develops and coordinates a strategy to measure and report on jurisdictional operational readiness; (3) provides analytic support and evaluation expertise to DSLR and CPR; and (4) fosters innovation and efficiency in evaluation and research through collaboration with healthcare and health security partners.

Field Assignee Services Branch (CBCBD). (1) Works with recipients to advance state and local preparedness efforts through placement of CDC field staff within state and local public health agencies; (2) provides scientific participation in development and implementation of field-based science initiatives and strategies; (3) provides situational awareness to CDC leadership when activated for public health responses; (4) provides consultation and technical assistance to state, territorial, tribal and local health departments in developing, implementing, and evaluating CPR activities and performance in support of CDC recommendations and those of their host site; (5) provides direct support for public health preparedness and epidemiologic capacity at the state, territorial, tribal, and local levels; (6) contributes as leaders in preparedness and epidemiology for a myriad of public health issues; (7) participates in the development of national preparedness and response policies and guidelines for public health emergencies and encourages and facilitates the transfer of guidelines into clinical and public health practice; (8) analyzes data to assess progress toward achieving program objectives and provides input for program management and evaluation reports for publications; (9) serves as liaison or focal point to assist state, territorial, tribal, and local partners in linking with proper resources, contacts, and obtaining technical assistance; (10) provides technical supervision and support for the CDC field staff and trainees as appropriate; (11) provides input into the development of branch and division policy, priorities, and operational procedures; (12) serves as an agent of information or technology transfer to ensure that effective methodology in one program is known and made available to other state and local programs; (13) analyzes technical and epidemiologic information to present at national and international scientific meetings and publishes programmatic, surveillance, epidemiologic information in collaboration with host agencies; and (14) develops and implements a comprehensive training and field placement program for entry-level public health preparedness and response professionals.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07939 Filed 4–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10716 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *May 15, 2020*.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Applicable

Integrated Plan Coverage Decision Letter; *Use:* The Bipartisan Budget Act (BBA) of 2018 directed the establishment of procedures to unify Medicare and Medicaid grievance and appeals procedures to the extent feasible for dual eligible special needs plans (D–SNPs) beginning in 2021. On April 16, 2019, CMS finalized rules (hereafter referred to as the April 2019 final rule) to implement these new statutory provisions.[1] As a result of these regulations, starting in 2021, a subset of full integrated dual special needs plans (FIDE SNPs) and highly integrated dual special needs plans (HIDE SNPs) will need to unify and update appeals and grievance procedures, including how enrollees are notified of their appeal rights.

Applicable integrated plans as defined at § 422.561 are required to issue form CMS–10716 when a request for either a medical service or payment covered under the Medicare or Medicaid benefit is denied in whole or in part. The notice explains why the plan denied the service or payment and informs the plan enrollees of their appeal rights.

The ''Applicable Integrated Plan Coverage Decision Letter'' or the ''coverage decision letter'', which will be issued as a result of an integrated organization determination under 42 CFR 422.631 when an applicable integrated plan reduces, stops, suspends, or denies, in whole or in part, a request for a service/item (including a Part B drug) or a request for payment of a service/item (including a Part B drug) the member has already received. ''Applicable integrated plans,'' hereinafter referred to as ''plans'', are defined at 42 CFR 422.561 as FIDE SNPs or HIDE SNPs with exclusively aligned enrollment, where state policy limits the D–SNP's membership to a Medicaid managed care plan offered by the same organization. Applicable integrated plans will issue the coverage decision letter starting in CY 2021 in place of the Notice of Denial of Medical Coverage (or Payment) (NDMCP) form (CMS–10003) as part of requirements to unify appeals and grievance processes. All other Medicare Advantage (MA) plans will continue to use the NDMCP form (CMS–10003). *Form Number:* CMS–10716 (OMB control number: 0938-New); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 693; *Total Annual Responses:* 693; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Marna Metcalf Akbar at 410–786–8251.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Plan Benefit Package (PBP) and Formulary CY 2021; *Use:* This information is mandated by the Social Security Act in order to collect plan bids that will establish the Medicare Advantage (Part C) and Prescription Drug (Part D) plan benefit package options to be offered to Medicare beneficiaries during the next annual open enrollment period. The Part C bid deadline (the first Monday in June) is stated at Section 1854(a)(6)(A) of the Social Security Act. The same deadline is applied to Part D bids by reference to the Part C requirement at Section 1860D–11(b)(1) of the Act and is cited in the 42 CFR references listed above. Copies of these references are provided in Appendix D. Section 6062 of the SUPPORT Act amended section 1860D–4(e)(2) of the Act to require the adoption of transaction standards for the Part D e-prescribing program to ensure secure ePA request and response transactions between prescribers and Part D plan sponsors no later than January 1, 2021. *Form Number:* CMS–R–262 (OMB control number: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profits institutions); *Number of Respondents:* 774; *Total Annual Responses:* 9,201; *Total Annual Hours:* 77,343. (For policy questions regarding this collection contact Joella Roland at 410–786–7638.)

Dated: April 9, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–07884 Filed 4–14–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10219, CMS–10695 and CMS–10526]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 15, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the

following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10219 HEDIS® Data Collection for Medicare Advantage

CMS–10695 Quality Payment Program/Merit-Based Incentive Payment System (MIPS) Surveys and Feedback Collections

CMS–10526 Cost-sharing Reduction Reconciliation Data Template

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* HEDIS® Data Collection for Medicare Advantage; *Use:* The HEDIS® data collection supports the CMS strategic goal of improving the quality of care and health status for Medicare beneficiaries. The HEDIS® measures are part of the Medicare Part C Star Ratings as described at §§ 422.160, 422.162, 422.164, and 422.166. CMS publishes the Medicare Part C Star Ratings each year to: (1) Incentivize quality improvement in Medicare Advantage (MA); and (2) assist beneficiaries in finding the best plan for them. The ratings feed into MA Quality Bonus Payments. The Medicare Star Ratings support the efforts of CMS to improve the level of accountability for the care provided by physicians, hospitals, and other providers.

HEDIS® data support the agency's goal to hold MA contracts accountable for delivering care in accordance with widely accepted clinical guidelines and standards of care. CMS uses HEDIS® data to obtain the information necessary for the proper oversight of the Medicare Advantage program. NCQA trains and licenses organizations to conduct audits on-site at the MAOs secure record-keeping facilities where they compile their administrative and medical records for the HEDIS data file submissions *Form Number:* CMS–10219 (OMB control number: 0938–1028); *Frequency:* Yearly; *Affected Public:* Federal Government; *Number of Respondents:* 677; *Total Annual Responses:* 677; *Total Annual Hours:* 216,640. (For policy questions regarding this collection contact Lori Teichman at 410–786–6684.)

2. *Type of Information Collection Request:* New collection of information request; *Title of Information Collection:* Quality Payment Program/Merit-Based Incentive Payment System (MIPS) Surveys and Feedback Collections; *Use:* The purpose of this submission is to request approval for generic clearance of a program of survey and feedback collections supporting the Quality Payment Program which includes the Merit-Based Incentive Payment System (MIPS) and Advanced Alternative Payment Models (AAPMs). MIPS is a program for certain eligible clinicians that makes Medicare payment adjustments based on performance on quality, cost and other measures and activities, and that consolidates components of three precursor programs—the Physician Quality Reporting system (PQRS), the Value Modifier (VM), and the Medicare Electronic Health Record (EHR) Incentive Program for eligible professionals. AAPMs are a track of the Quality Payment Program that offer incentives for achieving threshold levels of payments or patients in Advanced APMs or Other Payer Advanced APMs. Under the AAPM path, eligible clinicians may become Qualifying APM Participants (QPs) and are excluded from MIPS. Partial Qualifying APM Participants (Partial QPs) may opt to report and be scored under MIPS.

This generic clearance will cover a program of surveys and feedback collections designed to strategically obtain data and feedback from MIPS eligible clinicians, third-party intermediaries, Medicare beneficiaries, and any other audiences that would support the Agency in improving MIPS or the Quality Payment Program. The specific collections we intend to conduct are: Human Centered Design (HCD) User Testing Volunteer Sign-Up Survey; HCD User Satisfaction, Product Usage, and Benchmarking Surveys; and Physician Compare (and/or successor website) User Testing. *Form Number:* CMS–10695 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and Individuals; *Number of Respondents:* 630,300; *Total Annual Responses:* 630,300; *Total Annual Hours:* 57,950. (For policy questions regarding this collection, contact Michelle Peterman at 410–786–2591.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Cost-sharing Reduction Reconciliation Data Template; *Use:* Under established Department of Health and Human Services (HHS) regulations, although payments are not being advanced to qualified health plan (QHP) issuers at the present time, issuers are still permitted to submit data that compares the CSR-eligible enrollment for each issuer with their actual cost sharing reductions made by the issuer for medical services for each eligible enrollee in a benefit year. HHS will compare this CSR-eligible enrollment with the actual cost sharing reductions provided by the issuers that participate in the optional data submission window to verify the issuer's reporting of cost-sharing reductions provided. This revised collection does not add any data elements, and continues to make optional summary plan level reporting. *Form Number:* CMS–10526 (OMB control number: 0938–1266); *Frequency:* Annually; *Affected Public:* Private Sector: Not-for-profits; *Number of Respondents:* 150; *Total Annual Responses:* 150; *Total Annual Hours:* 2,250. (For policy questions regarding this collection contact Alper Ozinal 301–492–4178.)

Dated: April 9, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–07876 Filed 4–14–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10525]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice; partial withdrawal.

SUMMARY: On Tuesday, March 24, 2020, the Centers for Medicare & Medicaid Services (CMS) published a notice

document entitled, ''Agency Information Collection Activities: Proposed Collection; Comment Request''. That notice invited public comments on five separate information collection requests, under Document Identifiers: CMS–10468, CMS–10418, CMS–10488, CMS–R–290, and CMS–10525. Through the publication of this document, we are withdrawing the portion of the notice requesting public comment on the information collection request titled, ''PACE Quality Data Monitoring and Reporting.'' Form number: CMS–10525 (OMB control number: 0938–1264).

DATES: The original comment period for the document that published on March 24, 2020, remains in effect and ends May 26, 2020.

SUPPLEMENTARY INFORMATION: In FR document, 2020–06077, published on March 24, 2020 (85 FR 16631), we are withdrawing item 6 ''PACE Quality Data Monitoring and Reporting'' which begins on page 16633.

Dated: April 9, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–07886 Filed 4–14–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Intergovernmental Reference Guide (IRG) OMB #0970–0209

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS

ACTION: Request for public comment.

SUMMARY: The Intergovernmental Reference Guide (IRG) is a centralized and automated repository of state and tribal profiles that contains high-level descriptions of each state and tribal child support enforcement (CSE) program. These profiles provide state, tribal, and foreign country CSE agencies with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

DATES: *Comments due within 30 days of publication.* The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Office of Child Support Enforcement (OCSE) is proposing to add a new section (Section O) with six questions pertaining to family violence in the state profile. This will help process intergovernmental cases with family violence and will help ensure the safety of children and families. OCSE is also proposing to delete Sections A–L (140 questions) from the tribal profile and create new sections (Sections A–D) with 11 questions regarding case processing. This will assist in the efficient processing of paternity and support obligations.

Respondents: State and tribal CSE agencies.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Total number of respondents	Number of responses per respondent	Average burden hour per response	Annual burden hours
IRG: State Profile Guide (states and territories)	54	18	0.3	292
IRG: Tribal Profile Guide	62	18	0.3	335

Estimated Total Annual Burden Hours: 627.

Authority for the IRG information collection activities is: (1) 42 U.S.C. 652(a)(7), which requires the federal OCSE to provide technical assistance to state child support enforcement agencies to help them establish effective systems for collecting child and spousal support; (2) 42 U.S.C. 666(f), which requires states to enact the Uniform Interstate Family Support Act; (3) 45 CFR. 301.1, which defines an intergovernmental case to include cases between states and tribes; (4) 45 CFR. 303.7, which requires state CSE agencies to provide services in intergovernmental cases; and (5) 45 CFR. 309.120, which requires a tribal child support program to include intergovernmental procedures in its tribal IV–D plan.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–07885 Filed 4–14–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19

ACTION: Notice of amendment.

SUMMARY: The Secretary is issuing this amendment pursuant to section 319F–3 of the Public Health Service Act to extend liability immunity for activities related to medical countermeasures against COVID–19 authorized under the Coronavirus Aid, Relief, and Economic Security Act.

DATES: The amendment to the Declaration published on March 17, 2020 (85 FR 15198) was effective as of March 27, 2020.

FOR FURTHER INFORMATION CONTACT: Robert P. Kadlec, MD, MTM&H, MS, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue

SW, Washington, DC 20201; Telephone: 202–205–2882.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving ''willful misconduct'' as defined in the PREP Act. Under the PREP Act, a Declaration may be amended as circumstances warrant.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136 was enacted on March 27, 2020. The CARES Act amended section 319F–3(i)(1)(D) of the PHS Act, first added by the Families First Coronavirus Response Act, Public Law 116–127 on March 18, 2020. These amendments created a new category of covered countermeasures eligible for liability immunity under the PREP Act, namely, respiratory protective devices approved by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR part 84, or any successor regulations, that the Secretary determines to be a priority for use during a public health emergency declared under section 319 of the PHS Act.

On January 31, 2020, the Secretary declared a public health emergency, pursuant to section 319 of the PHS Act, 42 U.S.C. 247d, for the entire United States to aid in the response of the nation's health care community to the COVID–19 outbreak. On March 10, 2020, the Secretary issued a Declaration under the PREP Act for medical countermeasures against COVID–19 (85 FR 15198 (March 17, 2020)). The Secretary is amending the March 10, 2020 Declaration under the PREP Act to extend liability immunity to covered countermeasures authorized under the CARES Act. This amendment is made in accordance with section 319F–3 of the PHS Act, which authorizes the Secretary to amend a PREP Act declaration at any time.

Description of This Amendment by Section

Section I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may constitute such an emergency. This determination is separate and apart from the Declaration issued by the Secretary on January 31, 2020 under section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. As amended by the CARES Act, to extend the Declaration to respiratory protective devices approved by NIOSH, the Secretary must also determine that a respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, is a priority for use during the public health emergency declared by the Secretary under section 319 of the PHS Act.

Accordingly, in Section I of the Declaration, the Secretary is amending his determination that the spread of SARS–CoV–2 or a virus mutating therefrom and the resulting disease, COVID–19, constitutes a public health emergency for purposes of this Declaration under the PREP Act to include the determination that the use of any respiratory protective devices approved by NIOSH under 42 CFR part 84, or any successor regulations, is a priority for use during the public health emergency declared by the Secretary on January 31, 2020 under section 319 of the PHS Act for the entire United States to aid in the nation's health care community response to the COVID–19 outbreak.

Section VI. Covered Countermeasures

Section VI of the Declaration identifies the Covered Countermeasures for which the Secretary has recommended such activities. As amended by the CARES Act, the PREP Act states that a ''Covered Countermeasure'' must be a ''qualified pandemic or epidemic product,'' a ''security countermeasure,'' a drug, biological product, or device authorized for emergency use in accordance with sections 564, 564A, or 564B of the Federal Food, Drug, and Cosmetic (FD&C) Act, or a respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, that the Secretary determines to be a priority for use during a public health emergency declared under section 319 of the PHS Act. Accordingly, in Section VI of the Declaration, the Secretary is amending the list of medical countermeasures against COVID–19 that are covered countermeasures under the declaration to include covered countermeasures authorized by the CARES Act, namely respiratory protective devices approved by NIOSH under 42 CFR part 84, or any successor regulations, that the Secretary determines to be a priority for use during a public health emergency declared under section 319 of the PHS Act.

Section XII. Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Accordingly, the Secretary is amending Section XII of the Declaration to specify the effective time period for covered countermeasures authorized by the CARES Act.

Amendments to Declaration

Amended Declaration for Public Readiness and Emergency Preparedness Act Coverage for medical countermeasures against COVID–19.

Sections I, VI and XII of the March 10, 2020, Declaration under the PREP Act for medical countermeasures against COVID–19 are amended pursuant to section 319F–3(b)(4) of the PHS Act as described below. All other Sections of the Declaration remain in effect as published at 85 FR 15198 (March 17, 2020).

1. Determination of Public Health Emergency, Section I: Delete in full and replace with:

I. Determination of Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that the spread of SARS–CoV–2 or a virus mutating therefrom and the resulting disease COVID–19 constitutes a public health emergency. I further determine that use of any respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, is a priority for use during the public health emergency that I declared on January

31, 2020 under section 319 of the PHS Act for the entire United States to aid in the response of the nation's health care community to the COVID–19 outbreak.

2. Covered Countermeasures, Section VI, delete in full and replace with:

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any antiviral, any other drug, any biologic, any diagnostic, any other device, any respiratory protective device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act, or any respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations.

3. Effective Time Period, Section XII, delete in full and replace with:

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for any respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction, begins on March 27, 2020 and extends through October 1, 2024.

Liability immunity for all other Covered Countermeasures identified in Section VI of this Declaration, through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction, begins February 4, 2020 and extends through October 1, 2024.

Liability immunity for all Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with an emergency declaration and lasts through (1) the final day the emergency Declaration is in effect, or (2) October 1, 2024, whichever occurs first.

Authority: 42 U.S.C. 247d–6d.

Dated: April 10, 2020.

Alex M. Azar II,

Secretary of Health and Human Services.

[FR Doc. 2020–08040 Filed 4–13–20; 4:15 pm]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time Sensitive Research Opportunities in Environmental Health Sciences.

Date: April 30, 2020.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Janice B Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709 919–541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 9, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07917 Filed 4–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–RM–20–006: 4DN Organization and Function in Human Health and Disease, New Investigators (U01).

Date: May 14, 2020.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3717, *jessica.smith6@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–RM–20–005: 4DN Organization and Function in Human Health and Disease (U01).

Date: May 14–15, 2020.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3717, *jessica.smith6@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07915 Filed 4–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, May 20, 2020, 8:00 a.m. to May 21, 2020, 2:00 p.m., National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Rockville, MD, 20850 which was published in the **Federal Register** on March 31, 2020, 85 FR 17896 .

This notice is being amended to change the meeting start time from 8:00 a.m. to 9:00 a.m. The teleconference meeting will now be held from May 20, 2020, 9:00 a.m. to May 21, 2020, 2:00 p.m. The meeting is closed to the public.

Dated: April 9, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07889 Filed 4–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Urology.

Date: April 22, 2020.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07892 Filed 4–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Genome Analysis.

Date: April 29, 2020.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *nijaguna.prasad@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07890 Filed 4–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas.

DATES: This determination takes effect on April 15, 2020.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, section 1. In order to achieve that end, the President directed,

among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, section 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. In fiscal year 2019, the Border Patrol apprehended over 339,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, the Border Patrol had over 1,000 drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 122,000 pounds of marijuana, over 2,500 pounds of cocaine, over 90 pounds of heroin, over 1,700 pounds of methamphetamine, and over 11 pounds of fentanyl.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. The areas in Section 2 are located within the cities and the census designated place specifically enumerated in section 232(c) of title II of division A of the Consolidated Appropriations Act, 2019. *See* Public Law 116–6, Div. A, Title II, section 232. As required by section 232(a) of the Consolidated Appropriations Act, 2019, DHS consulted with local elected officials from the cities and census designated place identified in section 232(c) of the Consolidated Appropriations Act, 2019 regarding the alignment and design of physical barriers in such areas.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project areas''):

- Starting at the western boundary of the census designated place of Salineno, Texas and generally following the Rio Grande River south and east to the southeast boundary of the census designated place of Salineno, Texas.
- Starting at the western boundary of the Los Negros Creek Tract of the Lower Rio Grande Valley National Wildlife Refuge and generally following the Rio Grande River east to the eastern boundary of the city limits of Escobares, Texas.
- Starting at the western boundary of the city limits of Rio Grande City, Texas, and extending east to approximately two hundred and fifteen (215) feet southeast of the location where the international bridge at the Rio Grande City port of entry begins to cross the Rio Grande River.
- Starting approximately one-quarter (0.25) of a mile northwest of the intersection of Mission Street and West Private Lazaro Solis Street, then extending south for approximately one and one-half (1.5) miles, then extending north and east to approximately one and one-half (1.5) miles southeast of the intersection of East Private Lazaro Solis Street and El Sol Drive.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic

Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified at 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd–668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Acting General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Acting General Counsel.

[FR Doc. 2020–07981 Filed 4–14–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Exemption To Extend the Expiration Date of Certain Transportation Worker Identification Credentials

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of temporary exemption.

SUMMARY: TSA is granting a temporary exemption from requirements in 49 CFR part 1572 regarding the expiration of certain Transportation Worker Identification Credentials (TWIC®s). For the duration of this exemption, TSA will extend the expiration date of TWIC®s that expired on or after March 1, 2020, by 180 days.

DATES: This exemption becomes effective on April 10, 2020, and remains in effect through July 31, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571–227–2851, or *TWIC.Issue@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2020, the World Health Organization declared the SARS–CoV–2 virus (Novel Coronavirus) and Coronavirus Disease 2019 (COVID–19) to be a global pandemic. On March 13, 2020, the President declared a National Emergency.[1] The President then issued Executive Order 13909, *Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid–19* (March 18, 2020), which declared: ''. . . it is critical that all health and medical resources needed to respond to the spread of COVID–19 are properly distributed to the Nation's healthcare system and others that need them most at this time.''

In response to these actions, a majority of states have imposed significant restrictions on commercial activities and individual movement, except when performing essential functions. Moreover, health experts and the government have strongly recommended that individuals practice social distancing when engaging with others, to minimize the spread of COVID–19. During this time, it is vital to move cargo expeditiously through the supply chain, and to ensure that medical supplies and home goods reach healthcare centers and consumers. Maritime facilities and vessels are an integral part of the supply chain and must continue to operate at full capacity.

The Department of Homeland Security (DHS), through TSA and the U.S. Coast Guard (Coast Guard), published a final rule on January 25, 2007 that establishes requirements for merchant mariners and workers who need unescorted access to secure areas of maritime facilities and vessels.[2] These individuals must successfully complete a security threat assessment (STA) conducted by TSA and hold a TWIC® in order to enter secure areas without escort.

TSA and the Coast Guard administer the TWIC® program. Persons who are required to hold a TWIC® (defined as a mariner credentialed under 46 CFR part 10 or 12, and anyone needing unescorted access to a secure area of a vessel or facility regulated under 33 CFR parts 104, 105, or 106) are required to enroll and provide proof of identity and fingerprints at approved enrollment sites, designated and operated by a TSA trusted agent.[3] TSA's regulations require individuals who seek unescorted access to secured areas of maritime facilities and vessels to undergo an STA in order to receive a TWIC®. A TWIC® expires five years from the date of issuance[4] and individuals must go to a TSA enrollment center to initiate a new STA to receive a new credential.

There are 2,294,797 active TWIC®s in circulation today, and TSA records indicate that 234,536, or approximately 10% of them, will expire in the next six months. Social distancing practices in response to the COVID–19 crisis make gathering at enrollment centers unwise or prohibited. Approximately one-third of TSA's TWIC® enrollment centers have been forced to close because they are collocated with commercial or government offices that are closed as a result of COVID–19. For those that are operating, the process of collecting fingerprints, which is required for TWIC®, and completing the enrollment process may introduce risk to enrollment center staff or TWIC® applicants.

[1] *See* Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak* (March 13, 2020). Published at 85 FR 15337 (March 18, 2020).

[2] The final rule implements requirements in the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006).

[3] *See* 49 CFR 1572.17.

[4] *See* 49 CFR 1572.23(a).

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.[5] TSA has determined that it is in the public interest to grant an exemption from the current expiration standard in 49 CFR part 1572, which is five years from the date of issuance, given the need for transportation workers to continue to work without interruption during the current the COVID–19 crisis. This exemption will allow TWIC® holders to continue to provide vital services during the COVID–19 crisis, while TSA ensures effective transportation security vetting.

TSA has determined that there is little to no risk to transportation security associated with this exemption for the following reasons:

1. The extension of expiration dates applies only to individuals who have already successfully completed a comprehensive STA;

2. The extension of expiration dates is applicable to a relatively small percentage of TWIC® holders and is for a set, limited duration subject to possible modification by TSA before the end of the effective period to ensure consistency with the duration and scope of the COVID–19 crisis;[6]

3. TSA will continue to recurrently vet these TWIC® holders against Federal terrorism and national security-related watch lists, and the DHS Office of Biometric Identity Management (OBIM) IDENT system (a DHS-wide system for storage and processing of biometric and biographic information for national security) for security threat, criminal history, and immigration status checks during the extension period; and

4. TSA retains its full authority to suspend or immediately revoke an individual's TWIC® if the agency determines the holder is no longer eligible, in accordance with 49 CFR 1572.5(b) and 1572.19(c).

[5] *See* 49 U.S.C. 114(q). The Administrator may grant an exemption from a regulation prescribed in carrying out this section if the Administrator determines that the exemption is in the public interest. The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020, during the period of the COVID–19 National Emergency.

[6] The exemption remains in effect until July 31, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**. TSA considered tying the duration of the exemption to the duration of a public health emergency declaration, but believes that providing a set day is necessary because individuals without expired TWIC®s need a set date in order to initiate the steps necessary to renew their TWIC®s.

Exemption

1. *Eligibility.* This exemption applies to TWIC®s that expire on or after March 1, 2020.

2. *New Expiration Dates for Eligible TWIC®s.* For the duration of this exemption, the expiration date for an eligible TWIC® is180 days after the expiration date that appears on the face of the credential. TSA deems these eligible TWIC®s to be valid for the purpose of unescorted access to secured areas of maritime facilities and vessels. If the 180-day period extends beyond the duration of this temporary exemption, the TWIC® will be valid for the remainder of the extended 180-day period based on the expiration date of the TWIC®.

3. *Continuation of Vetting.* For the duration of the exemption, TSA will continue to recurrently vet the holders of the eligible TWIC®s against governmental watch lists for security threat, criminal history, and immigration status. TSA retains its full authority to suspend or immediately revoke an individual's TWIC® if the agency determines the holder is no longer eligible, in accordance with 49 CFR 1572.5(b) and 1572.19(c).

Stacey Fitzmaurice,

Executive Assistant Administrator for Operations Support.

[FR Doc. 2020–07923 Filed 4–14–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–08]

60-Day Notice of Proposed Information Collection: Quality Control Requirements for Direct Endorsement Lenders; OMB Control No.: 2502–0600

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 15, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for copies of available documents can obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Quality Control Requirements for Direct Endorsement Lenders.

OMB Approval Number: 2502–0600.

Type of Request: Revision.

Form Number: Not Applicable.

Description of the need for the information and proposed use: Per 24 CFR 202.8(3), a Direct Endorsement (DE) lender that sponsors third party originators (TPOs) is, ''responsible to the Secretary for the actions of its third party originators or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible.'' As a result, DE lenders are responsible for conducting quality control reviews on TPO originations of FHA-insured mortgage loans and ensuring that their Quality Control Plans contain this oversight provision. This creates an information collection burden on DE lenders, since these institutions must also conduct quality control on loans they originate and underwrite. DE lenders must conduct quality control reviews on a sample of loans that they originate or underwrite, including loans originated by TPOs. For the purposes of this information collection, it is assumed that the number of loans reviewed by each DE lender will comply with the Sample Size Standard and Sample Composition Standard described in HUD Handbook 4000.1, Section V.A.3.a.

In addition, under 24 CFR 203.255(c) and (e), HUD conducts both pre- and post-endorsement reviews of loans submitted for FHA insurance by DE lenders. As part of those reviews, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. In order to assist the Secretary with this directive, FHA requires that lenders self-report all findings of fraud and material misrepresentation, as well any material findings concerning the origination, underwriting, or servicing of the loan that the lender is unable to mitigate or otherwise resolve. The obligation to self-report these findings creates an additional information collection burden on DE lenders.

In accordance with the requirements of 5 CFR 1320.8(d), a Notice soliciting comments on this collection of information was initially published in the **Federal Register** on December 21, 2010 (Volume 75, Number 244, page 80066). At that time, FHA still allowed for loan correspondents to participate in its programs and had not yet transitioned to the use of TPOs. Therefore, FHA estimated information collection burdens based on the estimated used of TPOs by DE lenders. FHA has since revised these estimates with real data that captures TPO originations of FHA-insured single-family mortgage loans. This revision has increased the information collection burden associated with OMB Control Number 2502–0600.

Respondents: Active Title II Direct Endorsement (DE) lenders.

Estimated Number of Respondents: 3,641.

Estimated Number of Responses: 118,952.

Frequency of Response: Annually.

Average Hours per Response: 25.

Total Estimated Burdens: 29,738.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions. The General Deputy Assistant Secretary for Housing, John L. Garvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 10, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–07945 Filed 4–14–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2020–N061; FXES11130300000–201–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before May 15, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE53616C	University of Illinois/Illinois Natural History Survey.	Rusty patched bumble bee (*Bombus affinis*).	IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activity—collect DNA, fecal, and pollen samples, temporary hold—to existing authorized activities: Capture, handle, release.	Amend
TE43541A	Francesca J. Cuthbert, Saint Paul, MN.	Piping plover (*Charadrius melodus*).	Add new locations—PA and NY—to existing authorized locations: IL, MI, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activity—collect DNA, geolocator tag—to existing authorized activities: Capture, handle, band, feather sample, blood sample, erect exclosures, salvage eggs and chicks, release.	Amend
TE70877D	Jo Daviess Conservation Foundation, Elizabeth, IL.	Rusty patched bumble bee (*Bombus affinis*).	IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, release ...	New
TE74312D	Boone County Conservation District, Belvidere, IL.	Rusty patched bumble bee (*Bombus affinis*).	IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, release ...	New
TE62311A	Mary Gilmore, Stow, OH.	Add gray bat (*Myotis grisescens*) to existing permitted species: Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	AL, AR, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NJ, NY, NC, ND, OH, OK, PA, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, harp trap, band, radio-tag, collect hair, fungal lift tap, wing biopsy, and swab samples, release.	Amend

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2020–07916 Filed 4–14–20; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Tobacco Heating Articles and Components Thereof, DN 3447*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of on RAI Strategic Holdings, Inc.; R.J. Reynolds Vapor Company; and R.J. Reynolds Tobacco Company. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tobacco heating articles and components thereof. The complaint names as respondents: Altria Client Services LLC, Richmond, VA; Altria Group, Inc., Richmond, VA; Philip Morris USA, Inc., Richmond, VA; Philip Morris International Inc., New York, NY; and Philip Morris Products S.A., Switzerland. The complainant

requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3447'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 9, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–07873 Filed 4–14–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Information Collection; Reactivation Suitability Request—ATF Form 3252.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 15, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,*

permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New collection.

2. *The Title of the Form/Collection:* Reactivation Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3252.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The Confidential Informant (CI) handler will use the Reactivation Suitability Request—ATF Form 3252.5 to reinstate an individual to serve as a CI for ATF.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will respond to this collection annually, and it will take each respondent approximately 2 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 50 (# of respondents for this IC) * 2 (120 minutes *i.e.* the total time per response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–07895 Filed 4–14–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''American Apprenticeship Initiative (AAI) Grants.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 15, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Gabrielle Aponte-Henkel by telephone at 202–693–2683 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Apprenticeship.Grants-ETA@dol.gov.*

Submit written comments or requests for a copy of this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Room C–5321, 200 Constitution Avenue NW, Washington, DC 20210; by email: *Apprenticeship.Grants-ETA@dol.gov;* or by fax 202–693–3799.

FOR FURTHER INFORMATION CONTACT: Gabrielle Aponte-Henkel by telephone at 202–693–2683 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Apprenticeship.Grants-ETA@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

ETA is soliciting comments concerning the collection of data required by the AAI grants. These grants are designed to support grantees in providing education, training, and job placement assistance through Registered Apprenticeship programs in occupations and/or industries that have high-growth potential for which employers are using H–1B visas to hire foreign workers. ETA requires grantees to submit Quarterly Performance Reports (QPR) on (1) enrolled apprentices in Registered Apprenticeship programs, and (2) pre-apprenticeship program participants. The QPR also includes a narrative summary of the partnership progress and the implementation measures used by the grantee, as outlined in each grantee's project work plan. These QPRs help ETA gauge the impact of the AAI grants, determine best practices from programs implemented by AAI grantees, and better understand technical assistance needs of grantees and the targeted areas/populations served. The QPRs also provide data to inform future evaluations. Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended (originally codified at 29 U.S.C. 2916a and transferred to 29 U.S.C. 3224a) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0528.

Submitted comments will be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension Without Changes.

Title of Collection: American Apprenticeship Initiative Grants.

Form: Quarterly Performance Report and Quarterly Narrative Report.

OMB Control Number: 1205–0528.

Affected Public: Individuals/households, state/local/tribal governments, Federal government, private sector (businesses or other for-profits, and, not-for-profit institutions).

Estimated Number of Respondents: 12,046.

Frequency: Varies.

Total Estimated Annual Responses: 12,184.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 12,680 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–07937 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Access to Employee Exposure and Medical Records

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Standard requires employers to preserve and provide access to records associated with workers' exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment, and prevention of occupational illness and disease. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 5, 2020 (85 FR 6580).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Access to Employee Exposure and Medical Records.

OMB Control Number: 1218–0065.

Affected Public: Private Sector: Businesses or other for-profits; Individuals or Households.

Total Estimated Number of Respondents: 766,684.

Total Estimated Number of Responses: 6,688,963.

Total Estimated Annual Time Burden: 755,475 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07950 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Classifying Labor Surplus Areas

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL issues an annual list of Labor Surplus Areas (LSA) to be used by federal and state entities in a number of actions such as procurement and property transfer. The annual LSA list is updated during the year based upon petitions submitted to DOL by State Workforce Agencies requesting additional areas for LSA certification. This collection provides the processes by which States can submit petitions for additional LSA certification. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 11, 2019 (84 FR 67759).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Petition for Classifying Labor Surplus Areas.

OMB Control Number: 1205–0207.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 3.

Total Estimated Annual Time Burden: 9 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07949 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Information Grants to States (WIGS)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection for the Workforce Information Grants to States (WIGS) ensures the U.S. Department of Labor (DOL) Secretary meets WIOA requirements, and the states complete grant deliverables such as state economic analyses or special workforce information/economic studies, and the annual performance report. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 10, 2019 (84 FR 54644).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Workforce Information Grants to States (WIGS).

OMB Control Number: 1205–0417.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 162.

Total Estimated Annual Time Burden: 31,228 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07951 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Administration Conflict of Interest and Disclosure

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Conflict of Interest and Disclosure form will be used to determine whether or not a conflict of interest exists for a potential peer review panel member. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 23, 2019 (84 FR 70572).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health Administration Conflict of Interest and Disclosure.

OMB Control Number: 1218–0255.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 36.

Total Estimated Number of Responses: 36.

Total Estimated Annual Time Burden: 27 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07952 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Compensation by a Dependent Information Reports

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The forms included in this package are used to request information for entitlement to claim benefits under the Federal Employees' Compensation from federal employees/their dependents/survivors, to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of a deceased employee, and to show dependency. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 8, 2019 (84 FR 60457).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Claim for Compensation by a Dependent Information Reports.

OMB Control Number: 1240–0013.

Affected Public: Individuals of Households.

Total Estimated Number of Respondents: 933.

Total Estimated Number of Responses: 933.

Total Estimated Annual Time Burden: 800 hours.

Total Estimated Annual Other Costs Burden: $ 541.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07953 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Asbestos in General Industry Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 15, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This standard requires employers to monitor employee exposure, provide medical surveillance, and to maintain accurate records of employee exposure to asbestos. These records will be used by employers, employees, and the Government to ensure that employees are not harmed by exposure to asbestos in the workplace. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 6, 2020 (85 FR 6979).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Asbestos in General Industry Standard

OMB Control Number: 1218–0133.

Affected Public: Private Sector, Business or other for-profits.

Total Estimated Number of Respondents: 121.

Total Estimated Number of Responses: 32,203.

Total Estimated Annual Time Burden: 11,745 hours.

Total Estimated Annual Other Costs Burden: $1,018,516.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 9, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07935 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0003]

Advisory Committee on Construction Safety and Health (ACCSH): Notice of Meetings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of ACCSH and ACCSH Workgroup meetings postponement.

SUMMARY: The Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Workgroup meetings previously scheduled for April 28–29, 2020 are postponed. The meetings will be rescheduled and a notice will be published in the **Federal Register** when a meeting date is determined.

FOR FURTHER INFORMATION CONTACT: For general information about the postponement of the ACCSH meetings, contact: Scott Ketcham, Director, Directorate of Construction, OSHA, U.S. Department of Labor; telephone: (202) 693–2020; *ketcham.scott@dol.gov.*

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on April 9, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–07936 Filed 4–14–20; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its

six committees will meet April 20–21, 2020. On Monday, April 20, the first meeting will commence at 1:15 p.m., Eastern Daylight Time (EDT), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, April 21, the first meeting will commence at 12:00 p.m., EDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, April 21, the closed session meeting of the Board of Directors will commence at 4:45 p.m., EDT.

LOCATION: Public Notice Of Virtual Remote Meeting. Due to the COVID–19 public health crisis, Legal Services Corporation (LSC) will be conducting the April 20,—21, 2020 meetings remotely via ZOOM. LSC will post the ZOOM access information on the LSC website as soon as it is available.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

DIRECTIONS FOR OPEN SESSIONS:

- To participate in the meeting, go to the following link to ''Board Meeting Materials'': *https://www.lsc.gov/about-lsc/board/meetings/materialslsc/board/meetings/materials*;
- Additional instructions for participating in the meeting via ZOOM will be posted under ''Board Meeting Materials.''
- Once connected, your microphone will be *automatically* ''MUTED.''
- To participate in the meeting during public comment you will be notified when your microphone is no longer ''MUTED'' and you may give your questions, and or comments.

From time to time, the presiding Chair may solicit comments from the public.

MEETING SCHEDULE

	Time**
Monday, April 20, 2020:	
1. Institutional Advancement Committee	1:15 p.m.
2. Communications Subcommittee of the Institutional Advancement Committee.	
3. Governance and Performance Review Committee.	
4. Operations & Regulations Committee.	
5. Delivery of Legal Services Committee.	
Tuesday, April 21, 2020:	
1. Finance Committee	12:00 p.m.
2. Combined Finance and Audit Committees.	
3. Audit Committee.	
4. Board of Directors.	

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.**

Institutional Advancement Committee—Open, except that the meeting may be closed to the public to hear a briefing on Development activities.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Governance and Performance Review Committee—Open, except that the meeting may be closed to the public to hear a report on the President's evaluation of other officers.**

Combined Finance and Audit Committees—Open, except that the meeting may be closed to the public to hear a briefing from the auditors.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, Audit Committee, Governance and Performance Review Committee and Combined Audit and Finance Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

April 20, 2020

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of January 31, 2020
3. Update on Leaders Council and Emerging Leaders Council
   - John G. Levi, Chairman of the Board
4. Development report
   - Nadia Elguindy, Director of Institutional Advancement
5. Public Comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of January 31, 2020
2. Development activities report
   - Nadia Elguindy, Director of Institutional Advancement
3. Consider and act on motion to approve Leaders Council and Emerging Leaders Council invitees
4. Consider and act on other business
5. Consider and act on motion to adjourn the meeting

April 20, 2020

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of January 31, 2020
3. Communications and social media update
   - Carl Rauscher, Director of Communications and Media Relations
4. Public comment
5. Consider and act on other business

**Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3. Please note all meetings are Eastern Daylight Time (EDT).

6. Consider and act on motion to adjourn the meeting

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 31, 2020
3. Consider and act on other business
4. Public comment
5. Consider and act on motion to adjourn the open meeting and proceed to a closed session

Closed Session

1. Report on evaluations of LSC's Vice President for Grants Management, Vice President for Government Relations and Public Affairs, Chief Financial Officer
   - Ronald Flagg, President
2. Consider and act on adjournment of meeting

April 20, 2020

Operations & Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of January 30, 2020
3. Consider and act on the 2020–2021 Rulemaking Agenda
   - Ronald Flagg, President
   - Stefanie Davis, Senior Assistant General Counsel
4. Report on the Results of the Survey on Grantee Changes to Private Attorney Involvement Programs
   - Stefanie Davis, Senior Assistant General Counsel
5. Report on Regulatory Issues Involving the COVID–19 Health Crisis
   - Mark Freedman, Senior Associate General Counsel
   - Stefanie Davis, Senior Assistant General Counsel
6. Update on performance management and human capital management
   - Traci Higgins, Director of Human Resources
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

April 20, 2020

Delivery of Legal Services Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 30, 2020
3. Presentation on grantee oversight by the Office of Program Performance
   - Lynn Jennings, Vice President for Grants Management
   - Joyce McGee, Director, Office of Program Performance
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

April 21, 2020

Finance Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 31, 2020
3. Presentation of LSC's Financial Report for the first five months of FY 2020
   - Debbie Moore, Chief Financial Officer & Treasurer
4. Discussion of LSC's FY 2020 appropriations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
5. Consider and act on *Resolution #2020–XXX,* Approving the expenditure of $50,000,000 of appropriated funds for COVID–19 health crisis response
6. Discussion of LSC's FY 2021 appropriations request
   - Carol Bergman, Vice President for Government Relations & Public Affairs
7. Discussion regarding process, timetable, and methodology for FY 2022 budget request
   - Carol Bergman, Vice President for Government Relations & Public Affairs
   - Ronald Flagg, President
8. Public comment
9. Consider and act on other business
10. Consider and act on adjournment of meeting

April 21, 2020

Combined Finance & Audit Committees

Open Session

1. Approval of agenda
2. Presentation of the Fiscal Year (FY) 2019 Annual Financial Audit
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Marie Caputo, Principal, CliftonLarsonAllen
3. Consider and act on motion to adjourn the Open Session Meeting and proceed to a Closed Session

Closed Session

1. Opportunity to ask auditors question without management present
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Marie Caputo, Principal, CliftonLarsonAllen
2. Communication by Corporate Auditor with those charged with governance under Statement on Auditing Standard 114
   - Roxanne Caruso, Assistant Inspector General for Audits
   - Marie Caputo, Principal, CliftonLarsonAllen
3. Consider and act on motion to adjourn the meeting

Open Session

1. Presentation of the FY 2019 IRS Form 990
   - Debbie Moore, Chief Financial Officer & Treasurer
2. Consider and act on Resolution 2020–XXX, Acceptance of the Draft Financial Statements for Fiscal Year 2019
3. Presentation of the Office of Inspector General's Fraud Awareness Program for Grantees
   - Daniel O'Rourke, Assistant Inspector General for Investigations
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

April 21, 2020

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 31, 2020
3. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audits
4. Management update regarding risk management
   - Ronald Flagg, President
5. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - Roxanne Caruso, Assistant IG for Audits
6. Briefing on subgrants and subgrant oversight
   - Megan Lacchini, Deputy Director for General Compliance, Office of Compliance and Enforcement
7. Briefing on the integrity of LSC's electronic information and combating cyber risk
   - Jada Breegle, Chief Information Officer
   - Stuart Axenfeld, Deputy Director for Fiscal Compliance, Office of

Compliance and Enforcement
8. Briefing on the prevention of conflicts of interest or hostile work environment situations and equal employment opportunity initiatives
   - Traci Higgins, Director of Human Resources
9. Public comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of January 31, 2020
2. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
   - Lora Rath, Director of Compliance and Enforcement
3. Consider and act on adjournment of meeting

April 21, 2020

Board of Directors

Open Session—April 21, 2020

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of February 1, 2020
4. Chairman's Report
5. Members' Report
6. President's Report
7. Inspector General's Report
8. Consider and act on the report of the Governance and Performance Committee
9. Consider and act on the report of the Operations and Regulations Committee
10. Consider and act on the report of the Finance Committee
11. Consider and act on the report of the Combined Audit and Finance Committees
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Institutional Advancement Committee
14. Consider and act on the report of the Delivery of Legal Services Committee
15. Consider and act on *Resolution 2020–XXX,* in Recognition and Appreciation of Distinguished Service by Ed Marks
16. Consider and act on *Resolution 2020–XXX,* in Recognition and Appreciation of Distinguished Service by Ellen Lawton
17. Consider and act on *Resolution 2020–XXX,* in Recognition and Appreciation of Distinguished Service by Jim Sandman
18. Consider and act on *Resolution 2020–XXX,* Appointing Rebecca Weir Ethics Officer
19. Annual Presentation from the Office of Information Technology
    - Jada Breegle, Chief Information Officer
20. Report on process and timeline for Strategic Plan
    - Ronald Flagg, President
21. Veterans Task Force Update
    - Ronald Flagg, President
22. Disaster Task Force Update
    - Lynn Jennings, Vice President for Grants Management
23. Public Comment
24. Consider and act on other business
25. Consider and act on whether to authorize a closed session of the Board to address items listed below

Closed Session

1. Approval of minutes of the Board's Closed Session meeting of February 1, 2020
2. Management briefing
3. Inspector General briefing
4. Consider and act on General Counsel's report on potential and pending litigation involving LSC
5. Consider and act on prospective Leaders Council and Emerging Leaders Council invitees
6. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Karly Satkowiak, Special Counsel and Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1633. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON–CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

Dated: April 13, 2020.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2020–08046 Filed 4–13–20; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0008; NARA–2020–030]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by June 1, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to

each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Mobilization Common Operating Picture (MOBCOP) System Master Files (DAA–AU–2017–0022).

2. Department of Commerce, National Oceanic and Atmospheric Administration, Coast Energy Impact Program (CEIP) Loan Files (DAA–0370–2019–0003).

3. Department of Defense, Joint Chiefs of Staff, Academic Affairs Records (DAA–0218–2019–0002).

4. Department of Energy, Naval Nuclear Propulsion Program, Records of Infrastructure Maintenance, Support, and Security (DAA–0434–2015–0007).

5. Department of Health and Human Services, Agency for Health Care Research and Quality, Healthcare Cost and Utilization Project (HCUP) (DAA–0510–2019–0001).

6. Department of Health and Human Services, Indian Health Service, Hotline Records (DAA–0513–2020–0002).

7. United States International Trade Commission, Office of the Inspector General, Records of the Office of the Inspector General (DAA–0081–2020–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–07902 Filed 4–14–20; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0212]

Information Collection: NRC Form 4, Cumulative Occupational Exposure History

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 4, Cumulative Occupational Exposure History.''

DATES: Submit comments by June 15, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0212. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0212 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2019–0212. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0212 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20022A082. The supporting statement is available in ADAMS under Accession No. ML20022A084.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0212 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 4, ''Cumulative Occupational Exposure History.''
2. *OMB approval number:* 3150–0005.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 4.
5. *How often the collection is required or requested:* On occasion. The NRC does not collect NRC Form 4. However, NRC inspects the NRC Form 4 records at NRC-licensed facilities. In addition, NRC licensees must provide the NRC Form 4 to workers annually and each time a monitored transient worker changes employment sites.
6. *Who will be required or asked to respond:* NRC licensees who are required to comply with part 20 of title 10 of the *Code of Federal Regulations* (10 CFR).
7. *The estimated number of annual responses:* 241,014 (234,988 third party disclosure responses + 4,146 recordkeepers + 1,880 reporting responses).
8. *The estimated number of annual respondents:* 5,946.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 65,954 (7,050 third-party disclosure + 58,747 recordkeeping + 157 reporting).
10. *Abstract:* The NRC Form 4 is used to record the summary of an occupational worker's cumulative occupational radiation dose, including prior occupational exposure and the current year's occupational radiation exposure. The NRC Form 4 is used by licensees, and inspected by the NRC, to ensure that occupational radiation doses do not exceed the regulatory limits specified in 10 CFR 20.1501.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 9, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–07872 Filed 4–14–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3392; NRC–2017–0143]

Honeywell International Inc.; Metropolis Works Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a renewed license SUB–526, Docket No. 40–3392, to Honeywell International Inc. for its Metropolis Works (MTW) Facility uranium source conversion facility in Metropolis, IL. The renewed license expires on March 24, 2060. This action informs the public of the renewal of the issuance for the Honeywell MTW and discusses the staffs finding with respect to the issuance of the renewed license.

DATES: The license referenced in this document became available on March 24, 2020.

ADDRESSES: Please refer to Docket ID NRC–2017–0143 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–2017–0143. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to

pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: David Tiktinsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–8740, email: *David.Tiktinsky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

Pursuant to section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of renewal of a 10 CFR part 40 license, SUB–526, to Honeywell International Inc. The license authorizes Honeywell to possess and use source material, and sources used in gauges, in the operation of uranium source conversion at its Metropolis Works Facility in Metropolis, Il. This licensee's original request for a 40-year license renewal was made on February 8, 2017. A notice of receipt of the license renewal application with an opportunity to request a hearing and petition for leave to intervene was published in the **Federal Register** on June 19, 2017 (82 FR 27880). The NRC did not receive a request for a hearing or for a petition for leave to intervene. The license renewal application was subsequently revised and supplemented by letters dated September 20, 2017, October 8, 2018, July 7, 2019 and December 19, 2019. The December 19, 2019 version of the License Renewal Application is a standalone document that integrates the information provided in Honeywell's responses to the NRC staff's requests for additional information.

An environmental assessment and finding of no significant impact were prepared for the proposed renewal of license SUB–526 for Honeywell's uranium source conversion facility in Metropolis Il. A **Federal Register** notice documenting the completion of NRC's environmental review was published on October 16, 2019 (84 FR 55339).

This license renewal complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR Chapter 1. Accordingly, the license renewal issued on March 24, 2020, was effective immediately. The NRC prepared a safety evaluation report for the renewal of License SUB–526,and concluded that the licensee can continue to operate the facility without endangering the health and safety of the public and will not significantly affect the quality of the human environment for the duration of the license.

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
Honeywell International, Inc., Honeywell Metropolis Works ''Application for Renewal of USNRC Source Materials, SUB–526,'' February 8, 2017	ML17048A263
Honeywell International, Inc., ''[Supplement to] Submittal of License Renewal Application for Metropolis Works,'' September 20, 2017	ML17268A153
Honeywell International, Inc., Honeywell Metropolis Works, ''Honeywell License Renewal Application Revision 9/14/2018,'' October 8, 2018	ML18284A332
Honeywell International Inc., Letter from J. Price, ''Honeywell Metropolis Works Revised License Application,'' July 9, 2019	ML19192A168
Honeywell International Inc., Letter from J. Fulks, ''Honeywell Metropolis Works Revised License Application,'' December 19, 2019.	ML19357A061
Safety Evaluation Report, Renewal of Source Materials License SUB–526 for Honeywell International Inc., Honeywell Metropolis Works, Metropolis, Illinois, Docket 40–3392, March 24, 2020	ML19213A276
Honeywell Metropolis Works, Materials License SUB–526, Amendment 14, March 24, 2020	ML19211B649

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2017–0143. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0143); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: April 10, 2020.

For the Nuclear Regulatory Commission.

Andrea L. Kock,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–07946 Filed 4–14–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0104]

Information Collection: NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions.''

DATES: Submit comments by May 15, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0104 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2019–0104. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2009–0104 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The supporting statement and ''NRC Form 212, ''Qualifications Investigation Professional, Technical, and Administrative Positions'', are available in ADAMS under ML20007E641 and ML19186A402 respectively.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV*.

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 212, ''Qualifications Investigation Professional, Technical, and Administrative Positions.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 17, 2019 (84 FR 55593).

1. *The title of the information collection:* NRC Form 212, ''Qualifications Investigation Professional, Technical, and Administrative Positions.

2. *OMB approval number:* 3150–0033.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 212.

5. *How often the collection is required or requested:* The form is collected for every new hire to the NRC.

6. *Who will be required or asked to respond:* Former employers, supervisors, and other references indicated on the job application are asked to complete the NRC Form 212.

7. *The estimated number of annual responses:* 500.

8. *The estimated number of annual respondents:* 500.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 250.

10. *Abstract:* Information requested on NRC Form 212 is used to determine the qualifications and suitability of applicants for employment in professional, technical, and administrative positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel in OCHCO, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Dated: April 9, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–07904 Filed 4–14–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88610; File No. SR–NYSEARCA–2020–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37–E To Specify the Exchange's Source of Data Feeds From the Long-Term Stock Exchange, Inc.

April 9, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 6, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37–E to update the Exchange's source of data feeds from the Long-Term Stock Exchange, Inc. (''LTSE'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37–E, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37–E(d) to specify that, with respect to the LTSE, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from LTSE.

The Exchange proposes that this proposed rule change would be operative on the day that LTSE launches operations as an equities exchange, which is currently scheduled for May 15, 2020.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37–E(d) to update the data feed source for LTSE will ensure that Rule 7.37–E correctly identifies and publicly states on a market-by-market basis all of the specific securities information processor and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

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 proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–30 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–NYSEARCA–2020–30. 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

[4] On March 25, 2020, LTSE announced that it would begin phasing in securities on its production system on May 15, 2020. *See* LTSE Market Announcement: MA–202–008, available here: *https://longtermstockexchange.com/static/MA-2020-008-dfec5067f88285a0f563a894451b1f22.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[11] 15 U.S.C. 78s(b)(2)(B).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–30, and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07900 Filed 4–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88613; File No. SR–NYSE–2020–33]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Certain Changes and Corrections to the NYSE Rule 9000 Series

April 9, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 7, 2020, New York Stock Exchange LLC (''NYSE'' or 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 self-regulatory organization. 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 certain changes and corrections to the NYSE Rule 9000 Series (Code of Procedure). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes and corrections to the NYSE Rule 9000 Series (Code of Procedure), as follows.

Proposed Rule Change

In 2013, the Commission approved the Exchange's adoption of the Rule 8000 (Investigations and Sanctions) and Rule 9000 Series relating to investigation, discipline, sanction, and other procedural rules modeled on the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'').[4] The Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE National, Inc. (''NYSE National''), and NYSE Arca, Inc. (''NYSE Arca'') have since each adopted versions of the Rule 8000 and Rule 9000 Series.[5] The Exchange proposes certain changes in order to further harmonize its disciplinary rules with the disciplinary rules of its affiliates as well as to correct inconsistencies in the Rule 9000 Series.

First, Rule 9110 (Application) sets forth the types of proceedings to which the Rule 9000 Series applies and provides that, in performing the functions under the Rule 9000 Series, the Chief Regulatory Officer (''CRO'') and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. In order to strengthen and further safeguard the regulatory independence of the Exchange's CRO and Regulatory Staff, the Exchange proposes to add the following sentence to the end of the subsection:

> No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

The proposed sentence is based on the version of Rule 9110(a) adopted by the Exchange's affiliates NYSE Arca and NYSE National, which contains an identical sentence.[6]

Second, Rule 9120 (Definitions) sets forth the definitions applicable to the Rule 9000 Series. Under the definition of ''Interested Staff'' in Rule 9120(t)(B)(iii), the Exchange would add an ''s'' in parentheses after ''supervise'' to conform to NYSE Arca Rule 10.9120(t)(B)(iii).

Third, Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) sets forth the timing and contents of a decision of a Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and requests for review. Subsection (e)(2) provides that a majority decision with respect to an Exchange member that is an affiliate of the Exchange shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d–1(c)(1) and may not be reviewed pursuant to Rule 9310, which governs review by the Exchange's Board of Directors.

In order to conform Rule 9268(e)(2) with the changes proposed to Rule 9310(a) discussed below, and in order to further harmonize the Exchange's disciplinary rules with its affiliates, the Exchange proposes to delete the phrase ''an Exchange member that is'' before ''an affiliate of the Exchange'' and add the phrase ''as such term is defined in Rule 12b–2 under the Exchange Act'' after ''an affiliate of the Exchange.''

The proposed change would conform Rule 9268(e)(2) with NYSE Arca Rule 10.9268(e)(2), which contains the phrase ''an affiliate of the Exchange as such term is defined in Rule 12b–2 under the Exchange Act.'' Utilizing the definition of affiliate set forth in in Rule 12b–2 under the Exchange Act would not diminish the current scope or application of the Rule since the proposed definition of affiliate would continue to encompass member and member organizations. Moreover, the proposed change would add clarity and transparency to the Exchange's rules by using a definition of affiliate in the

[12] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02).

[5] In 2016, NYSE American adopted its Rule 8000 and Rule 9000 Series based on the NYSE and FINRA Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30). In 2018, the Commission approved NYSE National's adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENat–2018–02). In 2019, NYSE Arca adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''Release No. 85639'').

[6] *See* NYSE Arca Rule 10.9110(a); NYSE National Rule 10.9110(a).

federal securities laws that encompasses both members and member organizations, thereby avoiding potential confusion since Rule 9268(e)(2) currently uses ''member.''

Fourth, Rule 9310 governs review by the Exchange's board of directors. The Exchange proposes the following changes to Rule 9310.

In the first sentence of Rule 9310(a)(1)(A), the Exchange proposes to replace ''neither Party'' with ''none of the aforementioned persons.'' The proposed change is based on the version of Rule 9310(a)(1)(A) adopted by the Exchange's affiliates, which prohibits the persons set forth in the rule, and not just Parties, from requesting review by the affiliate's board of directors of a decision concerning an affiliate of that exchange.[7] The proposed change would thereby further ensure that decisions concerning an Exchange affiliate are final and cannot be appealed to the Exchange Board of Directors.

Similar to the changes discussed above to Rule 9268(e)(2), the Exchange would delete references to an Exchange member or member organization and instead refer to an affiliate of the Exchange as that term is defined in Rule 12b–2 under the Exchange Act in Rules 9310(a)(1)(A), 9310(a)(1)(B)(i) and 9310(a)(1)(B)(ii).

The proposed changes would harmonize Rule 9310 with NYSE Arca Rule 9310, which contains the phrase ''an affiliate of the Exchange as such term is defined in Rule 12b–2 under the Exchange Act,'' and with the proposed changes to Rule 9268 discussed above, which would use the same terms. Further, utilizing the definition of affiliate set forth in in Rule 12b–2 under the Exchange Act would not diminish the current scope or application of the rule since the proposed definition of affiliate would continue to encompass member and member organizations. Finally, by harmonizing Rule 9310 with Rule 9268, the proposal would add clarity and transparency to the Exchange's rules and further ensure that final determinations involving Exchange affiliates cannot be appealed to its Board of Directors.

Fifth, Rule 9560 (Expedited Client Suspension Proceeding) sets forth procedures for expedited suspension hearings. The Exchange proposes the following changes to Rule 9560.

The Exchange proposes to delete ''Client'' in the Rule 9560's heading. The word does not appear in the Rule 9560 heading adopted by any of the Exchange's affiliates.[8] The proposed change would work no substantive change to Rule 9560, which would otherwise remain unchanged.

The Exchange proposes to add ''or Panelist'' after ''Hearing Officer'' in three places in subsection (b)(2) and in two places in subsection (c)(1) of Rule 9560. The proposed change would conform the Exchange's rule with the analogous NYSE Arca and NYSE National provisions.[9] The proposed change to provide for the potential disqualification of Panelists in addition to Hearing Officers would contribute to fairer procedures consistent with Section 6(b)(7) of the Act.[10]

In Rule 9560(b)(2), the Exchange proposes two changes that would conform to the rules of the Exchange's affiliate NYSE Arca. First, the Exchange would delete the ''(a)'' following the reference to Rule 9233. The reference to subsection (a) does not appear in NYSE Arca Rule 10.9560(b)(2). The Exchange also believes that the correct reference should be to the entire rule. Second, the Exchange proposes to add a reference to Rule 9234, which governs recusal and disqualification of Panelists, following the reference to Rule 9233. The proposed change would reflect the addition of Panelists to Rule 9560 and conform to NYSE Arca Rule 10.9560(b)(2), which also refers to NYSE Arca Rule 10.9234.

Finally, the Exchange proposes to replace ''Chairman of the Hearing Panel'' with ''Hearing Officer'' in subsections (c)(1), (c)(2), (d)(1) and (e) of Rule 9560.

Rule 9560 was adopted in 2017 based on Cboe BZX Exchange, Inc. (''Cboe BZX'') Rule 8.17 and The Nasdaq Stock Market LLC (''Nasdaq'') Rule 9400 in order for the Exchange to have consistent rules for issuing cease and desist orders on an expedited basis to halt certain disruptive and manipulative quoting and trading activity.[11] Both the Cboe BZX and Nasdaq rule use the phrase ''Chairman of the Hearing Panel'' in subsections (c)(1), (c)(2), (d)(1) and (e), which the Exchange adopted without change. ''Chairman of the Hearing Panel'' is not defined in the Exchange's rules and is only used in Rule 9560. Rule 9120(r) defines ''Hearing Officer'' as ''an employee of FINRA who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against member organizations and covered persons.'' The Exchange believes that the correct reference in Rules 9560(c)(1), (c)(2), (d)(1) and (e) should be ''Hearing Officer.''[12]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,[15] in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would

[7] *See* NYSE American Rule 9310(a)(1)(A); NYSE Arca Rule 10. 9310(a)(1)(A); & NYSE National Rule 10.9310(a)(1)(A).

[8] *See* NYSE American Rule 9560; NYSE Arca Rule 10.9560; & NYSE National Rule 10.9560.

[9] *See* NYSE Arca Rule 10.9560(b)(2) & (c)(1) & NYSE National Rule 10.9560(b)(2) & (c)(1). *See* Release No. 85639, 84 FR at 16372, n. 69 (noting that the NYSE would submit a rule filing to harmonize Rule 9560 with NYSE Arca Rule 10.9560 providing for the recusal of both Hearing Officers and Panelists in expedited suspension hearings).

[10] 15 U.S.C. 78f(b)(7).

[11] *See* Securities Exchange Act Release Nos. 80807 (May 30, 2017), 82 FR 25856 (June 5, 2017) (SR–NYSE–2017–21); *see generally* Cboe BZX Rules 12.15 & 8.17 & Nasdaq Rule 2170 & 9400.

[12] The Exchange proposes to make similar changes to NYSE Arca Rules 10.9560(c)(1), (c)(2), (d)(1) and (e) that refer to ''Chief Hearing Officer'' and that should refer instead to ''Hearing Officer.''

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(7).

benefit from the increased clarity, thereby reducing potential confusion. Similarly, the Exchange believes that the proposed changes would also make the Exchange's disciplinary rules more consistent with the rules of its affiliates, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. Further, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, thereby furthering the objectives of Section 6(b)(7) of the Act.[16] Specifically, the Exchange believes that adding text to Rule 9110 to strengthen and further safeguard the regulatory independence of the Exchange's CRO and Regulatory Staff and providing for the recusal of Panelists in addition to Hearing Officers in expedited proceedings under Rule 9560 would continue to provide fair procedures for the suspending and disciplining of members and associated persons consistent with and in furtherance of the objectives of the objectives of Section 6(b)(7) of the Act.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending the Exchange's disciplinary rules to further harmonize those rules with the disciplinary rules of its affiliates and to correct inconsistencies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[16] *Id.*

[17] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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 Number SR–NYSE–2020–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–33 and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07903 Filed 4–14–20; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88615; File No. SR–NSCC–2020–802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV

April 9, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

hereby given that on March 16, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice SR–NSCC–2020–802 (''Advance Notice'') as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of modifications to NSCC's Rules & Procedures (''Rules'')[4] in order to enhance the calculation of certain components of the Clearing Fund formula. First, the proposed rule change would clarify and enhance the methodology for identifying securities as illiquid for purposes of determining the applicable calculation of the volatility component of the Clearing Fund formula, and would revise the definition of ''Illiquid Security'' in the Rules to reflect these changes.[5] Second, the proposed rule change would enhance the calculation of the haircut-based volatility component of the Clearing Fund formula that is applied to positions in (1) Illiquid Securities (which include securities that are priced at less than a penny (''sub-penny securities'') and initial public offerings (''IPOs'')), and (2) unit investment trusts (''UITs''). Third, the proposed rule change would eliminate the existing Illiquid Charge, as the risk it was designed to address would be addressed by the other enhancements being proposed. Finally, NSCC would make certain changes to Section I.(A) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules (''Procedure XV'')[6] for greater transparency. Each of these proposed changes are described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Proposed Changes

NSCC is proposing a number of enhancements to its methodology for calculations of certain components of the Clearing Fund. First, NSCC is proposing to (1) clarify and improve the transparency and use of the term ''Illiquid Security'' for purposes of determining the applicable calculation of the volatility component of the Clearing Fund formula to Net Unsettled Positions in those securities, and (2) enhance the methodology used in this term by including additional criteria.[7] Specifically, certain criteria relating to listing national securities exchanges would continue to be utilized and would be enhanced and described with greater clarity and transparency under the proposed changes. In addition, NSCC would (i) add securities' market capitalization and a median illiquidity ratio, as described in greater detail below, as additional measurements of liquidity and (ii) remove the references to OTC Bulletin Board and OTC Link issue. NSCC would revise the definition of ''Illiquid Security'' in the Rules to reflect these enhancements.

Second, NSCC would enhance the calculation of the haircut-based volatility component of the Clearing Fund methodology for Net Unsettled Positions in securities whose volatility is less amenable to statistical analysis and securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner. Currently, NSCC uses a fixed percentage in the calculation of charges for Net Unsettled Positions in each of these securities.[8] NSCC would modify these calculations by adding two specific categories for Illiquid Securities (as newly defined pursuant to the proposed changes) and UITs. For Illiquid Securities, NSCC would apply a percentage that is based on the applicable security's price level and for both Illiquid Securities and UITs, NSCC would recalculate the applicable percentages applied to such securities at least annually. NSCC would retain the existing general categories for securities whose volatility is less amenable to statistical analysis and securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner for securities that fall within those descriptions but that are not Illiquid Securities or UITs, and would continue to apply a fixed percentage to such securities.

Third, NSCC would eliminate the existing Illiquid Charge. The Illiquid Charge was designed to cover the risk that NSCC may be unable to easily liquidate Net Unsettled Positions in Illiquid Securities in the event of a Member default due to the securities' lack of marketability and other characteristics. This risk would be addressed by the enhanced criteria for identifying Illiquid Securities, and the enhanced calculation of the applicable haircut-based volatility charge proposed by this filing. Therefore, NSCC believes the Illiquid Charge would no longer be needed to address these risks. In connection with this proposed change, NSCC would also remove the definition of ''Illiquid Position'' from the Rules, as this term is only used in connection with the calculation of the Illiquid Charge.

Finally, NSCC would provide greater detail to describe the treatment of Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities in Section I.(A) of Procedure XV for greater transparency.

Each of the proposed changes is described in more detail below.

(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits

[3] On January 28, 2020, NSCC filed this Advance Notice as a proposed rule change (SR–NSCC–2020–003) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is available at *http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, available at *http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] *See* Rule 1 (Definitions and Descriptions). *Id.*

[6] Procedure XV, *supra* note 4.

[7] ''Net Unsettled Positions'' and ''Net Balance Order Unsettled Positions'' refer to net positions that have not yet passed their settlement date, or did not settle on their settlement date, and are referred to collectively in this filing as Net Unsettled Positions. NSCC does not take into account any offsets, such as inventory held at other clearing agencies, when determining Net Unsettled Positions for the purpose of calculating the volatility component. *See* Procedure XV, *supra* note 4.

[8] *See* Section I.(A)(1)(a)(ii) and Section I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[9] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit includes mitigation of potential losses to NSCC associated with liquidation of the Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[10] The aggregate of all Members' Required Fund Deposits, together with certain other deposits required under the Rules, constitutes the Clearing Fund of NSCC, which it would access, among other instances, should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.[11] Generally, the largest component of Members' Required Fund Deposits is the volatility component. The volatility component is designed to calculate the amount of money that could be lost on a portfolio over a given period of time assumed necessary to liquidate the portfolio, within a 99% confidence level.

NSCC has two methodologies for calculating the volatility component. For the majority of Net Unsettled Positions, NSCC calculates the volatility component as the greater of (1) the larger of two separate calculations that utilize a parametric Value at Risk (''VaR'') model, (2) a gap risk measure calculation based on the concentration threshold of the largest non-index position in a portfolio, and (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio (''VaR Charge'').[12] Pursuant to Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, certain Net Unsettled Positions are excluded from the calculation of the VaR Charge and are instead charged a haircut-based volatility component that is calculated by multiplying the absolute value of the position by a percent determined by NSCC that is (i) not less than 10% for securities whose volatility is less amenable to statistical analysis and (ii) not less than 2% for securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner.[13] Generally, certain equity securities, including Illiquid Securities, fall within the first category as securities whose volatility is less amenable to statistical analysis and fixed-income securities, including UITs, fall within the second category as securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner.[14] The securities that fall within either one of these categories tend to exhibit unpredictable illiquid characteristics, such as low trading volumes or infrequent trading. Because the VaR Charge is a model-based calculation, which generally relies on predictability, this charge may be less reliable for measuring market risk of securities that exhibit unpredictable illiquid characteristics.[15] Therefore, NSCC believes that the haircut-based volatility charge is a more appropriate measure of volatility for Net Unsettled Positions in these securities.

In addition to charging a haircut-based volatility component rather than a VaR Charge for certain Illiquid Securities, Members' Required Fund Deposits may also include an Illiquid Charge, which is calculated as described in Sections I.(A)(1)(h) and I.(A)(2)(f) of Procedure XV.[16] The Illiquid Charge is a component of the Clearing Fund that may be assessed with respect to ''Illiquid Positions,'' which are Net Unsettled Positions in ''Illiquid Securities'' that exceed applicable volume thresholds, as described in the definition of Illiquid Position in Rule 1 of the Rules.[17] The Illiquid Charge is designed to mitigate the risk that NSCC may face when liquidating Net Unsettled Positions in these securities following a Member default.

Currently, an Illiquid Security is defined in the Rules as ''a security, other than a family-issued security as defined in Procedure XV, that either (i) is not traded on or subject to the rules of a national securities exchange registered under [the Act]; or (ii) is an OTC Bulletin Board [18] or OTC Link issue.'' [19]

NSCC regularly assesses its market and credit risks, as such risks are related to its margining methodologies, to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market.[20] The proposed changes described below are a result of NSCC's regular review of the effectiveness of its margining methodology.

(ii) Proposed Enhancements to the Definition of Illiquid Security

NSCC is proposing to revise the Rules to (1) enhance certain existing criteria used in the definition of Illiquid Security for purposes of determining the applicable calculation of the volatility component; (2) remove certain criteria that would become unnecessary following the proposed enhancements; (3) enhance the definition by introducing additional criteria; and (4) repurpose the enhanced definition of Illiquid Security to use with respect to the calculation of the volatility component, as described below. NSCC believes that the proposed changes would provide Members with improved clarity and transparency into the methodology used to apply this definition. The proposed change would also provide NSCC with additional measures of a security's liquidity to improve its ability to apply margin that reflects the risk characteristics of that security.

Following the implementation of the proposed enhancements to this definition, as described below, the definition of Illiquid Security in Rule 1 of the Rules would be a security that: (i) Is not listed on a specified securities exchange (defined below) as determined on a daily basis; (ii) is listed on a specified securities exchange and, as

[9] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 4. NSCC's market risk management strategy is designed to comply with Rules 17Ad–22(e)(4) and (e)(6) under the Securities Exchange Act of 1934, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4) (e)(6).

[10] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services) of the Rules, *supra* note 4.

[11] *See* Procedure XV, *supra* note 4.

[12] *See* Sections I.(A)(1)(a)(i) and I.(A)(2)(a)(i) of Procedure XV, *supra* note 4.

[13] Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

[14] UITs are redeemable securities, or units, issued by investment companies that offer fixed security portfolios for a defined period of time.

[15] More specifically, the model that is used to calculate the VaR Charge relies on assumptions that are based on historic observations of a security's price. Such assumptions are not reliable predictors of price for securities that exhibit illiquid characteristics, which generally have low trading volumes or are infrequently traded.

[16] Sections I.(A)(1)(h) and I.(A)(2)(f) of Procedure XV, *supra* note 4.

[17] Rule 1, *supra* note 4.

[18] The OTC Bulletin Board is an interdealer quotation system that is used by subscribing members of the Financial Industry Regulatory Authority (''FINRA'') to reflect market making interest in eligible securities (as defined in FINRA's Rules). *See http://www.finra.org/industry/otcbb/otc-bulletin-board-otcbb.*

[19] OTC Link is an electronic inter-dealer quotation system that displays quotes from broker-dealers for many over-the-counter securities. *See https://www.otcmarkets.com.*

[20] *See* 17 CFR 240.17Ad–22(e)(6)(i), (e)(6)(vi).

determined on a monthly basis, (a)(I) its market capitalization is considered a micro-capitalization (as described below) as of the last business day of the prior month or (II) it is an American depositary receipt (''ADR''); and (b) the median of its calculated illiquidity ratio (defined below) of the prior six months exceeds a threshold that would be determined by NSCC on a monthly basis and is based on the 99th percentile of the illiquidity ratio of non-micro-capitalization common stocks [21] over the prior six months; or (iii) is listed on a specified securities exchange, and, as determined on a monthly basis, has fewer than 31 business days of trading history over the past 153 business days on such exchange. As discussed above, because the VaR Charge is a model-based calculation, which generally relies on predictability, the VaR Charge may be less reliable for measuring market risk of securities that exhibit unpredictable illiquid characteristics.[22] Each of the types of securities that would be in the definition of Illiquid Security are securities that tend to exhibit unpredictable illiquid characteristics including limited trading volumes or infrequent trading.

For purposes of this definition a ''specified securities exchange'' would be a national securities exchange that has established listing services and is covered by industry pricing and data vendors.[23] Initially, NSCC would define micro-capitalization as capitalization of less than $300 million. Consistent with generally prevailing views, NSCC believes that given the lack of public information and limited trading volumes, securities with capitalization below this threshold tend to involve higher risks and exhibit illiquid characteristics.[24] NSCC may adjust this definition from time to time as appropriate in order to continue to reflect a threshold that captures securities with capitalization that would indicate that the securities exhibit illiquid characteristics. Changes to the micro-capitalization threshold would be subject to NSCC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework'').[25] NSCC would notify Members of changes to the micro-capitalization threshold by important notice. For purposes of the definition of Illiquid Security, the ''illiquidity ratio'' of a security on any day would be equal to (i) the price return of such security on such day (based on the natural logarithm of the ratio between the closing price of the stock on such day to the closing price of the stock on the prior trading day) divided by (ii) the average daily trading amount [26] of such security over the prior 20 business days.[27]

(a) Enhancements to the Existing Criteria in the Definition of Illiquid Security

NSCC is proposing to enhance existing criteria in the definition of Illiquid Security as set forth below.

In the current definition, an Illiquid Security is a security that is ''either (i) not traded or subject to the rules of a national securities exchange registered under the Securities Exchange Act of 1934, as amended; or (ii) is an OTC Bulletin Board or OTC Link issue.'' [28] On a daily basis, NSCC receives from third party vendors data relating to securities processed through NSCC which indicates the exchanges, if any, on which each security is listed. If a security is not listed on of one of the national securities exchanges covered by the third party vendors, then, currently, NSCC would consider that security an Illiquid Security for the purpose of calculating the Illiquid Charge.[29] Based on historic performances, NSCC believes the national securities exchanges that the vendors cover for this purpose are appropriate for determining if a security exhibits characteristics of liquidity because such exchanges have established listing services and are covered by industry pricing and data vendors. NSCC believes that such exchanges tend to list securities that exhibit liquid characteristics such as having more available public information, larger trading volumes and higher capitalization. NSCC continues to believe this analysis is appropriate for identifying securities that exhibit illiquid characteristics, and would retain and enhance this criterion in the definition in the Rules by specifying that it uses the specified securities exchanges that have established listing services and that are covered by industry pricing and data vendors and providing that it would determine on a daily basis whether securities are subject to the rules of a specified securities exchange.

NSCC would use the same process for determining whether a security is an Illiquid Security based on if such security is listed on a national security exchange and would enhance the definition to reflect the process that will be used. NSCC would change ''national securities exchange registered under the Securities Exchange Act of 1934, as amended'' to ''specified securities exchange'' in the definition of Illiquid Security and add a defined term for ''specified securities exchange'', which would be a national securities exchange that has established listing services and is covered by industry pricing and data vendors.

As a further enhancement, NSCC is proposing to replace the phrase ''not traded on or subject to the rules of'' with ''not listed on'' to more accurately describe the process that NSCC and its vendors use to determine if a security is on a national securities exchange. In addition, determining whether a security is listed on an exchange is more definitive and more reliably verifiable

[21] Securities that are exchange-traded products (''ETPs'') or ADRs would not be included when calculating the illiquidity ratio threshold. ETPs are not included when calculating the illiquidity ratio threshold because the underlying common stocks that comprise the indexes of equity ETPs are included in the calculation. ADRs are not included when calculating the illiquidity ratio threshold because the market capitalization of ADRs may be difficult to calculate because each ADR often converts to different number of shares of a local security. In addition, if NSCC is unable to retrieve data to calculate the illiquidity ratio for the median illiquidity ratio for a security on any day, NSCC would use a default value for that day for purposes of the calculation for the security (*i.e.,* the security would essentially be treated as illiquid for that day).

[22] *See supra* note 15.

[23] The exchanges that would initially be specified securities exchanges are: New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market and Cboe BZX Exchange, Inc.

[24] *See, e.g., https://www.sec.gov/reportspubs/investor-publications/investorpubs microcapstockhtm.html.*

[25] *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–NSCC–2017–008) (describes the adoption of the Model Risk Management Framework of NSCC which sets forth the model risk management practices of NSCC) and Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009) (amends the Model Risk Management Framework). The Model Risk Management Framework describes the model management practices adopted by NSCC, which have been designed to assist NSCC in identifying, measuring, monitoring, and managing the risks associated with the design, development, implementation, use, and validation of ''models'' which would include the methodology for determining the volatility component of the Clearing Fund. *Id.*

[26] The daily trading amount equals the daily trading volume multiplied by the end-of-day price.

[27] NSCC believes that the 20-business day period is sufficient to reflect recent market activity for the security.

[28] *See* Rule 1, *supra,* note 4.

[29] The exchanges that have established listing services that the vendors cover for this purpose are: New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market and Cboe BZX Exchange, Inc. Members' Clearing Fund Summary reports, available through the DTCC Risk Portal, identify securities within their portfolio by the ticker symbol and whether those securities are considered Illiquid Securities for purposes of the calculation of the Illiquid Charge. This information provides Members with insight into the basis for their margin calculations.

than determining whether a security is traded on or subject to the rules of a securities exchange. NSCC is also proposing to remove references to the OTC Bulletin Board and OTC Link issues in the definition of Illiquid Security. NSCC believes that the definition as revised pursuant to this rule change would capture securities listed on the OTC Bulletin Board and OTC Link and the reference to such platforms is unnecessary.

NSCC is also proposing to remove the phrase ''other than a family issued security as defined in Procedure XV'' from the definition of Illiquid Security because family issued security is not defined in Procedure XV and, given the new proposed use of the definition of Illiquid Security together with other proposed changes, it is not necessary to exclude Family-Issued Securities from the definition. The current defined term ''Illiquid Security'' is only used in the defined term ''Illiquid Position'' and in sections relating to the Illiquid Charge which would be removed pursuant to the proposed changes as described herein. The phrase ''other than a family issued security as defined in Procedure XV'' was intended to ensure that long Net Unsettled Positions in Family-Issued Securities are excluded from the Illiquid Charge.[30] Currently, short Net Unsettled Positions in Family-Issued Securities whose volatility is less amenable to statistical analysis are subject to the haircut set forth in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV. In addition, short Net Unsettled Positions in Family-Issued Securities that are Illiquid Positions are currently subject to the Illiquid Charge.[31] Long Net Unsettled Positions in Family Issued Securities are not subject to the haircut set forth Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV nor to the Illiquid Charge.

As described below, following the proposed rule change, the defined term Illiquid Security would be repurposed to be used in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV which sections would apply to certain short Net Unsettled Positions in Family-Issued Securities.[32] As is the case currently, only long Net Unsettled Positions in Family-Issued Securities would be excluded from the calculations in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV which would be noted in I.(A)(1)(a)(ii) as proposed below. The proposed rule change would not change the treatment of long Net Unsettled Positions in Family-Issued Securities which would remain subject to the calculations set forth in Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV.

NSCC believes that each of these proposed changes would improve the definition for its new proposed purpose and improve Members' transparency into the application of the existing criteria of the Illiquid Security definition.

(b) New Criteria in the Definition of Illiquid Security

NSCC is also proposing to include additional criteria in order to identify securities that exhibit illiquid characteristics and may not be captured by the existing definition as described below.

Although the criterion for this definition relating to whether a security is traded on or subject to the rules of a specified securities exchange would be determined on a daily basis, as noted above, under the proposal, NSCC would also apply new criteria, described below, on a monthly basis, to identify those securities that are subject to the rules of a specified securities exchange but may still exhibit illiquid characteristics and should be identified as Illiquid Securities. The new criteria would be based on (i) the security's market capitalization and (ii) the trading history of the security. In addition, ADRs would also be subject to additional review to determine if they should be deemed to be Illiquid Securities.

First, NSCC is proposing to revise the definition of Illiquid Security to identify securities issued by an entity with a micro-capitalization, which can be a characteristic of illiquidity. For purposes of this criterion, NSCC would calculate the product of the outstanding shares and market price on a daily basis for each issuance. Each month, NSCC would use the average of those calculations over the prior month to determine market capitalization. If the average for a particular security is below a threshold determined by NSCC from time to time, the security would be considered micro-capitalization. Initially, NSCC would define micro-capitalization as capitalization of less than $300 million. Securities with a capitalization below $300 million and which are considered micro-capitalization tend to exhibit illiquid characteristics such as limited public information and lower trading volumes. NSCC may update the micro-capitalization threshold from time to time as announced by an important notice to the Members. Changes to the threshold would be subject to NSCC's model risk governance procedures set forth in the Model Risk Management Framework.[33]

If the average market capitalization of a security is considered micro-capitalization or if the security is an ADR, then the security would be subject to an additional illiquidity ratio test described below to determine if it is an Illiquid Security. NSCC believes it is appropriate to subject a security to the illiquidity ratio test if a security is considered within the range of micro-capitalization because the capitalization of a security could be an indicator of the lack of liquidity of a security. In addition, for ADRs, the market capitalization of the ADR may be difficult to calculate because each ADR often converts to different number of shares of a local security. As a result, NSCC has decided to subject all ADRs to the illiquidity ratio test to determine if it is an Illiquid Security. As noted

[30] Long Net Unsettled Positions in Family-Issued Securities are not subject to the Illiquid Charge because the risk that long Net Unsettled Positions in Family-Issued Securities raise, wrong way risk, is separately provided for by a separate charge for such securities. *See* Section I.(A)(1)(a)(iv) and Section I.(A)(2)(a)(iv), *supra* note 4. Wrong way risk is a risk that an exposure to a counterparty is highly likely to increase when the creditworthiness of that counterparty deteriorates. *See* Principles for financial market infrastructures, issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, pg. 47 n.65 (April 2012), *available at http://www.bis.org/publ/cpss101a.pdf.* Short Net Unsettled Positions in Family-Issued Securities do not present the same wrong way risk as long Net Unsettled Positions in Family-Issued Securities. See note 29 below.

[31] The defined term ''Illiquid Security'' currently excludes ''a family issued security as defined in Procedure XV'', however, family issued security is not defined in Procedure XV. The defined term Illiquid Security was added to the Rules in 2017. *See* Securities Exchange Act Release No. 80260 (March 16, 2017), 82 FR 14781 (March 22, 2017) (File No. SR–NSCC–2017–001). When the defined term was added, the section where family issued securities was defined in Procedure XV was referring to a separate charge that was applied to long Net Unsettled Positions in Family-Issued Securities and the exclusion of ''family issued security'' from the defined term Illiquid Security was intended to refer to long Net Unsettled Positions in Family-Issued Securities not short Net Unsettled Positions in Family-Issued Securities.

[32] NSCC has identified exposure to specific wrong-way risk when it acts as central counterparty to a Member with long positions in Family-Issued Securities. In the event a Member with long positions in Family-Issued Securities defaults, NSCC would close out those positions following a likely drop in the creditworthiness of the issuer, possibly resulting in a loss to NSCC from a resulting drop in price in the securities. As such, NSCC provides a specific charge for such securities. *See id.* Short positions present a different risk profile than long positions in this close out scenario based on, in part, the difference in the potential responsiveness of price change to quantity that may occur when NSCC is liquidating a long position in an Illiquid Security, compared to when it is liquidating a short position. As a result, the charge for Family-Issued Securities is only applied to long positions in such securities.

[33] *See supra* note 25.

above,[34] ETPs and ADRs would be excluded from the pool of securities that are used to calculate the illiquidity ratio threshold. However, ETPs that are considered micro-capitalization and ADRs would be subject to the illiquidity ratio test to determine if they are Illiquid Securities.

If a security is considered within the range of micro-capitalization or if the security is an ADR, it would be subject to additional illiquidity ratio test that would include the application of an ''illiquidity ratio'' to determine if the security should be deemed an Illiquid Security. The illiquidity ratio of a security on any day would be equal to (i) the security's price return on such day (based on the natural logarithm of the ratio between the closing price of the stock on such day to the closing price of the stock on the prior trading day) divided by (ii) the average daily trading amount [35] of such security over the prior 20 business days.[36] The illiquidity ratio for each security that is subject to this illiquidity ratio test would be determined monthly.

A security that is subject to the illiquidity ratio test would only be deemed an Illiquid Security if the calculated median illiquidity ratio of the prior six months exceeds a threshold to be determined by NSCC on a monthly basis based on the 99th percentile of the illiquidity ratio of non-micro-capitalization common stocks over the prior six months.[37] If the calculated median illiquidity ratio of a security did not exceed such threshold it would not be deemed an Illiquid Security and would be subject to the VaR Charge. NSCC believes the illiquidity ratio would provide it with a reliable measurement of a security's liquidity because NSCC would use the absolute value of the daily return-to-volume ratio to capture price impact. Given the same dollar amount of trading activity, higher price impact typically indicates less liquidity.

Second, NSCC would include in the Illiquid Security definition securities that are subject to the rules of a specified securities exchange, but, as determined on a monthly basis, have fewer than 31 business days of trading history over the past 153 business days on such exchange. NSCC has historically used this time period to identify IPOs which tend to exhibit illiquid characteristics due to their limited trading history.[38]

In order to implement these proposed changes, NSCC would include these additional criteria in the revised definition of ''Illiquid Security'' in Rule 1 of the Rules.

(iii) Proposed Enhancement to the Volatility Component Applicable to Illiquid Securities and UITs

NSCC is also proposing to enhance the calculation of the haircut-based volatility component for Illiquid Securities and UITs. As described above, Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV currently provide that NSCC has the discretion to exclude from the VaR Charge Net Unsettled Positions in classes of securities whose volatility is (1) less amenable to statistical analysis, or (2) amenable to generally accepted statistical analysis only in a complex manner, and permits NSCC to instead calculate the volatility charge for Net Unsettled Positions in these securities as a haircut-based charge.[39]

Pursuant to this authority, NSCC calculates the volatility charge for IPOs by multiplying the absolute value of the Net Unsettled Position by a fixed 15%, and calculates the volatility charge for all other Illiquid Securities (as currently defined) and sub-penny securities by multiplying the absolute value [40] of the Net Unsettled Position by a fixed 20%. Net Unsettled Positions in UITs are subject to the same haircut-based volatility charge as other securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner. Today, NSCC generally does not adjust the applicable haircut-based volatility charge, which is a percent that is no less than 2%, pursuant to Procedure XV.

Based on backtesting results, NSCC has observed that market price movements are correlated to a security's market price. Therefore, NSCC believes it would be able to calculate a haircut-based volatility charge that more appropriately addresses the risks presented by a Net Unsettled Position if NSCC considers a security's price level or risk profile when determining the haircut percentage to be used in that calculation. As described below, NSCC is proposing to enhance the calculation of the haircut-based volatility component for Illiquid Securities and UITs. In order to implement the changes described below, NSCC would revise Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV by including new subsections (A)(I) and (II) and (B)(I) and (II) relating to such securities.

a. Enhancing the Volatility Charge for Illiquid Securities

First, NSCC is proposing to enhance the haircut-based volatility charge for Illiquid Securities. The applicable percent would be determined at least annually [41] as the highest of (1) 10%, (2) a percent benchmarked to be sufficient to cover 99.5th percentile of the historical 3-day return of each group of Illiquid Securities [42] in each Member's portfolio and (3) a percent benchmarked to be sufficient to cover 99th percentile of the historical 3-day return of each group in each Member's portfolio after incorporating a fixed transaction cost.[43] The applicable percent, and the determination of how often the applicable percent is determined if more often than annually, would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[44] The look-back period for this calibration would be no less than five years and would initially be five years to be consistent with the historical data set used in model development. The look-back period may be adjusted by NSCC as necessary consistent with the model risk management practices adopted by NSCC to respond to, for example, market events that impact liquidity in the market and Member backtesting

[34] *See supra* note 21.

[35] *Supra* note 26.

[36] For example, assuming Stock A has a closing price of $10 on day 1, and a closing price of $11 on day 2, then the ''price return'' as of day 2 would be abs(log(11/10)) = 0.09531018. Assuming the average daily trading amount of the stock over the prior 20 business days is $1,100,000, the daily ''illiquidity ratio'' for Stock A on day 2 is 0.09531018 divided by 1,100,000 × 10^6 = 0.0866.

[37] *See supra* note 21.

[38] NSCC has observed that the use of the metric, 31 business days of trading over the past 153 business days, has been useful in identifying securities, such as IPOs, that exhibit illiquid characteristics based on their limited trading history. As such, NSCC would use this metric in the definition of Illiquid Security to ensure that these securities, including IPOs, are identified as Illiquid Securities.

[39] *See* Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

[40] For purposes of the calculating the absolute value, the share price of each sub-penny security is rounded up to one cent. If a transaction in any security with a share price below one cent is entered into NSCC's Continuous Net Settlement system or Balance Order Accounting Operation, NSCC rounds up the price of the security to one cent.

[41] A number of important considerations consistent with the model risk management practices adopted by NSCC could prompt more frequent haircut review, such as material deterioration of Members' backtesting performance, market events or structure changes, and model validation findings. *See also* Model Risk Management Framework *supra* note 25.

[42] NSCC would group Illiquid Securities by price level, and Illiquid Securities that are sub-penny securities would be separately grouped by long or short position, as discussed in more detail below.

[43] The fixed transaction cost would be equal to one-half of the estimated bid-ask spread and would be included in the simulated liquidation gain/loss of the positions in each Member's portfolio.

[44] *See supra* note 25.

deficiencies. Adjustments to the look-back period would be subject to NSCC's model risk governance procedures set forth in the Model Risk Management Framework.[45] Generally, lower priced securities that may present NSCC with a greater risk would be charged a haircut-based volatility charge based on a higher percent.

NSCC would group Illiquid Securities by price level, and Illiquid Securities that are sub-penny securities would be separately grouped by long or short position, where each group is assigned a percent to be used in the calculation of the haircut-based volatility charge. The price level groupings would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[46] The proposal would allow NSCC to calculate this charge based on the market price of Illiquid Securities. With respect to an Illiquid Security that is not a sub-penny security, NSCC would calculate one haircut-based volatility charge for short and long positions. However, with respect to an Illiquid Security that is a sub-penny security, NSCC would calculate the haircut-based volatility charge for short positions and long positions separately. NSCC believes the proposed change is appropriate for Illiquid Securities that are sub-penny securities, particularly as short positions in sub-penny securities could experience price movements of more than 100%. Further, these securities are typically issued by companies with low market capitalization, and may be susceptible to market manipulation, enforcement actions, or private litigation. The proposed change would allow NSCC to calculate a haircut-based volatility charge that accounts for this risk of price movements. Although sub-penny securities would be separately grouped by price level based on the sub-penny values, since the price of sub-penny securities is rounded up to one cent when it is entered into the Continuous Net Settlement System and Balance Order Accounting Operation, the current market price of each sub-penny security would be deemed to be one cent for purposes of applying the haircut-based volatility charge.

By setting a floor of 10%, the proposal would allow NSCC to charge an amount that has been adequate, based on historical observation, to address risks presented by Net Unsettled Positions in these securities and is consistent with the current methodology, which also sets a floor for the haircut-based volatility charge of no less than 10%. In this way, the haircut-based volatility charge would be calculated to allow NSCC to collect margin at levels that reflect the risk presented by these Net Unsettled Positions. Unlike the current methodology which provides NSCC the discretion to apply a haircut, NSCC would not have discretion as to whether to apply the haircut-based volatility charge to Illiquid Securities and all Illiquid Securities would be subject to the charge.

In order to implement this proposed change, NSCC would describe the haircut-based volatility charge applicable to Illiquid Securities in the new Sections I.(A)(1)(a)(ii)(B)(I) and I.(A)(2)(a)(ii)(B)(I) of Procedure XV.

b. Enhancing the Volatility Charge for UITs

NSCC is also proposing to revise the calculation of the haircut-based volatility charge applied to UITs by reviewing the percent used in this calculation at least annually, in order to apply a haircut-based volatility charge to Net Unsettled Positions in UITs that is more closely based on a measurement of the risk presented by Members' portfolio composition and market conditions.

Currently, NSCC applies a haircut-based volatility charge that is a fixed 2% to Net Unsettled Positions in securities whose volatility is amenable to generally accepted statistical analysis (for example, the methodology used to calculate the VaR Charge) only in a complex manner, which include UITs. NSCC is proposing to continue to apply a haircut-based volatility charge to Net Unsettled Positions in UITs that would be no less than 2%, as currently provided for in Procedure XV, but would re-calculate the applicable percent designated by NSCC at least annually. The re-calculation of the applicable percent would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[47] Subject to this existing floor, the applicable percent would be benchmarked to be sufficient to cover 99.5th percentile of the historical 3-day return of UITs in each Member's portfolio, with a lookback period of no less than five years. Unlike the current methodology which provides NSCC the discretion to apply a haircut, NSCC would not have discretion as to whether to apply the haircut-based volatility charge to UITs and all UITs would be subject to the charge.

In order to implement this proposed change, NSCC would describe the haircut-based volatility charge applicable to UITs in the new Sections I.(A)(1)(a)(ii)(B)(II) and I.(A)(2)(a)(ii)(B)(II) of Procedure XV.

c. Enhancing Existing Language for Volatility Charge

NSCC is also proposing to re-arrange the existing language relating to securities whose volatility is (1) less amenable to statistical analysis, or (2) amenable to generally accepted statistical analysis only in a complex manner, to clarify the language and make it more transparent. NSCC would move the description of securities whose volatility is less amenable to statistical analysis to new Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV and move the description of securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner to new Sections I.(A)(1)(a)(ii)(A)(II) and I.(A)(2)(a)(ii)(A)(II). NSCC would indicate that securities that are Illiquid Securities or UITs would not be subject to these general categories. NSCC would also remove the phrase ''such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar threshold (*e.g.,* five dollars)'' which was intended as an example of securities whose volatility is less amenable to statistical analysis because NSCC does not believe that the example adequately describes all of the securities that are less amenable to statistical analysis and may be misleading. In addition, securities in the example would include securities that are Illiquid Securities and that would no longer be subject to this general category. In addition, NSCC is proposing to remove the phrase ''other than corporate and municipal bonds,'' which qualifies securities amenable to generally accepted statistical analysis only in a complex manner, because the treatment of corporate and municipal bonds would be clarified as set forth in subsection (v) below.

NSCC believes that the new defined term Illiquid Security would identify all securities for which a haircut is currently applied because such securities are less amenable to statistical analysis pursuant to Sections I.(A)(1)(a)(ii)(x) and I.(A)(2)(a)(ii)(x) of Procedure XV.[48] The haircut for Illiquid Securities upon implementation of the rule change would be calculated pursuant to the new category for Illiquid Securities under Sections

[45] *See supra* note 25.

[46] *See supra* note 25.

[47] *See supra* note 25.

[48] *See* Sections I.(A)(1)(a)(ii)(x) and I.(A)(2)(a)(ii)(x) of Procedure XV, *supra* note 4.

I.(A)(1)(a)(ii)(B)(I) and I.(A)(2)(a)(ii)(B)(I) of Procedure XV rather than Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV. NSCC believes that UITs are currently substantially all of the securities for which a haircut is currently applied because such securities are amenable to generally accepted statistical analysis only in a complex manner pursuant to Sections I.(A)(1)(a)(ii)(y) and I.(A)(2)(a)(ii)(y) of Procedure XV.[49] The haircut for UITs upon implementation of the rule change would be calculated pursuant to the new category for UITs under Sections I.(A)(1)(a)(ii)(B)(II) and I.(A)(2)(a)(ii)(B)(II) of Procedure XV rather than Sections I.(A)(1)(a)(ii)(A)(II) and I.(A)(2)(a)(ii)(A)(II) of Procedure XV.

There are some types of securities that are amenable to generally accepted statistical analysis only in a complex manner that would not constitute UITs and for which a haircut would continue to be calculated using the category for securities that are amenable to generally accepted statistical analysis only in a complex manner upon implementation of the rule change. NSCC believes that there are no current types of securities for which the haircut would be calculated using the general category for securities that are less amenable to statistical analysis upon implementation of the rule change. NSCC, however, may deem it necessary to calculate a haircut for securities that fall within this existing category, if such securities do not fall within the categories for Illiquid Securities, after assessing margin suitability or future asset class reviews. Therefore, NSCC is proposing to keep these two more general categories in the Rules revised as contemplated above. As with these existing general categories currently, NSCC would have the discretion to determine whether a security fits within one of these categories. NSCC would follow its existing risk management practices and procedures when determining whether to apply a security that is not an Illiquid Security or a UIT to one of these categories. Applying a new security to one of these categories would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[50]

(iv) Proposal To Eliminate the Illiquid Charge

NSCC is proposing to eliminate the existing Illiquid Charge in conjunction with the aforementioned enhancements. The Illiquid Charge is currently imposed on Net Unsettled Positions in Illiquid Securities, in addition to other applicable components of the Clearing Fund. Because the current haircut-based volatility charge is a flat charge, calculated as a percentage of the absolute value of these Net Unsettled Positions, it may not currently address the lack of liquidity and marketability that are characteristic of Illiquid Securities. The Illiquid Charge is calculated and applied to address these additional risks. Currently, due to the existing definition of Illiquid Security, the Illiquid Charge has limited applicability, and generally only applies to a small population of securities that exhibit illiquid characteristics (*i.e.,* over-the-counter securities traded off-exchange).[51]

However, NSCC believes the proposed enhancements would address the risks presented by Net Unsettled Positions in Illiquid Securities more adequately. As described above, the enhanced methodology for identifying Illiquid Securities would enable NSCC to identify additional securities that could pose credit exposure to NSCC. Further, NSCC believes that the proposed methodology for calculating the applicable haircut-based volatility charge would be more responsive to the risks presented by Net Unsettled Positions in those securities because it would be based on historical performance and would be recalibrated more frequently. Therefore, NSCC is proposing to eliminate the Illiquid Charge in connection with these proposed rule changes as it would be no longer needed to address the risks presented by Illiquid Securities.

In connection with this change, NSCC would also remove the definition of ''Illiquid Position'' from Rule 1 of the Rules, as this term is only used in connection with the Illiquid Charge.

In order to implement this proposed change, NSCC would amend Rule 1 of the Rules by removing the definition of ''Illiquid Position,'' and NSCC would amend Procedure XV by removing references to the Illiquid Charge in subsection (g) of Section I.(A)(1) and subsection (e) of Section I.(A)(2) and removing subsection (h) of Section I.(A)(1) and subsection (f) of Section I.(A)(2) where the Illiquid Charge is currently described.

(v) Proposal To Enhance Language in Section I.(A) of Procedure XV

In addition to the enhancements described above, NSCC is proposing to make the following changes to Section I.(A) of Procedure XV: (x) Add language in subsections (1)(a)(ii) and (iii), and (2)(a)(ii) and (iii), that indicates that Net Unsettled Positions in corporate and municipal bonds are excluded from calculations in subsections (1)(a)(i) and (ii), and (2)(a)(i) and (ii), respectively; and (y) add language in subsections (1)(a)(ii) and (iv), and 2(a)(ii) and (iv), that indicates that long Net Unsettled Positions in Family-Issued Securities are excluded from calculations in subsections (1)(a)(i) and (ii), and (2)(a)(i) and (ii), respectively. The current language indicates that corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities are excluded from calculations in subsections (1)(a)(i) and (2)(a)(i) but does not explicitly indicate that corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities are excluded from (1)(a)(ii) and (2)(a)(ii). NSCC currently applies a haircut for corporate and municipal bonds pursuant to (1)(a)(iii) and (2)(a)(iii) and long Net Unsettled Positions in Family-Issued Securities pursuant to subsections (1)(a)(iii) and (2)(a)(iii) and does not apply a haircut for those securities pursuant to subsections (1)(a)(ii) or (2)(a)(ii).[52] The proposed changes are intended to improve Members' transparency into the treatment of Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities in Section I.(A) of Procedure XV and would not change NSCC's methodology with respect to corporate and municipal bonds or long Net Unsettled Positions in Family-Issued Securities.

Expected Effect on and Management of Risk

NSCC believes that the proposed changes to enhance the margining

[49] *See* Sections I.(A)(1)(a)(ii)(y) and I.(A)(2)(a)(ii)(y) of Procedure XV, *supra* note 4. Note that the haircuts for municipal and corporate bonds which are also fixed-income securities that are amenable to generally accepted statistical analysis only in a complex manner are separately calculated pursuant to Sections I.(A)(1)(a)(iii) and I.(A)(2)(a)(iii) of Procedure XV. *See* Sections I.(A)(1)(a)(iii) and I.(A)(2)(a)(iii) of Procedure XV, *supra* note 4. Examples of fixed income securities that may remain subject to calculations under Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV would include preferred stock or other fixed income securities that are amenable to generally accepted statistical analysis only in a complex manner other than UITs or corporate or municipal bonds.

[50] *See supra* note 25.

[51] Between November 2017 and November 2018, the Illiquid Charge represented an average of approximately 1.5% of the total Clearing Fund requirement.

[52] As discussed above, currently, short Net Unsettled Positions in Family-Issued Securities whose volatility is less amenable to statistical analysis are subject to the haircut set forth in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV. In addition, short Net Unsettled Positions in Family-Issued Securities that are Illiquid Positions are currently subject to the Illiquid Charge.

methodology applied to Illiquid Securities and UITs and to eliminate the Illiquid Charge would enable NSCC to better limit its risk exposures to Members arising out of their Net Unsettled Positions.

First, the proposal to enhance the methodology for identifying Illiquid Securities would improve NSCC's ability to limit its risk exposures posed by Net Unsettled Positions in these securities by allowing it to (1) better identify securities that exhibit illiquid characteristics, and (2) calculate a volatility margin component that is appropriate for those characteristics.

Second, the proposal to enhance the calculation of the volatility component applied to Net Unsettled Positions in Illiquid Securities and in UITs would enable NSCC to limit its credit exposures posed by these securities. The proposal would more appropriately address the risks presented by a Net Unsettled Position in these securities by applying a calculation that considers a security's price level and risk profile when determining the haircut percentage to be used in that calculation. Therefore, by enabling NSCC to calculate and collect margin that more accurately reflects the risk characteristics of Illiquid Securities and UITs in its Members' Net Unsettled Positions, these proposals would enhance NSCC's risk management capabilities.

Finally, NSCC's proposal to eliminate the Illiquid Charge would affect NSCC's management of risk by removing a component from the Clearing Fund calculations that is no longer needed to address the risks posed by Net Unsettled Positions in Illiquid Securities. Such risks would be better addressed by the proposed changes to the methodology for identifying Illiquid Securities and the enhancement to the calculation of the applicable volatility charge. This proposed change would remove a component from its Clearing Fund that would no longer be needed to effectively manage risks.

By providing NSCC with a more effective measurement of its exposures, as described above, the proposed change would also mitigate risk for Members because lowering the risk profile for NSCC would in turn lower the risk exposure that Members may have with respect to NSCC in its role as a central counterparty.

Consistency With the Clearing Supervision Act

Although the Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') does not specify a standard of review for an advance notice, its stated purpose is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[53]

NSCC believes that the proposal is consistent with the Clearing Supervision Act, specifically with the risk management objectives and principles of Section 805(b), and with certain of the risk management standards adopted by the Commission pursuant to Section 805(a)(2), for the reasons described below.[54]

(i) Consistency With Section 805(b) of the Clearing Supervision Act

For the reasons described below, NSCC believes that the proposed changes in this advance notice are consistent with the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act and in the Covered Clearing Agency Standards.

As discussed above, NSCC is proposing to (i) change to the way it identifies illiquid securities and the way it calculates the volatility component of the Clearing Fund as applied to Net Unsettled Positions in illiquid securities and UITs, (ii) enhance the calculation of the haircut-based volatility component of the Clearing Fund Formula that is applied to such illiquid securities and UITs and (iii) eliminate the Illiquid Charge as the risk it was designed to address would be addressed by the other enhancements. The volatility charge is one of the components of its Members' Required Fund Deposits—a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. NSCC believes the proposed changes are consistent with promoting robust risk management because they are designed to enable NSCC to better limit its exposure to Members in the event of a Member default.

First, NSCC's proposal to introduce additional criteria for identifying illiquid securities by enhancing the definition of ''Illiquid Security'' and using the definition for purposes of determining the volatility component of the Clearing Fund formula would better enable NSCC to limit its exposures to Net Unsettled Positions in securities that exhibit illiquid characteristics. Second, the proposal to enhance the calculation of the haircut-based volatility charge as applied to Illiquid Securities and UITs would better enable NSCC to limit its exposures to Members by basing this calculation on the risk characteristics of these securities. Finally, NSCC's proposal to eliminate the Illiquid Charge would enable NSCC to remove a component of the Required Fund Deposit that is no longer needed to address risks that would be more adequately addressed through the proposed enhancements to existing risk management measures, as described above.

Furthermore, NSCC believes that the changes proposed in this advance notice are consistent with promoting safety and soundness, which, in turn, is consistent with reducing systemic risks and supporting the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.[55] The proposed changes are designed to better limit NSCC's exposures to Members in the event of Member default. As discussed above, the proposed enhancements to the definition of Illiquid Security are designed to capture additional securities that exhibit illiquid characteristics, and would allow NSCC to limit its exposure to Members by applying a volatility component that is a more appropriate measure of volatility for Net Unsettled Positions in these securities. The proposed enhancements to the haircut-based volatility charge for Illiquid Securities and UITs would allow NSCC to collect margin at levels that better reflect the risk presented by these Net Unsettled Positions and would help NSCC limit its exposures to Members.

Removing the Illiquid Charge would help ensure the Clearing Fund calculation would not include unnecessary components, particularly as NSCC would be better able to address the risks this charge was designed to address through the other proposed risk management enhancements.

By better limiting NSCC's exposures to Members in the event of a Member default, the proposed changes are consistent with promoting safety and soundness, which, in turn, is consistent with reducing systemic risks and supporting the stability of the broader financial system.

As a result, NSCC believes the proposal would be consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act, which specify the promotion of robust

[53] *See* 12 U.S.C. 5461(b).

[54] 12 U.S.C. 5464(a)(2) and (b).

[55] 12 U.S.C. 5464(b).

risk management, promotion of safety and soundness, reduction of systemic risks and support of the stability of the broader financial system.[56]

(ii) Consistency With Section 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like NSCC, and financial institutions engaged in designated activities for which the Commission is the supervisory agency or the appropriate financial regulator.[57] The Commission has accordingly adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (''Covered Clearing Agency Standards'').[58]

The Covered Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[59] NSCC believes that the proposed changes are consistent with Rules 17Ad–22(e)(4)(i) and (e)(6)(i) and (v), each promulgated under the Act.[60]

Rule 17Ad–22(e)(4)(i) under the Act[61] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

As described above, NSCC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, the proposed changes to the methodology for identifying Illiquid Securities would allow NSCC to better identify securities that may present credit exposures, for purposes of applying an appropriate margin charge. The proposed enhancements to the volatility charge applicable to Illiquid Securities and UITs would provide NSCC with a more effective measure of the risks that may be presented to NSCC by positions in the securities. Specifically, the proposal to base the calculation of the haircut-based volatility charge applied to positions in Illiquid Securities and UITs on those securities' price level and risk profile would enable NSCC to manage its credit exposures by allowing NSCC to collect and maintain sufficient resources to cover those credit exposures fully with a high degree of confidence. As an example, a recent impact study indicated that under the current methodology short positions in sub-penny securities and securities priced between one cent and one dollar exhibited the lowest average backtesting coverage percentages with 96.2% during the study period, whereas using the proposed methodology average backtesting coverage percentage for such securities would have increased to 99.5% over the study period. NSCC also believes that with the proposed changes NSCC could remove the Illiquid Charge from the Clearing Fund formula because the proposed changes would provide NSCC with a more effective measure of risks related to Net Unsettled Positions in Illiquid Securities. As such, the proposed enhancements to the calculation of the volatility component would permit NSCC to more effectively identify, measure, monitor and manage its exposures to risk, and would enable it to better limit its exposure to potential losses from Member default.

Therefore, NSCC believes that the proposal would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[62]

Rule 17Ad–22(e)(6)(i) under the Act[63] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's credit exposures to Members. NSCC is proposing changes that are designed to more effectively address risk characteristics of Net Unsettled Positions in Illiquid Securities. NSCC believes that these changes would enable NSCC to produce margin levels that are more commensurate with the particular risk attributes of these securities, including the risk of increased transaction and market costs to NSCC to liquidate or hedge due to lack of liquidity or marketability of such positions.

For example, by enhancing the methodology for Illiquid Securities through an additional review of market capitalization of a security and the use of an illiquidity ratio, NSCC believes that the proposed change would allow NSCC to better identify those securities that may exhibit illiquid characteristics. The proposed changes to the haircut-based methodology to base the calculation on the price level and risk profile of the applicable security, rather than a static percent, would, NSCC believes, enable NSCC to more effectively measure the risks that are particular to Illiquid Securities and UITs. Backtesting results indicate that by calculating a haircut-based volatility charge that addresses the risks presented by a security's price level or risk profile, the proposed methodology would result in a volatility charge that more appropriately addresses the risk of these securities.

These proposed changes are designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios that exhibit illiquid risk attributes. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[64]

Rule 17Ad–22(e)(6)(v) under the Act[65] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. NSCC is proposing to eliminate the Illiquid Charge because, NSCC believes, the other proposed

[56] *Id.*

[57] 12 U.S.C. 5464(a)(2).

[58] 17 CFR 240.17Ad–22(e).

[59] *Id.*

[60] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(6)(i) and (v).

[61] 17 CFR 240.17Ad–22(e)(4)(i).

[62] *Id.*

[63] 17 CFR 240.17Ad–22(e)(6)(i).

[64] *Id.*

[65] 17 CFR 240.17Ad–22(e)(6)(v).

changes would provide NSCC with a more effective measure of the risks presented by Illiquid Securities. Eliminating this charge would enable NSCC to remove what would become, with the implementation of the other proposed changes, an unnecessary component from the Clearing Fund calculation, and would help NSCC to rely on a more appropriate method of measuring its exposures to this risk. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(v) under the Act.[66]

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[67] NSCC requests that the Commission notify NSCC that it has no objection to the Advance Notice as soon as practicable. As discussed in this filing, the proposed changes would improve NSCC's ability to manage the risks presented to it by positions in illiquid securities and UITs. More specifically, the proposed changes would (1) allow NSCC to better identify securities that exhibit illiquid characteristics and may present credit exposures for purposes of applying an appropriate margin charge, and (2) enhance the volatility charge applicable to illiquid securities and UITs to provide NSCC with a more effective measure of the risks that may be presented to NSCC by positions in these securities.

NSCC believes that both the current and recent market volatility, as well as rapidly developing world events that could be reasonably expected to cause prolonged and potentially extreme market volatility, could have a sudden negative impact on liquidity in certain market segments.

Therefore, NSCC believes that there is good cause for the Commission to notify NSCC that it has no objection to the Advance Notice as soon as practicable, to allow NSCC to implement these important and time-sensitive risk management enhancements and have the ability to more effectively mitigate the risks presented by positions in illiquid securities and UITs.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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–NSCC–2020–802 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2020–802. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2020–802 and should be submitted on or before April 30, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07896 Filed 4–14–20; 8:45 am]

BILLING CODE 8011–01–P

[66] *Id.*

[67] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88611; File No. SR–NYSENAT–2020–15]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From the Long-Term Stock Exchange, Inc.

April 9, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 6, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to update the Exchange's source of data feeds from the Long-Term Stock Exchange, Inc. (''LTSE'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(d) to specify that, with respect to the LTSE, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from LTSE.

The Exchange proposes that this proposed rule change would be operative on the day that LTSE launches operations as an equities exchange, which is currently scheduled for May 15, 2020.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37(d) to update the data feed source for the LTSE will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

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 proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–15 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–NYSENAT–2020–15. This file number should be included on the subject line if email is used. To help the Commission process and review your

[4] On March 25, 2020, LTSE announced that it would begin phasing in securities on its production system on May 15, 2020. *See* LTSE Market Announcement: MA–202–008, available here: *https://longtermstockexchange.com/static/MA-2020-008-dfec5067f88285a0f563a894451b1f22.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[11] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2020–15, and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07898 Filed 4–14–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88621; File No. SR–NYSEARCA–2020–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

April 10, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers and to ETP Holders affiliated with such Lead Market Makers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers (''LMMs''),[4] and to ETP Holders[5] affiliated with such LMMs, that provide displayed liquidity in Tape B securities to the NYSE Arca Book.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders and LMMs to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee change effective April 1, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[6]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] numerous alternative trading systems,[9] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-

[4] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[5] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[7] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[8] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[11] *See id.*

marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders and LMMs can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all LMMs on the Exchange, and is intended to provide ETP Holders and LMMs an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B securities to the NYSE Arca Book.[12] Specifically, LMMs that are registered as the LMM in Tape B securities that have a consolidated average daily volume (''CADV'') in the prior calendar quarter of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, whichever is greater (''Less Active ETP Securities''), and the ETP Holders affiliated with such LMMs, currently receive an incremental credit for orders that provide displayed liquidity to the Book in any Tape B securities that trade on the Exchange.[13] The current incremental credits and volume thresholds are as follows:

- An additional credit of $0.0004 per share if an LMM is registered as the LMM in at least 400 Less Active ETP Securities or at least 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV
- An additional credit of $0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 400 Less Active ETP Securities or in at least 200 but less than 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV
- An additional credit of $0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities
- An additional credit of $0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities
- An additional credit of $0.00005 per share if an LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities

The number of Less Active ETP Securities for the billing month is based on the number of Less Active ETP Securities in which an LMM is registered as the LMM on the average of the first and last business day of the previous month.

With this proposed rule change, the Exchange proposes to amend the percentage of Consolidated Tape B ADV requirement from 0.010% to 0.013%. The Exchange is not proposing any change to the CADV requirement of less than 100,000 shares. Based on the Exchange's calculation of Tape B CADV for the prior calendar quarter, *i.e.,* from January 1, 2020 to March 31, 2020, the proposed change would result in an additional 40 Less Active ETP Securities that LMMs can register in to qualify for the incremental credits. The increase in the number of Less Active ETP Securities should benefit most, if not all, LMMs on the Exchange.

The purpose of the proposed rule change is to encourage LMMs and ETP Holders to enhance the market quality in Tape B securities that are listed and traded on the Exchange and, given the recent volatility in the equities markets, the Exchange believes that amending the percentage threshold would qualify a greater number of Less Active ETP Securities, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposal would also encourage competition in Tape B securities quoted and traded on the Exchange. To illustrate, suppose an LMM is currently registered in 98 Less Active ETP Securities, and thus qualifies to earn an incremental credit of $0.0001 per share. With this proposed rule change, which would result in an additional 40 Less Active ETP Securities that LMMs could register in as the LMM, the LMM in the above example could choose to register in as little as 2 additional Less Active ETP Securities, and by doing so, would then qualify for the tier that provides an incremental rebate of $0.0002 per share because the LMM would be registered in at least 100 Less Active Securities. The Exchange believes the proposed rule change would provide greater incentive to LMMs to add displayed liquidity in Less Active ETP Securities as it would increase the number of eligible Less Active ETP Securities that a LMM could register in as the LMM.

The Exchange does not know how much order flow LMMs and ETP Holders choose to route to other exchanges or to off-exchange venues. The incremental credits in NYSE Arca-listed securities are available to all LMMs that are registered as the LMM in a security, and to ETP Holders that are affiliated with a LMM. Currently, there is one LMM that qualifies for the $0.0003 per share credit and one other LMM that qualifies for the $0.0004 per share credit.[14] Without having a view of a LMM's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in more LMMs sending their orders in NYSE Arca-listed securities to the Exchange to qualify for the existing credits or whether this proposed rule change would result in LMMs to send more of their orders in NYSE Arca-listed securities to the Exchange to qualify for such credits. The Exchange cannot predict with certainty how many LMMs would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and

[12] *See* Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87); 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR–NYSEArca–2016–165); 85094 (February 11, 2019), 84 FR 4579 (February 15, 2019) (SR–NYSEArca–2019–05); and 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR–NYSEArca–2020–21).

[13] The Exchange defines ''affiliate'' to ''mean any ETP Holder under 75% common ownership or control of that ETP Holder.'' *See* Fee Schedule, NYSE Arca Marketplace: General.

[14] As of March 31, 2020, there are 18 registered LMMs on the Exchange that could qualify for the incremental rebates for Less Active ETP Securities, all of whom are affiliated with one or more ETP holders.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

competitive market. 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.'' [17]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [18] Indeed, equity trading is currently dispersed across 13 exchanges,[19] numerous alternative trading systems,[20] and broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order which provide liquidity on an Exchange, LMMs and ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

The Exchange believes the proposed rule change to amend the percentage requirement to qualify for the incremental LMM credits is reasonable because it is intended to continue to encourage LMMs, and ETP Holders affiliated with such LMMs, to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes that amending the threshold from 0.010% of Consolidated Tape B ADV to 0.013% of Consolidated Tape B ADV would qualify a greater number of Less Active ETP Securities, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposed amendment to qualify for the current incremental credit for adding liquidity is also reasonable because it would encourage liquidity and competition in all securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed change could incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in all securities, and in particular Tape B securities, to the benefit of all market participants.

Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for LMMs from the substantial amounts of liquidity present on the Exchange. All participants, including LMMs, would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change to amend the percentage of Consolidated Tape B ADV threshold to qualify for the incremental LMM credits is equitable because it provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that, given the recent volatility and high volumes in the equities markets, amending the threshold from 0.010% of Consolidated Tape B ADV to 0.013% of Consolidated Tape B ADV would qualify a greater number of Less Active ETP Securities that LMMs could register in as a LMM, and should therefore provide LMMs increased opportunities to earn incremental credits, which would encourage greater displayed liquidity and improved quoting.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, LMMs and ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to amend the percentage of Consolidated Tape B ADV threshold to qualify for the incremental LMM credits, as the amended requirements would apply on an equal basis to all LMMs. Further, the Exchange believes that amending the threshold from 0.010% of Consolidated Tape B ADV to 0.013% of Consolidated Tape B ADV would qualify a greater number of Less Active ETP Securities, and should therefore incentivize LMMs to send more orders to the Exchange resulting in increased opportunities to earn incremental credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to amend the percentage of Consolidated Tape B ADV threshold to qualify for the incremental rebates neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed threshold would be applied to all similarly situated LMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no LMM already operating on the Exchange would be disadvantaged by this allocation of fees.

Finally, the submission of orders to the Exchange is optional for LMMs and ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[19] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[20] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[21] 15 U.S.C. 78f(b)(8).

of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for LMMs and ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the amended percentage of Consolidated Tape B ADV threshold to qualify for the incremental credit applicable to LMMs, and ETP Holders affiliated with such LMMs, would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed rule change would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market 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. As noted above, the Exchange's current market share of intraday trading (*i.e.,* excluding auctions) is less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [23] of the Act and subparagraph (f)(2) of Rule 19b–4 [24] 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) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–28 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–NYSEARCA–2020–28. 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–NYSEARCA–2020–28 and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07948 Filed 4–14–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88614; File No. SR–ICC–2020–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

April 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4,[2] notice is hereby given that

[22] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on April 3, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Clearing Participant (''CP'') Default Management Procedures (''Default Management Procedures''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to revise the Default Management Procedures, which set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter's portfolio. The proposed revisions update the default contacts that ICC maintains for each CP, include language on the development of the scope of a default management test, and make additional clarification and clean-up changes throughout the document. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes to amend the list of defined terms in Section 2 (Definitions). Specifically, ICC proposes to update the composition of the individuals that comprise ICC management.

The proposed changes to Subsection 4.3.2.1 (Role-Based Contacts) revise certain types of contacts that ICC maintains for each CP in respect of the default management process. Currently, ICC maintains contact information for the Chief Executive Officer (''CEO''), Chief Financial Officer (''CFO''), and General Counsel of each CP, as well as other role-based contacts that are specific to the default management process. The proposed changes remove the requirement that ICC maintain contact information for the CEO, CFO, and General Counsel of each CP in connection with the default management process and instead require ICC to maintain contact information for the most senior person in charge of the CDS business and the most senior person responsible for providing compliance oversight for the CDS business.

In Subsection 4.5 (Default Management Tests), ICC proposes clarification changes regarding the coordination of a default management test, which is a test of ICC's default management process. ICC proposes to clarify that it coordinates default management tests with its Risk Committee and Board, among other external participants. ICC proposes to specify that it conducts a default management test at least every twelve months, rather than once per calendar year. Additionally, the proposed changes direct the ICC Risk Oversight Officer to work with other members of the Close-Out Team, instead of ICC management, to determine the scope of each default management test. The Close-Out Team is responsible for overseeing the default management process and includes ICC management, the most senior member of the ICC Treasury Department, and the ICC Risk Oversight Officer. The proposed amendments also reference proposed Appendix 1 that includes language on the development of the scope of a default management test. The scope would be presented to the Board for review prior to executing the default management test.

In Subsection 6.1.1 (President Pre-Declaration Initiated Actions), ICC proposes to update the contacts that the ICC President notifies of a possible default, including Intercontinental Exchange, Inc. contacts and CP contacts. As discussed above, ICC proposes to replace the requirement that the ICC President contact the CEO or CFO of each CP that is at risk of defaulting or in default (''Default Risk CP'') with the requirement to contact the default contacts of each Default Risk CP.

ICC proposes updates to Subsection 6.1.5 (CCO Pre-Declaration Initiated Actions) regarding particular actions that occur prior to a declaration of default. The Chief Compliance Officer (''CCO'') works with ICC personnel to draft certain notices for CPs that are used as part of the default management process. Under the amended Default Management Procedures, the Close-Out Team, instead of ICC management, reviews and approves such notices, which are addressed to the default contacts at each Default Risk CP, rather than the CEO, CFO, and General Counsel.

ICC proposes further updates to Subsection 6.4 (Default Declaration Notification) regarding specific actions that follow a default declaration. Under the revisions, the CCO sends certain notices to the default contacts of each defaulting CP, rather than the CEO, CFO, and General Counsel of each defaulting CP. Further, the ICC President is required to notify the Risk Committee and Board, rather than the chairman of the Risk Committee, of the CP that has been declared in default.

ICC proposes a clarification update to Subsection 8.6 (Direct Liquidation) to clarify that certain actions relating to direct liquidation are only taken if ICC obtains Board approval.

Amended Subsection 9.1 (Calling for Assessments) includes a minor update to the procedures for calling for assessment contributions. ICC may call for assessment contributions, which CPs are obligated to meet by providing additional amounts to the Guaranty Fund, in the event that the Guaranty Fund has been depleted or ICC anticipates the need for additional funds related to a default. Currently, ICC distributes notices calling for assessment contributions to each CP's Execution Coordinator. Such role is responsible for coordinating internally and with ICC for hedging and liquidation related activities. ICC proposes replacing ''Execution Coordinator'' with ''Central Point of Contact,'' which is a role that has overall responsibility for coordinating internally and with ICC during the default management process and is thus more relevant to the subject task.

In proposed Appendix 1 to the Default Management Procedures, ICC includes language on the development of the scope of a default management test. Specifically, proposed Appendix 1 sets forth key scenario components that ICC may consider when developing a

default management test. ICC may supplement the list of factors included in this appendix from time to time as it identifies additional factors to test. This appendix considers (1) scenarios resulting in CP defaults, such as a CP's failure to meet payment obligations to ICC, insolvency or bankruptcy; (2) default management tools available to ICC in case of default, including consulting with the CDS Default Committee or performing Secondary Default Management Actions (*e.g.,* calling for assessment contributions); (3) timing considerations, such as the time and length of a default event; (4) planning strategy (*e.g.,* whether there is advance notice of a test); and (5) event specific elements that may occur in a default scenario, such as the occurrence of multiple CP defaults or stressed market conditions.

ICC proposes other non-material changes that would fix typographical or grammatical errors by amending:

- Section 4 (Operational Readiness), to replace ''described'' with ''describes'' in the phrase ''This section described the steps taken.''
- Subsection 4.4 (Secure Trading Facility), to replace ''review'' with ''reviewed'' in the phrase ''periodically review by the Risk Department.''
- Subsection 4.5 (Default Management Tests), to add ''to'' to the phrase ''also be included.''
- Subsection 5.2 (Close-Out Team Activation), to add ''to'' to the phrase ''Default Risk Alert the President.''
- Subsection 6.1.3 (COO Pre-Declaration Initiated Actions), to add ''and'' to the phrase ''the Court a no action.''
- Subsection 6.4 (Default Declaration Notification), to replace ''confirm'' with ''confirms'' in the phrase ''and confirm with.''
- Subsection 7.3 (Initial CDS Default Committee Meeting), to replace ''provide'' with ''provides'' in the phrase ''ICC provide'' and replace the phrase ''receive'' with ''receives'' in the phrase ''ICC receive.''
- Subsection 9.1 (Calling for Assessments), to remove ''are subject'' from the phrase ''CPs are subject are considered.''
- Subsection 9.2 (Initiating a Cooling-Off Period), to replace ''Colling-Off Period'' with ''Cooling-Off Period.''
- Subsection 9.3 (Liquidation by Secondary Auction), to replace ''addition'' with ''additional'' in the phrase ''on or more addition CP Default''; remove an unfinished sentence; and replace ''extend'' with ''extent'' in the phrase ''to the extend.''
- Subsections 9.4 (Entering a Loss Distribution Period) and 9.5 (Continuing a Loss Distribution Period), to remove reference to a section that does not exist.
- Subsection 9.7 (Termination of Clearing), to replace ''Partial Tear-Up'' with ''Termination'' in the phrase ''Partial Tear-Up Circular.''
- Subsection 10.7 (Execute Transfers), to change the title to ''Execution of Transfers.''

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[4] because ICC believes that the proposed rule change enhances ICC's ability to manage the risk of a default by providing updates and additional clarity with respect to ICC's default management process and procedures. The amendments to the Default Management Procedures update the default contacts that ICC maintains so relevant individuals are notified and can take timely action as part of the default management process. Proposed Appendix 1 includes language on the development of the scope of a default management test and sets forth key scenario components that ICC may consider, which promotes robust and effective default management tests. The clarification and clean-up changes throughout the document ensure that the documentation of ICC's Default Management Procedures remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's default management process. ICC believes that such changes augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[5]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[6] Rule 17Ad–22(b)(3) [7] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The proposed revisions update certain types of contact information that ICC maintains as part of the default management process to ensure that relevant individuals are notified and can take timely action. The proposed revisions further include language on the development of the scope of a default management test in Appendix 1, which promotes robust and effective default management tests that ensure operational readiness by ICC and its CPs to execute the default management process. ICC believes that such changes strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults, including by ensuring that relevant individuals are notified and can take timely action during the default management process and through robust and effective default management tests that enhance ICC's ability to manage financial stress from CP defaults, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[8]

Rule 17Ad–22(d)(4) [9] requires ICC to establish, implement, maintain and enforce written policies and procedures

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] *Id.*

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ad–22(b)(3).

[8] *Id.*

[9] 17 CFR 240.17Ad–22(d)(4).

reasonably designed to, in relevant part, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity. The proposed amendments provide additional clarity and detail regarding the coordination of default management tests, including by specifying that ICC conducts a default management test at least every twelve months; clarifying that ICC receives input from relevant stakeholders, including the Board, Risk Committee, and the Close-Out Team; and adding proposed Appendix 1 that promotes robust and effective default management tests. Such testing and preparation strengthens ICC's ability to detect and manage financial stress from CP defaults and allows ICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity, consistent with the requirements of Rule 17Ad–22(d)(4).[10]

Rule 17Ad–22(d)(8)[11] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act[12] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. The Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The proposed revisions allow for feedback from, and notification to, relevant stakeholders, such as the Board, Risk Committee, and the Close-Out Team. The proposed changes note the coordination of a default management test with the Risk Committee and Board, the review of the scope of a default management test by the Board, the notification to the Risk Committee and Board of the CP in default, and the input of the Close-Out Team on various default management matters. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the Board, relevant committees, and ICC personnel is clearly documented, and also promote the effectiveness of ICC's risk management procedures by detailing the responsibilities of relevant stakeholders throughout the Default Management Procedures, consistent with the requirements of Rule 17Ad–22(d)(8).[13]

Rule 17Ad–22(d)(11)[14] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures—Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website. The proposed changes to the Default Management Procedures update certain contacts that ICC maintains so relevant individuals are notified and can take timely action as part of the default management process. Additionally, the proposed changes clarify and augment ICC's default management process and enhance ICC's ability to withstand defaults and continue providing clearing services, including by promoting robust and effective default management tests that ensure operational readiness by ICC and its CPs through the additional detail included in proposed Appendix 1 and by making clarification and clean-up changes to ensure that the documentation of ICC's Default Management Procedures remains up-to-date, transparent, and focused on clearly articulating the procedures used to support ICC's default management process, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad–22(d)(11).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the ICC Default Management Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICC–2020–005 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–005. 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

[10] *Id.*

[11] 17 CFR 240.17Ad–22(d)(8).

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 240.17Ad–22(d)(8).

[14] 17 CFR 240.17Ad–22(d)(11).

[15] *Id.*

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2020–005 and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07897 Filed 4–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88617; File No. SR–CboeBZX–2020–032]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.8(e) Related to the Exchange's Lead Market Maker Program and To Make Corresponding Changes to its Fee Schedule

April 10, 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 April 8, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 a rule change to amend Rule 11.8(e) related to the Exchange's Lead Market Maker Program and to make corresponding changes 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/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.8(e) applicable to the Exchange's Lead Market Maker (''LMM'') Program[3] for Cboe-listed securities to include Primary Equity Securities[4] and Closed-End Funds[5] and to make corresponding changes to its Fee Schedule.[6] Currently, the LMM Program includes only ETPs[7] listed on the Exchange. The Exchange believes that the proposal will enhance liquidity in Cboe-listed Primary Equity Securities and Closed-End Funds by offering daily incentives that are directly tied to an LMM meeting market quality metrics in such securities, as further described below. The Exchange is not proposing to make any changes to the LMM Program itself other than to include Primary Equity Securities and Closed-End Funds and to establish the performance standards applicable to such securities.[8]

Current LMM Program

Under the LMM Program, the Exchange offers daily incentives for LMMs in ETPs listed on the Exchange for which the LMM meets certain Minimum Performance Standards.[9] Such daily incentives are determined based on the number of Cboe-listed ETPs for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally speaking, the more LMM Securities[10] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those ETPs, the greater the total daily payment to the LMM. Such daily incentives are structured as follows:

[16] 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. 86213 (June 27, 2019), 84 FR 31951 (July 3, 2019) (the ''Original LMM Filing'').

[4] As defined in Rule 14.1(a), the term ''Primary Equity Security'' means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (''ADRs'') or Shares (''ADSs'').

[5] As provided in Rule 14.8(a), the term ''Closed-End Funds'' means closed-end management investment companies registered under the Investment Company Act of 1940.

[6] The Exchange notes that there is currently only one Primary Equity Security listed on the Exchange (Cboe Global Markets, Inc., ticker ''CBOE'') and zero Closed-End Funds.

[7] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[8] The Exchange notes that the Designated Market Maker (''DMM'') Program on the New York Stock Exchange LLC (''NYSE'') is comparable to the Exchange's LMM Program in that it is designed to incentivize liquidity provision and create enhanced market quality in listed securities. The DMM Program applies to all securities that may be listed on NYSE, which includes ETPs, Primary Equity Securities, and Closed-End Funds, consistent with this proposal, among others. *See* NYSE Rule 104, ''Dealings and Responsibilities of DMMs.''

[9] As defined in Rule 11.8(e)(1)(D), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, *see* Original LMM Filing.

[10] As defined in Rule 11.8(e)(1)(C), the term ''LMM Security'' means an ETP that has an LMM.

	Average aggregate daily auction volume in LMM securities					
	0–10,000	10,001–100,000	100,001–500,000	500,001–1,000,000	1,000,001–3,000,000	3,000,001 or greater
Daily Incentive for each Qualified ETP 1–5	$10	$25	$40	$50	$150	$200
Daily Incentive for each Qualified ETP 6–25	10	25	25	30	100	150
Daily Incentive for each Qualified ETP 26–50	10	10	20	25	75	100
Daily Incentive for each Qualified ETP 51–100	10	10	15	20	50	75
Daily Incentive for each Qualified ETP Greater Than 100	10	10	15	15	25	50

By way of example, if an LMM has 30 LMM Securities, each of which is a Qualified ETP,[11] 10 of which each have an average daily auction volume of 5,000 shares (combined between the opening and closing auction), 10 of which each have an average daily auction volume of 50,000 shares (combined between the opening and closing auction), and 10 of which each have an average daily auction volume of 200,000 shares (combined between the opening and closing auction), then the LMM would fall into the fifth column (10*5,000 + 10*50,000 + 10*200,000 = 2,550,000 average aggregate daily auction volume). As such, the LMM would receive $150 each for five Qualified ETPs, $100 each for Qualified ETPs 6–25, and $75 each for Qualified ETPs 26–30. This would result in a daily payment of ($150*5) + ($100*20) + ($75*5) = $3,125 to the LMM.

LMMs that meet a more stringent set of standards also receive enhanced daily incentives, as follows:

	Average aggregate daily auction volume in LMM securities					
	0–10,000	10,001–100,000	100,001–500,000	500,001–1,000,000	1,000,001–3,000,000	3,000,001 or greater
Daily Incentive for each Enhanced ETP 1–5	$2.50	$6.25	$10	$12.50	$37.50	$50
Daily Incentive for each Enhanced ETP 6–25	2.50	6.25	6.25	7.50	25	37.50
Daily Incentive for each Enhanced ETP 26–50	2.50	2.50	5	6.25	18.75	25
Daily Incentive for each Enhanced ETP 51–100	2.50	2.50	3.75	5	12.50	18.75
Daily Incentive for each Enhanced ETP Greater Than 100	2.50	2.50	3.75	3.75	6.25	12.50

Using the same example as above, where the LMM has 30 LMM Securities, 10 of which are Enhanced ETPs,[12] which have 2,550,000 shares of average aggregate daily auction volume in LMM Securities, the issuer would fall into the fifth column. As such, the LMM would receive an additional $37.50 for each of its first five Enhanced ETPs and an additional $25 each for Enhanced ETPs 6–10. This would result in an additional daily payment of ($37.50*5) + ($25*5) = $312.50 to the LMM.

LMMs also receive free transactions in closing auctions in ETPs for which they are the LMM in order to incentivize LMMs to provide liquidity in the closing auction for their LMM Securities.

Proposed Changes

As noted above, the Exchange is proposing to make several limited changes to Rule 11.8(e) and its Fee Schedule in order to add Primary Equity Securities and Closed-End Funds to the existing LMM Program and to establish the performance standards applicable to such securities. The Exchange is not proposing to change any of the functionality or pricing associated with the current LMM Program.

Specifically, the Exchange is proposing to add a new definition under Rule 11.8(e)(1) for the term ''Listed Security,'' which would mean ''any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.'' The Exchange is also proposing to amend the definition of ''LMM Security'' under Rule 11.8(e)(1) such that it would be defined as ''a Listed Security that has an LMM,'' instead of ''an ETP that has an LMM.'' The Exchange is also proposing to make certain numbering changes in order to facilitate the addition of the definition of ''Listed Security.''

The Exchange is also proposing to amend Rule 11.8(e)(2) such that one of the factors that will be used as the basis for selecting LMMs shall be ''experience with making markets in the applicable security type'' instead of ''experience making markets in ETPs.''

The Exchange is also proposing to replace each instance of the term ''ETP'' under footnote 14 of its Fee Schedule with ''Security'' in order to make clear that such pricing applies to all LMM Securities and not just ETPs.

Finally, the Exchange is proposing to add specific requirements around what constitutes a Qualified Security and Enhanced Security for Primary Equity Securities and Closed End Funds. Specifically, the Exchange is proposing to amend the definition of Minimum Performance Standards in current Rule 11.8(e)(1)(D) such that for Primary

[11] As provided in footnote 14 of the Fee Schedule, a ''Qualified ETP'' is an ETP for which an LMM is a Qualified LMM.

[12] As defined in footnote 14 of the Fee Schedule, an ''Enhanced ETP'' a Qualified ETP for which an LMM also meets certain enhanced market quality standards.

Equity Securities and Closed-End Funds, Minimum Performance Standards will specifically require the following:

(i) registration as a market maker in good standing with the Exchange;

(ii) time at the inside requirements, which, for Qualified Securities, require that an LMM maintain quotes at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 15% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. For Enhanced Securities, an LMM must quote at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 40% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares;

(iii) auction participation requirements, which, for a Qualified Security, require that the Opening Auction price is within 4% of the last Reference Price, as defined in Rule 11.23(a)(19), and 2% for an Enhanced Security. For a Qualified Security, such requirements provide that the Closing Auction price must be within 3% of the last Reference Price and 1% for an Enhanced Security;

(iv) market-wide NBB and NBO spread and size requirements, which require 300 shares at both the NBB and NBO during at least 50% of Regular Trading Hours for both Qualified Securities and Enhanced Securities. For Qualified Securities, the NBBO spread of such shares must be no wider than 2% for a security priced equal to or greater than $5 and no wider than 7% for a security priced less than $5. For Enhanced Securities, the NBBO spread of such shares must be no wider than 1% for securities priced equal to or greater than $5 and no wider than 2% for securities priced less than $5; and

(v) depth of book requirements, which, for securities priced equal to or greater than $5 requires at least $150,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours and, for securities priced less than $5, at least $50,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours. For Qualified Securities, such liquidity must be within 2% of both the NBB and NBO for securities priced equal to or greater than $5 and within 7% of both the NBB and NBO for securities priced less than $5. For Enhanced Securities, such liquidity must be within 1% of both the NBB and NBO for securities priced equal to or greater than $5 and within 2% of both the NBB and NBO for securities priced less than $5.

As a follow-on to the examples above and to reiterate that the Exchange is not proposing to make any changes to the LMM Program, but only to include Primary Equity Securities and Closed-End Funds in the existing LMM Program and to establish the performance standards applicable to such securities, if an LMM has 30 LMM Securities, each of which is a Qualified Security, 10 of which e ach have an average daily auction volume of 5,000 shares (combined between the opening and closing auction), 10 of which each have an average daily auction volume of 50,000 shares (combined between the opening and closing auction), and 10 of which each have an average daily auction volume of 200,000 shares (combined between the opening and closing auction), then the LMM would fall into the fifth column (10*5,000 + 10*50,000 + 10*200,000 = 2,550,000 average aggregate daily auction volume). As such, the LMM would receive $150 each for five Qualified Securities, $100 each for Qualified Securities 6–25, and $75 each for Qualified Securities 26–30. This would result in a daily payment of ($150*5) + ($100*20) + ($75*5) = $3,125 to the LMM. The Exchange notes that this example is identical to the first example above and that this would be the outcome regardless of the breakdown of how many of the Qualified Securities are ETPs, Primary Equity Securities, and Closed-End Funds, as would the example above related to Enhanced ETPs.

Implementation Date

The Exchange proposes to implement these amendments immediately.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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)[15] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes both issuers of securities and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs, Primary Equity Securities, and Closed-End Funds listed on the Exchange.

The Exchange believes that the proposal to include Primary Equity Securities and Closed-End Funds in the LMM Program is consistent with the Act for the same reasons that ETPs are currently include in the LMM Program: Because it will enhance market quality in Cboe-listed Primary Equity Securities and Closed-End Funds both throughout the day and in the closing auction by incentivizing liquidity provision on the Exchange and requiring LMMs to meet the Minimum Performance Standards. Specifically, the Exchange believes that the proposal will enhance market quality in Cboe-listed Primary Equity Securities and Closed-End Funds by incentivizing liquidity provision on the Exchange in such securities and requiring LMMs to meet the Minimum Performance Standards in order to receive daily incentives in such securities in the same way that the LMM Program provides enhanced market quality on the Exchange in ETPs. Further, the Exchange believes that adding Primary Equity Securities and Closed-End Funds will further act to strengthen the LMM Program by providing additional potential securities for an LMM to take on in order to

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

increase their average aggregate daily auction volume in their LMM Securities, allowing both new and existing LMMs with the possibility of receiving increased daily incentives. The Exchange also believes that it is appropriate to include Primary Equity Securities and Closed-End Funds in the LMM Program, which currently only applies to ETPs, because, despite being issued by different types of Companies,[16] the metrics used to measure market quality as Minimum Performance Standards in ETPs under the current LMM Program are generally the same metrics that are used to measure market quality for Primary Equity Securities and Closed-End Funds.[17] Specifically, tighter spreads, deeper liquidity, and enhanced auction executions result in better overall market quality in an LMM Security and result in better executions for investors, regardless of whether the instrument the investor is buying or selling as a Primary Equity Security, a Closed-End Fund, or an ETP. Further to this point, the term ETP encapsulates all securities listed on the Exchange pursuant to Rule 14.11, which includes securities issued by varying types of trusts, debt instruments issued by banks, among others, that hold or track varying types of instruments including U.S. and foreign equity securities, Closed-End Funds, corporate debt, treasury securities, commodities, and more. The term ETP is already a broad term and the Exchange believes that adding Primary Equity Securities and Closed-End Funds to the LMM Program is generally consistent with the rationale underlying the LMM Program applying to ETPs. In addition, adding Primary Equity Securities and Closed-End Funds to the existing LMM Program will further incentivize existing LMMs to act as LMM for Primary Equity Securities and Close-End Funds by: (i) Allowing an LMM apply the pricing applicable to its existing average aggregate daily auction volume in its LMM Securities to any new Primary Equity Securities and Closed-End Funds; and (ii) keeping the administration of the LMM Program as straight-forward as possible by simply adding Primary Equity Securities and Closed-End Funds to the structure that LMMs are already familiar with.

The Exchange believes that these changes will both enhance liquidity in Cboe-listed Primary Equity Securities and Closed-End Funds and help the Exchange to compete as a primary listing venue for such products. Similarly, the Exchange believes that it will allow it to better compete as a listing venue in that it will allow the Exchange to implement a liquidity provision program that includes security types already included in a liquidity provision program on its competitor, as described above.

The Exchange also believes that the proposal to add Primary Equity Securities and Closed-End Funds to the LMM Program is a reasonable means to incentivize liquidity provision in such securities listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings for ETPs, Primary Equity Securities, and Closed-End Fund. Transfers between listing venues occur frequently[18] for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid by participants to access the Exchange. Rather, the proposed payments are based on achieving certain objective market quality metrics.

Further, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to add Primary Equity Securities and Closed-End Funds to the LMM Program. Specifically, the Exchange believes that the proposal is reasonable, equitable, and not unfairly discriminatory because it will enhance market quality in Cboe-listed Primary Equity Securities and Closed-End Funds by incentivizing liquidity provision on the Exchange in such securities and requiring LMMs to meet the Minimum Performance Standards in order to receive daily incentives in such securities. While the proposed payments apply only to LMMs, such LMMs must meet rigorous Minimum Performance Standards in order to receive even the lower Qualified Security payments, resulting in better market quality in Exchange-listed securities and better executions for investors. Further, in order to qualify as an Enhanced Security and receive an additional payment above the payment for Qualified Securities, an LMM must meet even more rigorous market quality metrics in the security, which further enhances market quality and investor executions in Exchange-listed securities. Where an LMM does not meet the Minimum Performance Standards, they will not receive the payments. Further, registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

Further, the daily payment amounts are based specifically on the Exchange's revenue model. For securities with greater auction volume, the Exchange generally makes more money and, thus, is able to offer LMMs with LMM Securities that have higher average aggregate daily auction volume higher payments. The buckets and payments are modeled based both on current revenue and product distribution among LMMs as well as expected revenue and product distribution in the future including organic growth among existing products, securities transferring to the Exchange, and additional participants in the LMM Program. The Exchange believes that it is fair and reasonable and not unfairly discriminatory to offer different pricing between the different auction volume tiers because those tiers and possible payments are specifically tailored to the Exchange's expected revenue from that auction volume.

Specifically, the proposed payment per Qualified Security (and thus the total payment to an LMM) generally goes up as the CADV moves from left to right because as the average aggregate daily auction volume in LMM Securities increases, the Exchange will generate additional revenue and can thus support increased payments to LMMs. Similarly, the proposed payments per Qualified Security generally go down as the number of Qualified Securities goes up in order to ensure that the daily incentive payments do not exceed the Exchange's revenue for that LMM's LMM Securities while still providing incentives for LMMs to take on additional ETPs, Primary Equity Securities, and Closed-End Funds. As such, the Exchange believes that the proposal represents an equitable allocation of payments.

[16] As defined in Rule 14.1(a)(3), the term Company means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter XIV, the term ''Company'' includes an issuer that is not incorporated, such as, for example, a limited partnership.

[17] To this point, the Exchange notes that all of the proposed Minimum Performance Standards applicable to Primary Equity Securities and Closed-End Funds as provided in proposed Rule 11.8(e)(1)(E)(i)-(v) fall within the ranges currently applicable to ETPs as provided in the Original LMM Filing.

[18] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently [19] for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed Primary Equity Securities and Closed-End Funds, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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 [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [23] 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to expand its LMM Program to Primary Equity Securities and Closed-End Funds without delay, which the Exchange believes will provide market quality enhancements. The Commission notes that a similar program on another exchange applies to these types of securities [24] and that the proposed performance standards are similar to those already in place on the Exchange with respect to ETPs listed on the Exchange. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[25]

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–CboeBZX–2020–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–032, and should be submitted on or before May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07947 Filed 4–14–20; 8:45 am]

BILLING CODE 8011–01–P

[19] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See supra* note 8.

[25] 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).

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16416 and #16417; MISSISSIPPI Disaster Number MS–00123]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4478–DR), dated 03/12/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 01/10/2020 through 01/11/2020.

DATES: Issued on 03/12/2020.

Physical Loan Application Deadline Date: 05/11/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 12/14/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/12/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bolivar, Chickasaw, Choctaw, Clay, DeSoto, Oktibbeha, Panola, Prentiss, Quitman, Sunflower, Tallahatchie, Tishomingo, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16416B and for economic injury is 164170.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–07955 Filed 4–14–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2020–0260]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is used to identify foreign airmen in order to allow the agency to verify their foreign license when used to qualify for a US certificate. Respondents are holders of foreign licenses wishing to obtain US Certificates.

DATES: Written comments should be submitted by June 15, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: *www.regulations.gov* (Enter docket number into search field).

By mail: Robin Thurman, Federal Aviation Administration, AFB–720, PO Box 25082, Oklahoma City, Oklahoma 73107.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins by email at: *Margaret.A.Hawkins@faa.gov;* phone: 405–954–7045.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0724.

Title: Verification of Foreign License, Rating and Medical Certification.

Form Numbers: Form 8060–71.

Type of Review: Renewal of an information collection.

Background: The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign license wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate or rating on the basis of a foreign pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 8,700 foreign applicants for U.S. certificates annually.

Frequency: On occasion.

Estimated Average Burden per Response: 10 Minutes.

Estimated Total Annual Burden: 1450 Hours.

Margaret A. Hawkins,

Compliance Specialist, Forms Manager, Airmen Certification Branch, AFB–720.

[FR Doc. 2020–07931 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0087]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from five individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart

failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2020–0087 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0087.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0087), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go *http://www.regulations.gov/docket?D=FMCSA-2020-0087.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0087* 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., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The five individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Cory Brister

Mr. Brister is a CMV driver in Mississippi. A December 28, 2016, medical report from Mr. Brister's cardiologist indicates that his ICD was implanted in December of 2016. An October 9, 2019, letter from his cardiologist reports that Mr. Brister is asymptomatic, that his ejection fraction has improved with medical therapy, and that his ICD has never deployed. A February 19, 2020, letter from his cardiologist indicates that a February of 2020, echocardiogram was normal, and his left ventricular ejection fraction is 55 percent.

Christopher K. Chrestman

Mr. Chrestman is CMV driver in Mississippi. A letter February 2020, letter from his cardiologist states that Mr. Chrestman's ICD was implanted in January of 2020, he is currently asymptomatic, he has not had any shocks from the device, and that he will need to continue regular follow up care with his physicians.

Theodore J. Engelke

Mr. Engelke is a CMV driver in Minnesota. May 14, 2019, progress notes

[1] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

from Mr. Engelke's cardiologist state that his ICD was implanted in September of 2017, he has had no ICD discharges, and no symptoms of heart failure or angina pectoris.

Charles Michaux

Mr. Michaux is a CMV driver in California. A February 11, 2019, letter from his cardiologist states that Mr. Michaux's ICD was implanted in March of 2019, he denied any symptoms at his last January 9, 2020, clinic visit, and is stable. Mr. Michaux reports in his application that his ICD device has never deployed.

John Warner

Mr. Warner is a CMV driver in Colorado. A December 19, 2019, letter from Mr. Warner's cardiologist reports that his ICD was implanted in August of 2010, and that there have been no shocks and no symptoms of concern, and that he has a recent ejection fraction of 65–70 per cent.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07888 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0045]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on March 16, 2020. The exemptions expire on March 16, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0045* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On February 6, 2020, FMCSA published a notice announcing receipt of applications from six individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (85 FR 7003). The public comment period ended on March 9, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. This comment supported granting these exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR–2015-title49-vol5/pdf/CFR–2015-title49-vol5-part391-appA.pdf.*

inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the February 6, 2020, **Federal Register** notice (85 FR 7003) and will not be repeated in this notice.

These six applicants have been seizure-free over a range of 22 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the six exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Randall J. Bernath (MI)
Hermie Garrett (NY)
Gary Olsen (MN)
Michael Day (AZ)
Jeb McCulla (LA)
John Shainline IV (PA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–07887 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–6]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before June 15, 2020.

ADDRESSES: Submit written comments on the ICR activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–0010,'' and should also include the title of the ICR. Alternatively, comments may be faxed to 202–493–6216 or 202–493–6497, or emailed to Ms. Wells at *hodan.wells@dot.gov,* or Ms. Toone at *kim.toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce

information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Track Safety Standards.

OMB Control Number: 2130–0010.

Abstract: The information collection associated with 49 CFR part 213 is used by FRA to ensure and enhance rail safety by monitoring complete compliance with all regulatory requirements. Part 213 prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. While the requirements prescribed in this part generally apply to specific track conditions existing in isolation, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide safe operations over that track. Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with the prescribed standards. In 2013, FRA amended the Track Safety Standards and Passenger Equipment Safety Standards to promote the safe interaction of rail vehicles with the track over which they operate under a variety of conditions at speeds up to 220 m.p.h.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 746 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [1]
213.4(f)—Excepted track—Notification to FRA about removal of excepted track.	746	15 notices	10 minutes	2.5	$190
213.5(c)—Responsibility for compliance—Notification of assignment to FRA.	746	15 notices	1 hour	15	1,140
213.7(a)–(b)—Designations: Names on list with written authorizations.	746	2,500 documents	10 minutes	416.7	31,669
213.17(a)—Waivers	746	10 petitions	2 hours	20	1,520
213.57(e)—Curves, elevation and speed limitations—Request to FRA for vehicle type approval.	746	4 requests	8 hours	32	2,432
213.57(f)—Written Notification to FRA prior to implementation of higher curving speeds.	746	4 notifications	2 hours	8	608
213.57(g)—Written consent of track owners obtained by railroad providing service over that track.	746	4 written consents	45 minutes	3	228
213.110(a)—Gage restraint measurement systems (GRMS)—Implementing GRMS—notices & reports.	746	1 notification	45 minutes	.8	61
213.110(g)—GRMS vehicle output reports	746	1 report	5 minutes	.1	8
213.110(h)—GRMS vehicle exception reports	746	1 report	5 minutes	.1	8
213.110(j)—GRMS/PTLF—procedures for data integrity.	746	1 documented procedure	1 hour	1	76
213.110(n)—GRMS inspection records	746	2 records	30 minutes	1	76
213.118(a)–(c)—Continuous welded rail (CWR)—Revised plans w/procedures for CWR.	438	10 plans	4 hours	40	3,040
213.118(d)—Notification to FRA and RR employees of CWR plan effective date.	438	750 notifications to employees.	15 seconds	3.1	236
213.118(e)—Written submissions after plan disapproval.	438	5 written submissions	2 hours	10	760
213.118(e)—Final FRA disapproval and plan amendment.	438	5 amended plans	1 hour	5	380
213.234(f)—Automated inspection of track constructed with concrete crossties—Recordkeeping requirements.	30	2,000 records	30 minutes	1,000	76,000
213.237(b)(2)—Inspection of Rail—Detailed request to FRA to change designation of a rail inspection segment or establish a new segment.	65	4 requests	15 minutes	1	76
213.237(b)(3)—Notification to FRA and all affected employees of designation's effective date after FRA's approval/conditional approval.	65	1 notice to FRA + 15 bulletins.	15 minutes	4	304
213.237(d)—Notice to FRA that service failure rate target in paragraph (a) of this section is not achieved.	65	4 notices	15 minutes	1	76
213.237(d)—Explanation to FRA as to why performance target was not achieved and provision to FRA of remedial action plan.	65	4 letters of explanation/plans.	15 minutes	1	76
213.241—Inspection records[2]	746	1,375,000 records	10 minutes	229,166.7	17,416,669
213.303(b)—Responsibility for compliance—Notification of assignment to FRA.	2	5 notices	30 minutes	2.5	190
213.305(a)–(c)—Designation of qualified individuals; general qualifications—Written authorization for remedial actions.	2	20 written documents	30 minutes	10	760
213.305(e)—Designation of qualified individuals; general qualifications; recordkeeping requirements for designations.	2	200 records	10 minutes	33.3	2,531

CFR section	Respondent universe (railroads)	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [1]
213.317(a)–(b)—Waivers	2	2 petitions	8 hours	16	1,216
213.329(e)—Curves, elevation and speed limitations—FRA approval of qualified vehicle types based on results of testing.	2	2 cover letters + 2 technical reports + 2 diagrams.	30 minutes + 16 hours + 15 minutes.	33.5	2,546
213.329(f)—Written notification to FRA 30 days prior to implementation of higher curving speeds.	2	2 notices	2 hours	4	304
213.329(g)—Written consent of other affected track owners by railroad.	2	2 written consents	45 minutes	1.5	114
213.333(d)—Automated vehicle-based inspection systems—Track Geometry Measurement System (TGMS) output/exception reports.	7	7 reports	1 hour	7	532
213.341(b)–(d)—Initial inspection of new rail & welds—Inspection records.	2	800 records	2 minutes	26.7	2,029
213.343(a)–(e)—Continuous welded rail (CWR)—Procedures for installations and adjustments of CWR.	2	2 plans	4 hours	8	608
213.343(h)—Recordkeeping requirements	2	8,000 records	2 minutes	266.7	20,269
213.345(a)–(c)—Vehicle qualification testing—Vehicle qualification program for all vehicle types operating at track Class 6 speeds or above.	2	2 program plans	120 hours	240	18,240
213.345(d)—Previously qualified vehicle types qualification programs.	2	2 program plans	8 hours	16	1,216
213.345(h)—Written consent of other affected track owners by railroad.	4	4 written consents	30 minutes	2	230
213.369(d)—Inspection Records—Record of inspection of track.	2	15,000 records	10 minutes	2,500	190,000
Total	746	1,404,410 responses	N/A	233,899	17,776,417

[1] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.
[2] **Note:** Each record of an inspection under §§ 213.4, 213.119, 213.233, 213.235, and 213.237 is covered under § 213.241.

Total Estimated Annual Responses: 1,404,410.

Total Estimated Annual Burden: 233,899 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $17,776,417.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2020–07911 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–7]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) abstracted below. Before submitting these ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before June 15, 2020.

ADDRESSES: Submit written comments on the ICRs activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–XXXX,'' (the relevant OMB control number for each ICR is listed below) and should also include the title of the ICR. Alternatively, comments may be faxed to 202–493–6216 or 202–493–6497, or emailed to Ms. Wells at *hodan.wells@dot.gov,* or Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the

methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Abstract: Under 49 CFR part 239, FRA requires railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting passenger rail service operations. The information collected is necessary for compliance with the regulation.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 34 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [1]
239.13—Waivers	34 railroads	1 waiver petition	10 hours	10 hours	$760
239.101/201/203—Emergency preparedness plan: amended plans.	34 railroads	6 amended plans	16 hours	96 hours	7,296
—Non-substantive changes to emergency preparedness plan.	34 railroads	4 amended plans	1 hour	4 hours	304
—Emergency preparedness plans for new/start-up railroads.	34 railroads	1 new plan	80 hours	80 hours	6,080
239.101(a)(1)(ii)—RR designation of employees responsible for maintaining emergency phone numbers for use in contacting outside emergency responders and appropriate RR officials that a passenger emergency has occurred.	34 railroads	34 designations	5 minutes	2.8 hours	213
—Commuter/intercity passenger RRs gathering/keeping emergency phone numbers.	34 railroads	34 lists/updated records.	1 hour	34 hours	2,584
239.101(a)(7)—RR dissemination of information regarding emergency procedures/instructions.	1 new railroad	350 cards/1 safety message.	5 minutes	29.3 hours	2,227
	34 railroads	1,000 cards/100 safety messages.	5 minutes	91.7 hours	6,969
239.105(d)—Debrief and critique sessions.	34 railroads	25 debrief/critique records.	5 minutes	2.1 hours	160
Total	34 railroads	1,556	N/A	350 hours	26,592

Total Estimated Annual Responses: 1,556.

Total Estimated Annual Burden: 350 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $26,592.

Title: Critical Incident Stress Plans.

OMB Control Number: 2130–0602.

Abstract: Under 49 CFR part 272, Class I, intercity passenger, and commuter railroads are required to develop, and submit to FRA for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a critical incident as defined in 49 CFR 272.9. FRA uses the information collected to ensure the minimum standards of part 272 are met.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses/Rail Labor Unions.

Form(s): N/A.

Respondent Universe: 41 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent
272.103(a)—Railroad submission of critical incident stress plan (CISP) to FRA for approval.	1 new railroad	1 plan	12 hours	12 hours	$912
—(b) RR CISP copy to 5 labor organizations.	41 railroads	20 plan copies	5 minutes	1.7 hours	129

[1] The dollar equivalent cost throughout this document is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent
—(c)(1) Rail labor organization comment to FRA on CISP submission.	5 employee labor organizations.	5 comments	2 hours	10 hours	760
—(c)(2) Rail labor affirmative statement to FRA that comment copy has been served on railroad.	5 employee labor organizations.	5 certifications	5 minutes	.4 hours	30
—(e) Railroad submission of updated/modified existing CISP to FRA for approval.	41 railroads	4 updated/modified plans.	6 hours	24 hours	1,824
—(f) Copy to RR employees of updated/modified CISP[2].	41 railroads	5,000 copies	5 minutes	416.7 hours	31,669
—(g) Railroads make copies of CISP available to FRA inspector upon request.	41 railroads	25 plan copies	5 minutes	2.1 hours	160
272.105—Requirement to file CISP electronically.	41 railroads	4 CISP electronic submissions.	8 minutes	.5 hours	38
Total	41 railroads	5,064 responses	N/A	467 hours	35,522

Total Estimated Annual Responses: 5,064.

Total Estimated Annual Burden: 467 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $35,522.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Authority: 44 U.S.C. 3501–3520)

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2020–07910 Filed 4–14–20; 8:45 am]

BILLING CODE 4910–06–P

[2] FRA understands most railroads provide their CISP information to employees via a company portal or other electronic means, thus FRA reduced the estimate of actual physical copies to 5,000 to reflect that understanding.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of an information collection titled ''Securities Offering Disclosure Rules.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before May 15, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0120, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0120'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0120'' or ''Securities Offering Disclosure Rules.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor.

[1] On January 17, 2020, the OCC published a 60-day notice for this information collection, 84 FR 3105.

''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Securities Offering Disclosure Rules.

OMB Control No.: 1557–0120.

Type of Review: Regular.

Description: Twelve CFR part 16 governs the offer and sale of securities by national banks and Federal savings associations. The requirements in part 16 enable the OCC to perform its responsibility to ensure that the investing public has information about the condition of the offering institution, the reasons for raising new capital, and the terms of the offering.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 43.

Estimated Annual Burden: 946 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–07918 Filed 4–14–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission or OMB Review; Recordkeeping Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Recordkeeping Requirements for Securities Transactions.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0142, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0142'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0142'' or ''Recordkeeping Requirements for Securities Transactions.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Recordkeeping Requirements for Securities Transactions.

OMB Number: 1557–0142.

[1] On January 22, 2020 the OCC published a 60-day notice for this information collection, 85 FR 3760.

Description: The information collection requirements in 12 CFR parts 12 and 151 are required to ensure that national banks and Federal savings associations comply with securities laws and to improve the protections afforded to persons who purchase and sell securities through these financial institutions. Parts 12 and 151 establish recordkeeping and confirmation requirements applicable to certain securities transactions effected by national banks or Federal savings associations for customers. The transaction confirmation information required by these regulations ensures that customers receive a record of each securities transaction and that both financial institutions and the OCC have the records necessary to monitor compliance with securities laws and regulations. The OCC uses the required information in the course of its examinations to evaluate, among other things, an institution's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR parts 12 and 151 are as follows:

• 12 CFR 12.3 requires a national bank effecting securities transactions for customers to maintain certain records for at least three years. 12 CFR 12.3(b) provides that the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

• 12 CFR 151.50 requires a Federal savings association effecting securities transactions for customers to maintain certain records for at least three years. 12 CFR 151.60 provides that the records required by 12 CFR 151.50 must clearly and accurately reflect the information required and provide an adequate basis for audit of the information.

• 12 CFR 12.4 requires a national bank to give or send to the customer a written notification of the transaction at or before completion of the securities transaction or, if using a confirmation from a registered broker/dealer, to send a copy of that confirmation within one business day from the bank's receipt of the confirmation from the broker dealer. Section 12.4 also establishes the required minimum disclosures for a customer's securities transactions.

• 12 CFR 151.70 requires a Federal savings association that effects a securities transaction for a customer to give or send that customer a written notice of the transaction or give or send the customer the registered broker-dealer confirmation. 12 CFR 151.80 establishes when a Federal savings association must provide notice if it elects to comply with § 151.70 by using a broker-dealer confirmation and also requires the Federal savings association to provide a statement of the source and amount of any remuneration it has received or will receive in connection with the transaction, unless it has determined remuneration in a written agreement with the customer. 12 CFR 151.90 establishes when a Federal savings association must provide notice if it elects to comply with § 151.70 by providing the customer with a written notice and establishes the minimum disclosures that must be included in that notice. 12 CFR 151.90 requires a Federal savings association to give or send the written notice to the customer at or before the completion of the securities transaction.

• 12 CFR 12.5 sets forth notification procedures that a national bank may elect to use, as an alternative to complying with § 12.4, to notify customers of securities transactions for accounts in which the bank does not exercise investment discretion, trust transactions, agency transactions, and certain periodic plan transactions.

• 12 CFR 151.100 describes notification procedures that a Federal savings association may use, as an alternative to complying with 12 CFR 151.70, for customer accounts in which the savings association does not exercise investment discretion, certain accounts for which it exercises investment discretion in other than an agency capacity, trust transactions, agency transactions, certain periodic plan transactions, collective investment fund transactions, and money market funds.

• 12 CFR 12.7(a) requires national banks to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform certain securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts for certain types of orders; provide for crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where permissible under applicable law; and require certain officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

• 12 CFR 151.140 requires Federal savings associations that effect securities transactions for customers to maintain and follow policies and procedures and sets forth the minimum requirements for such policies and procedures. These policies and procedures must assign responsibility for the supervision of employees who perform certain securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts for certain types of orders; provide for crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where permissible under applicable law; and require certain officers and employees to file personal securities trading reports as required by 12 CFR 151.150.

• 12 CFR 12.7(a)(4) requires certain national bank officers and employees involved in the securities trading process to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

• 12 CFR 151.150 requires certain Federal savings association officers and employees to report to the savings association personal transactions in securities made by them or on their behalf in which they have a beneficial interest. 12 CFR 151.150(a) sets forth the information to be included in the report and requires the report to be filed no later than 30 days after the end of each calendar quarter.

• 12 CFR 12.8 requires a national bank seeking a waiver of one or more of the requirements of 12 CFR 12.2 through 12.7 to file a written request for waiver with the OCC.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 355.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,718 hours.

Comments: The OCC published a notice for 60 days of comment on January 22, 2020. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–07921 Filed 4–14–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activity: Title 38 Positions—Applications and Appraisals for Employment

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, 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 extension 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 June 15, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0205'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Title 38 Positions—Applications and Appraisals for Employment, VA Forms 10–2850, 10–2850a, 10–2850c, FL 10–341(a).

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: The collection of this information is authorized by Title 38, United States Code (U.S.C.) 7403, (Veterans' Benefits), which provides that appointments of Title 38 employees will be made only after qualifications have been satisfactorily verified in accordance with regulations prescribed by the Secretary. Occupations listed in 38 U.S.C. 7401(1) and 7401(3) (Appointments in Veterans Health Administration), are appointed at a grade and step rate or an assignment based on careful evaluation of their education and experience.

VA Forms 10–2850, 10–2850a, and 10–2850c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with Department of Veterans Affairs (VA) as well as educational and experience. To assure that a full evaluation of each candidate's credentials can be made prior to employment, the forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registration, liability insurance history, and involvement in malpractice proceedings. VA Form Letter 10–341a is the pre-employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant. This collection of information is necessary to determine eligibility for employment and the appropriate grade and step rate or assignment.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists, Optometrists, and Chiropractors, will collect information used to determine eligibility for appointment to VHA.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists, will collect information used to determine eligibility for appointment to VHA.

c. VA Form 10–2850c, Application for Associated Health Occupations, will collect information used to determine eligibility for appointment to VHA.

d. VA Form Letter 10–341(a), Appraisal of Applicant, will collect information used to determine if applicant meets the requirements for employment.

VA Form 10–2850

Affected Public: Individuals and households.

Estimated Annual Burden: 8,064 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 16,128.

VA Form 10–2850a

Affected Public: Individuals and households.

Estimated Annual Burden: 32,256 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 64,511.

VA Form 10–2850c

Affected Public: Individuals and households.

Estimated Annual Burden: 10,752 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 21,504.

VA Form Letter 10–341(a)

Affected Public: Individuals and households.

Estimated Annual Burden: 25,410 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 50,820.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–07908 Filed 4–14–20; 8:45 am]

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Wednesday, April 15, 2020

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