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Contents

Federal Register

Vol. 85, No. 93

Wednesday, May 13, 2020

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Restoration of Firearms Privileges, 28664–28665

Animal and Plant Health Inspection Service
RULES
Animal Welfare:
Amendments to Licensing Provisions and to Requirements for Dogs, 28772–28799

Centers for Disease Control and Prevention
NOTICES
Meetings:
Board of Scientific Counselors, National Institute for Occupational Safety and Health, National Firefighter Registry Subcommittee, 28638

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Survey of 2020 Residential Energy Consumption; Low Income Home Energy Assistance Program Administrative Data Matching, 28638–28639

Coast Guard
RULES
Safety Zone:
Tug Kimberly Anne and Barge Big Digger Operating in the Straits of Mackinac, MI, 28488–28490
PROPOSED RULES
Drawbridge Operations:
Back Bay of Biloxi, Biloxi, MS, 28540–28541
Belle River, LA, 28542–28544
Industrial Seaway Canal, MS, 28544–28546
Trent River, New Bern, NC, 28546–28548
Financial Responsibility–Vessels; Superseded Pollution Funds, 28802–28828
Special Local Regulations:
Marine Events Within the Fifth Coast Guard District; Withdrawal, 28539–28540
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28646–28647

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
PROPOSED RULES
Federal Acquisition Regulation:
List of Domestically Nonavailable Articles, 28596–28598

Education Department
NOTICES
Application for New Awards:
Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling; Deadline Extension, 28617

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Application To Export Electric Energy:
Powerex Corp., 28617–28618

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area, 28490–28493
Oklahoma; Updates to the General SIP and New Source Review Permitting Requirements; Correction, 28493–28494
Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington, 28494–28499
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Missouri; Control of Emissions From Lithographic and Letterpress Printing Operations, 28548–28549
Wisconsin; Redesignation of the Shoreline Sheboygan, WI Area to Attainment of the 2008 Ozone Standards, 28550–28564
Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel, 28564–28586
NOTICES
Final Reissuance of National Pollutant Discharge Elimination System General Permit:
Concentrated Animal Feeding Operations in Idaho, 28624–28625

Federal Accounting Standards Advisory Board
NOTICES
Issuance of Statement:
Federal Financial Accounting Concepts 9, Materiality: Amending Statement of Federal Financial Accounting Concepts (SFFAC) 1, Objectives of Federal Financial Reporting, and SFFAC 3, Management's Discussion and Analysis, 28625

Federal Aviation Administration
PROPOSED RULES
Amendment of Class D and Class E Airspace:
Jackson and Lakeview, MI, 28523–28524

Federal Communications Commission
PROPOSED RULES
Rules Governing the Use of Distributed Transmission System Technologies, Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard, 28586–28596

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28625–28627, 28634–28636
Improving Public Safety Communications in the 800 MHZ Band, 28627–28633
Meetings:
Communications Security, Reliability, and Interoperability Council, 28637
Privacy Act; Matching Program, 28633–28634

Federal Emergency Management Agency
RULES
Emergency Management Priorities and Allocations System, 28500–28520
Suspension of Community Eligibility, 28499–28500
NOTICES
Major Disaster Declaration:
Alabama; Amendment No. 1, 28654
Arizona; Amendment No. 1, 28652
Arkansas; Amendment No. 1, 28653
Colorado; Amendment No. 1, 28649
Connecticut; Amendment No. 1, 28655
Delaware; Amendment No. 1, 28657
District of Columbia; Amendment No. 1, 28657
Georgia; Amendment No. 1, 28653
Idaho; Amendment No. 1, 28648
Indiana; Amendment No. 1, 28651
Iowa; Amendment No. 1, 28653
Kansas; Amendment No. 1, 28655
Kentucky; Amendment No. 1, 28650
Maryland; Amendment No. 1, 28651
Minnesota; Amendment No. 1, 28648
Mississippi; Amendment No. 1, 28649
Missouri; Amendment No. 1, 28654
Nebraska; Amendment No. 1, 28656
Nevada; Amendment No. 1, 28648
New Hampshire; Amendment No. 1, 28647
New Mexico; Amendment No. 1, 28654
North Carolina; Amendment No. 1, 28652
North Dakota; Amendment No. 1, 28658
Ohio; Amendment No. 1, 28656
Oklahoma; Amendment No. 1, 28649
Pennsylvania; Amendment No. 1, 28650
Rhode Island; Amendment No. 1, 28652
South Carolina; Amendment No. 1, 28655
South Dakota; Amendment No. 1, 28656
Tennessee; Amendment No. 1, 28650
Vermont; Amendment No. 1, 28658
Virginia; Amendment No. 1, 28651
Wisconsin; Amendment No. 1, 28657

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28621–28624
Application:
Equitrans, LP, 28623
Pacific Gas and Electric Co., 28621
Authorization for Continued Project Operation:
Bear Swamp Power Co., LLC, 28619
Erie Boulevard Hydropower, LP, 28619
Combined Filings, 28618–28620
Environmental Assessments; Availability, etc.:
Columbia Gas Transmission, LLC; Leach XPress Project Amendment, 28620–28621

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 28637

Federal Retirement Thrift Investment Board
NOTICES
Meetings:
Board Member, 28637–28638

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations, 28639–28642

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
School Food Purchase Study IV, 28599–28602
School Meals Operations Study: Evaluation of the School-Based Child Nutrition Programs, 28602–28605

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
List of Domestically Nonavailable Articles, 28596–28598

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Findings of Research Misconduct, 28643–28645
Meetings:
National Biodefense Science Board, 28645

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Questionnaire and Data Collection Testing, Evaluation, and Research for the Health Resources and Services Administration, 28642–28643

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Determination Pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act; Correction, 28658–28662

Interior Department
See National Park Service

Internal Revenue Service
PROPOSED RULES
Denial of Deduction for Certain Fines, Penalties, and Other Amounts:
Information With Respect to Certain Fines, Penalties, and Other Amounts, 28524–28539
Hearing:
Source of Income From Certain Sales of Personal Property, 28539
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28697–28698
Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2020, 28698–28699

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Prestressed Concrete Steel Wire Strand From the Republic of Turkey, 28610–28613
Initiation of Less-Than-Fair-Value Investigations:
Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates, 28605–28610

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Monosodium Glutamate From China and Indonesia, 28663–28664

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

Labor Department
See Workers Compensation Programs Office

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation:
List of Domestically Nonavailable Articles, 28596–28598

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Foreign Branching, 28666–28667

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 28646
National Institute of Diabetes and Digestive and Kidney Diseases, 28646
National Institute of Environmental Health Sciences, 28645–28646

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 28615–28616
North Pacific Fishery Management Council, 28614–28615
Pacific Fishery Management Council, 28614
Western Pacific Fishery Management Council, 28616–28617

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 28662–28663

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5, 28479–28484
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5, 28521–28523
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request Online Forms, 28667–28668

Postal Service
NOTICES
Market Test of Experimental Product:
Commercial PO Box Redirect Service, 28668

Presidential Documents
PROCLAMATIONS
Special Observances:
Mother's Day (Proc. 10033), 28837–28838
National Charter Schools Week (Proc. 10030), 28829–28832
National Defense Transportation Day and National Transportation Week (Proc. 10031), 28833–28834
Peace Officers Memorial Day and Police Week (Proc. 10032), 28835–28836
ADMINISTRATIVE ORDERS
COVID–19 Response and Economic Recovery Facilitation in South Dakota; Continued Federal Support for Governors' Use of National Guard (Memorandum of May 8, 2020), 28839–28840

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28605

Securities and Exchange Commission
RULES
Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, 28484–28488
PROPOSED RULES
Good Faith Determinations of Fair Value, 28734–28770
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28668–28669, 28675–28676, 28685–28686

Meetings:
Fixed Income Market Structure Advisory Committee, 28686
Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data, 28702–28731
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe Exchange, Inc., 28669–28671
New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American, LLC, 28671–28675
NYSE American, LLC, 28686–28691
NYSE Arca, Inc., 28676–28685

Small Business Administration
RULES
Business Loan Program Temporary Changes:
Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor With Respect to Certification Concerning Need for Paycheck Protection Program Loan Request,

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Repatriation/Emergency Medical and Dietary Assistance Loan Application, 28691

Trade Representative, Office of United States
NOTICES
Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act, 28695–28697
Product Exclusions:
China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 28691–28695

Transportation Department
See Federal Aviation Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Compliance Inspection Report, 28699
Meetings:
Research Advisory Committee on Gulf War Veterans' Illnesses, 28699–28700

Workers Compensation Programs Office
NOTICES
Meetings:
Advisory Board on Toxic Substances and Worker Health, 28665–28666

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 28702–28731

Part III
Securities and Exchange Commission, 28734–28770

Part IV
Agriculture Department, Animal and Plant Health Inspection Service, 28772–28799

Part V
Homeland Security Department, Coast Guard, 28802–28828

Part VI
Presidential Documents, 28829–28840

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10030 28831
10031 28833
10032 28835
10033 28837

Administrative Orders:

Memorandums:
Memorandum of May 8, 2020 28839

9 CFR

1 28772
2 28772
3 28772

10 CFR

72 28479

Proposed Rules:

72 28521

14 CFR

Proposed Rules:

71 28523

17 CFR

200 28484
230 28484
232 28484
239 28484
240 28484
270 28484
274 28484

Proposed Rules:

210 28734
270 28734

26 CFR

Proposed Rules:

1 (2 documents) 28524, 28539

33 CFR

165 28488

Proposed Rules:

100 28539
117 (4 documents) 28540, 28542, 28544, 28546
135 28802
138 28802
153 28802

40 CFR

52 (2 documents) 28490, 28493
131 28494

Proposed Rules:

52 (2 documents) 28548, 28550
81 28550
86 28564
600 28564

44 CFR

64 28499
333 28500

47 CFR

Proposed Rules:

73 28586

48 CFR

Proposed Rules:

25 28596

Rules and Regulations

Federal Register

Vol. 85, No. 93

Wednesday, May 13, 2020

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2020–0050]

RIN 3150–AK47

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for two multipurpose canisters MPC–89 and MPC–37; add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes. These changes are discussed in more detail in the ''Discussion of Changes'' section of this direct final rule.

DATES: This direct final rule is effective July 27, 2020, unless significant adverse comments are received by June 12, 2020. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC 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 *https://www.regulations.gov* and search for Docket ID NRC–2020–0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–8342; email: *Vanessa.Cox@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Discussion of Changes
V. Voluntary Consensus Standards
VI. Agreement State Compatibility
VII. Plain Writing
VIII. Environmental Assessment and Finding of No Significant Impact
IX. Paperwork Reduction Act Statement
X. Regulatory Flexibility Certification
XI. Regulatory Analysis
XII. Backfitting and Issue Finality
XIII. Congressional Review Act
XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0050 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–2020–0050.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2020–0050 in your comment submission.

Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* and enters all comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the NRC, 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. You should inform those persons 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. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 5 to Certificate of Compliance No. 1032 and does not include other aspects of the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. The NRC has determined that, with the requested changes, adequate protection of public health and safety will continue to be ensured. The amendment to the rule will become effective on July 27, 2020. However, if the NRC receives any significant adverse comment on this direct final rule by June 12, 2020, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. Responses are considered substantive when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record;

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition; or

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 28, 2011 (76 FR 17019), that approved the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1032.

IV. Discussion of Changes

On June 15, 2018, as supplemented on September 20, 2018, April 1, 2019, April 30, 2019, June 14, 2019, October 4, 2019, October 21, 2019, and December 18, 2019, Holtec International submitted a request to amend Certificate of Compliance No. 1032 for the HI–STORM Flood/Wind Multipurpose Canister Storage System. Amendment No. 5 revises the certificate of compliance as follows:

1. Adds new heat load patterns for the MPC–89 and MPC–37 and revises the minimum required cooling time for fuel to one year for MPC–89 and MPC–37 storage canisters.
2. Adds four new fuel types (10x10I, 11x11A, 7x7C and 8x8G) to the approved contents listed in Appendix B to the certificate of compliance.
3. Allows an exception to the American Society of Mechanical Engineers Code that permits use of certain duplex stainless steels in the HI–STORM Flood/Wind Multipurpose Canister Storage System.
4. Uses the ANSYS FLUENT® computer-based analysis model to revise the calculation for evaluating effective fuel conductivities.
5. Adds the use of the damaged fuel isolator to Appendix A of the certificate of compliance.
6. Adds two versions of the standard variable weight transfer cask: Version V, which has a natural circulation feature, and Version V2, which has the option for a removable neutron shield.
7. Adds the option of using cyclic vacuum drying for all multi-purpose canisters.
8. Adds fuel assemblies containing blended low enriched uranium as approved contents, adds the definition for blended low-enriched uranium fuel assemblies to the Glossary in the final safety analysis report and to the definition section in the certificate of compliance, and adds the required shielding evaluation to the final safety analysis report for storing blended low enriched uranium fuel assemblies in the HI–STORM Flood/Wind Multipurpose Canister Storage System.

In addition, Amendment No. 5 makes several clarifications and minor changes.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to prevent loss of containment, shielding, and criticality control in the event of each evaluated accident condition. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 5 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection

Against Radiation.'' Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System casks that meet the criteria of Amendment No. 5 to Certificate of Compliance No. 1032.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility V. Category ''NRC—Areas of Exclusive NRC Regulatory Authority.'' The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular Agreement State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 5 to Certificate of Compliance No. 1032.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 5 revises the certificate of compliance to: (1) Add new heat load patterns and revise the minimum required cooling time for multipurpose canisters MPC–89 and MPC–37; (2) add new fuel types to the approved contents; (3) allow an exception to a code to permit use of certain duplex stainless steels; (4) use an analysis model to revise the calculation for evaluating effective fuel conductivities; (5) add the use of the damaged fuel isolator; (6) add two versions of the standard variable weight transfer cask; (7) add the option of using cyclic vacuum drying; and (8) make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for Amendment No. 5 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

The design of the cask would prevent loss of confinement, shielding, and criticality control in the event of each evaluated accident condition. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 5 would remain well within the 10 CFR part 20 limits. Therefore, the proposed certificate of compliance changes will not result in any radiological or non-radiological

environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 5 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System in accordance with the changes described in proposed Amendment No. 5 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 5 to Certificate of Compliance No. 1032 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled ''List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if: (1) It notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 28, 2011 (76 FR 17019), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design by adding it to the list of NRC-approved cask designs in § 72.214.

On June 15, 2018, as supplemented on September 20, 2018, April 1, 2019, April 30, 2019, June 14, 2019, October 4, 2019, October 21, 2019, and December 18, 2019, Holtec International submitted a request to amend the HI–STORM Flood/Wind Multipurpose Canister Storage System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 5 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System under the changes described in Amendment No. 5 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1032 for the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 5 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 5 to Certificate of Compliance No. 1032 for the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System was initiated by Holtec International and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 5 applies only to new casks fabricated and used under Amendment No. 5. These changes do not affect existing users of the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, and previous

amendments continue to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 5, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 5 to Certificate of Compliance No. 1032 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. 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./Web link/ **Federal Register** Citation
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Resubmittal dated June 15, 2018.	ML18179A100 (package).
Holtec International Modification to Requested Changes on HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Request dated September 20, 2018.	ML18268A139.
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Supplemental Information dated April 1, 2019.	ML19108A081 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Request for Supplemental Information 6–1 for Certificate of Compliance No. 1032 dated April 30, 2019.	ML19127A267 (package).
Submittal of Holtec International Certificate of Compliance No. 1032 dated June 14, 2019	ML19177A239 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Additional Information—Batch 1 dated October 4, 2019.	ML19289A626 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Additional Information—Batch 2 dated October 21, 2019.	ML19317D392 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Consolidated Changed Pages dated December 18, 2019.	ML20002A643 (package).
Memo re User Need for Rulemaking for the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 5 dated February 14, 2020.	ML20014E617.
Draft Proposed Certificate of Compliance No. 1032, Amendment 5	ML20014E618.
Proposed Certificate of Compliance No. 1032, Amendment 5—Appendix A, Technical Specifications	ML20014E619.
Proposed Certificate of Compliance No. 1032, Amendment 5—Appendix B	ML20014E620.
Preliminary Certificate of Compliance No. 1032, Amendment 5—Safety Evaluation Report	ML20014E621.

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–2020–0050. 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–2020–0050; (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).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011, superseded by Amendment Number 0, Revision 1, on April 25, 2016.

Amendment Number 0, Revision 1, Effective Date: April 25, 2016.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

Amendment Number 1, Revision 1, Effective Date: June 2, 2015.

Amendment Number 2 Effective Date: November 7, 2016.

Amendment Number 3 Effective Date: September 11, 2017.

Amendment Number 4 Effective Date: July 14, 2020.

Amendment Number 5 Effective Date: July 27, 2020.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

* * * * *

Dated this 29th day of April, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–10087 Filed 5–12–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 232, 239, 240, 270, and 274

[Release Nos. 33–10765; 34–88358; IC–33814; File No. S7–23–18]

RIN 3235–AK60

Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts

Correction

In rule document 2020–05526 in the issue of Friday, May 1, 2020, make the following corrections:

1. On page 26058, in the first column, footnote 1056 should read ''[1056] The Commission recently adopted rules requiring registrants to include a hyperlink to each exhibit identified in the exhibit index in any registration statement or report that is required to include exhibits under 17 CFR 229.601 (Item 601 of Regulation S–K) or under Form F–10 or Form 20– F. In connection with this rulemaking, commenters indicated that hyperlinking would make it easier and reduce the amount of time required for investors to navigate to related documents. See Exhibit Hyperlinks and HTML Format, Release No. 34–80132 (Mar. 1, 2017) [82 FR 14130 (Mar. 17, 2017)] at nn.85 and 86. In 2019, the Commission adopted amendments to its investment company registration forms, including Forms N–3, N–4, and N–6, to require hyperlinks to exhibits required to be filed with the registration statement. See FAST Act Adopting Release, supra note 501.

2. The table entitled ''Rule 498a PRA Estimates'' appearing on pages 26087–26089, should appear as follows:

BILLING CODE 1301–00–D

RULE 498A PRA ESTIMATES

	Internal Hour Burden	Wage Rate	Internal Time Costs	Annual External Cost Burden
PROPOSED ESTIMATES FOR FORM N-3				
Preparation and filing of ISP/USP	38 hours	$336 (blended rate for compliance attorney and senior programmer)	$12,768	$9,500
Online Posting of Contract Documents	2 hours	$239 (webmaster)	$478	$500
Online Posting of Portfolio Company Documents	--	--	--	--
Total Burden per Registrant	**40 hours**		**$13,246**	**$10,000**
Number of registrants	× 5		× 5	× 5
Total annual burden	**200 hours**		**$66,230**	**$50,000**
PROPOSED ESTIMATES FOR FORM N-4				
Preparation of ISP and USP	20 hours	$336 (blended rate for compliance attorney and senior programmer)	$6,720	$5,000
Online Posting of Contract Documents	2 hours	$239 (webmaster)	$478	$500
Online Posting of Portfolio Company Documents	2 hours	$239 (webmaster)	$478	$500
Total Burden per Registrant	**24 hours**		**$7,676**	**$6,000**
Number of registrants	x 500		× 500	× 500
Total annual burden	**12,000 hours**		**$3,838,000**	**$3,000,000**

PROPOSED ESTIMATES FOR FORM N-6				
Preparation of ISP/USP	20 hours	$336	$6,720	$5,000
Online Posting of Contract Documents	2 hours	$239 (webmaster)	$478	$500
Online Posting of Portfolio Company Documents	2 hours	$239 (webmaster)	$478	$500
Total Burden per Registrant	**24 hours**		**$7,676**	**$6,000**
Number of registrants	× 221		× 221	× 221
Total annual burden	**5,304 hours**		**$1,696,396**	**$1,326,000**
TOTAL PROPOSED ESTIMATED BURDENS				
Total Annual burden	**17,504 hours**		**$5,600,626**	**$4,376,000**
Use of summary prospectus	x 95%		x 95%	x 95%
Total Annual Burden for Collection of Information	**16,629 hours[1]**		**$5,320,595[2]**	**$4,157,200**
FINAL ESTIMATES FOR FORM N-3				
Preparation of ISP/USP	38 hours	$269 (blended rate for compliance attorney and intermediate accountant)	$10,222	$9,500
Online Posting of Contract Documents	2 hours	$248 (webmaster)	$496	$500

[1] The Proposing Release included an aggregate estimate of 17,359 hours, which reflected a mathematical error. The table includes the corrected calculation based on the estimates in the Proposing Release.

[2] The Proposing Release included an aggregate estimated time cost equivalent of $5,565,971, which reflected a mathematical error relating to the estimated total annual burden hours. The table includes the corrected calculation based on the estimates in the Proposing Release.

Online Posting of Portfolio Company Documents	–	–	–	–
Total Burden per Registrant	**40 hours**		**$10,718**	**$10,000**
Number of registrants	× 6		× 6	× 6
Total annual burden	**240 hours**		**$64,308**	**$60,000**
FINAL ESTIMATES FOR FORM N-4				
Preparation of ISP and USP	20 hours	$269 (blended rate for compliance attorney and intermediate accountant	$5,380	$5,000
Online Posting of Contract Documents	2 hours	$248 (webmaster)	$496	$500
Online Posting of Portfolio Company Documents	2 hours	$248 (webmaster)	$496	$500
Total Burden per Registrant	**24 hours**		**$ 6,372**	**$6,000**
Number of registrants	× 426		× 426	× 426
Total annual burden	**10,224 hours**		**$ 2,714,472**	**$2,556,000**
FINAL ESTIMATES FOR FORM N-6				
Preparation of ISP and USP	20 hours	$269 (blended rate for compliance attorney and intermediate accountant	$5,380	$5,000
Online Posting of Contract Documents	2 hours	$248 (webmaster)	$496	$500

Online Posting of Portfolio Company Documents	2 hours	$248 (webmaster)	$496	$500
Total Burden per Registrant	**24 hours**		**$ 6,372**	**$6,000**
Number of registrants	× 244		× 244	× 244
Total annual burden	**5,856 hours**		**$ 1,554,768**	**$1,464,000**
ESTIMATES FOR PRINTING AND MAILING				
Initial Summary Prospectus	–	–	–	$1,183,200
Updating Summary Prospectus	–	–	–	$8,855,000
Total annual burden	**–**	**–**	**–**	**$10,038,200**
TOTAL ESTIMATED BURDENS (INCLUDING PRINTING AND MAILING)				
Total Annual burden	**16,320 hours**		**$4,333,548**	**$14,118,200**
Use of summary prospectus	x 90%		x 90%	x 90%
Total Annual Burden for New Collection of Information	**14,688 hours**		**$3,900,193**	**$11,559,420**

[FR Doc. C1–2020–05526 Filed 5–12–20; 8:45 am]
BILLING CODE 1301–00–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0242]

RIN 1625–AA00

Safety Zone; Tug Kimberly Anne and Barge Big Digger Operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of a tug and barge in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the work, inspection, and surveying of underwater infrastructure. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or their designated representative.

DATES: This rule is effective without actual notice from May 13, 2020 through October 30, 2020. For the purposes of enforcement, actual notice will be used from May 4, 2020 through May 13, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0242 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Sean V. Murphy, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard at telephone (906) 635–3223 or email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details of the specific dates, vessel names, and safety zone distances concerning the safety zones were not finalized within a sufficient time to allow for notice and a subsequent 30-day comment period before work, inspections, and surveying of underwater infrastructure. Delaying this rule to allow for a notice and comment period would be impracticable because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with aforementioned operation commencing on May 4, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the work, inspections, and surveying of underwater infrastructure.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with the work, inspection, and surveying of underwater infrastructure in the Straits of Mackinac starting May 4, 2020, will be a safety concern for anyone within a 500-yard radius of the tug and barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operation is conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from May 4, 2020, to October 30, 2020. The safety zone will cover all navigable waters within 500 yards of a tug and barge being used to work, inspect, and survey underwater infrastructure in the Straits of Mackinac. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the operation is conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule

will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500 yards of a tug and barge used to work, inspect, and survey underwater infrastructure in the Straits of Mackinac. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0242 to read as follows:

§ 165.T09–0242 Safety Zone; Tug Kimberly Anne and Barge Big Digger operating in the Straits of Mackinac, MI.

(a) *Location.* The following areas are safety zones: All navigable waters within 500 yards of Tug Kimberly Anne and Barge Big Digger while conducting work, inspection, and surveying of underwater infrastructure in the Straits of Mackinac.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative.

(2) Before a vessel operator may enter or operate within the safety zones, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from May 4, 2020 to October 30, 2020.

Dated: May 1, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–09652 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0684; FRL–10007–95–Region 2]

Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of New York for purposes of implementing Reasonably Available Control Technology (RACT) in the New York portion of the New York-Northern New Jersey-Long Island NY–NJ–CT nonattainment area (New York Metropolitan Area or NYMA) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) as it relates to major sources emitting oxides of nitrogen (NO_X), control technique guidelines (CTG) for sources of volatile organic compounds (VOCs), and non-CTG for major sources of VOCs. In addition, the EPA is approving portions of the SIP revision submitted by New York to address the 2008 ozone NAAQS that certify that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program, an emissions statement program, and a nonattainment new source review program. The EPA is also approving New York's RACT plan as it applies to the CTG for industrial cleaning solvents and to solvent metal cleaning processes. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective on June 12, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2018–0684. 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.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866, at (212) 637–3347, or by email at *Hammad.Omar@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. What is the background for this action?
II. What comments were received in response to the EPA's proposed action?
III. What action is the EPA taking?

IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background for this action?

On February 13, 2020 (85 FR 8233), the EPA published a Notice of Proposed Rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on November 13, 2017 for purposes of implementing Reasonably Available Control Technology (RACT) [1] for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) for the New York portion of the NYMA classified as moderate nonattainment. The State's November 2017 SIP submittal consists of a demonstration that New York meets the RACT requirements for the two precursors for ground-level ozone, *i.e.,* oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 8-hour ozone standard. The EPA proposed to approve New York's November 2017 RACT SIP submittal as it applies to non-control technique guideline (non-CTG) major sources of VOCs, CTG sources of VOCs and to major sources of NO_X.

The EPA also proposed to approve the following New York certifications that were submitted as part of SIP revisions to address the moderate area 2008 8-hour NAAQS. The certifications, that are applicable state-wide and therefore to the New York portion of NYMA, are: (1) That nonattainment new source review (NNSR) applies to NO_X and VOC emissions from stationary sources; (2) that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program; and (3) that the State has satisfied the requirements for an emissions statement program.

New York certified that there are no sources located in the State for the following six CTGs: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. The EPA did not propose any action on this certification since we previously approved the State's negative declaration for these six CTGs. 82 FR 58342 (December 12, 2017); 40 CFR 52.1683 (a) and (b).

The EPA proposed to approve New York's RACT plan as it applies to the CTG for industrial cleaning solvents. On December 12, 2017 (82 FR 58342), the EPA published a conditional approval of New York's state-wide RACT submittal, dated December 22, 2014, as supplemented on September 6, 2017, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement as it applies to CTG requirements for VOC sources for industrial cleaning solvents. In its letter dated September 6, 2017, New York committed to adopt, by November 30, 2018, a revised Part 226 of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), entitled, ''Solvent Metal Cleaning Processes,'' which addresses the CTG for industrial cleaning solvents. In the conditional approval, EPA stated that if New York failed to meet its commitment within the one-year time period specified by CAA section 110(k)(4), the conditional approval will, by operation of law, become a disapproval. New York's response to the conditional approval was submitted to the EPA on November 5, 2019, approximately 11 months later than the State's commitment included in its September 6, 2017, letter to the EPA, so the conditional approval converted to a disapproval. The EPA then proposed to approve New York's state-wide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017, and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement, as it applies to CTG requirements for VOC sources for industrial cleaning solvents.

The EPA also proposed to approve New York's RACT plan as it applies to solvent cleaning processes. The EPA approved New York's RACT plan for solvent metal cleaning processes under the 1-hour ozone standard and proposed to approve New York's revised and more stringent requirements as the RACT plan for solvent metal cleaning processes for the 2008 8-hour ozone standard.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's February 13, 2020, proposed rulemaking (85 FR 8233).

II. What comments were received in response to the EPA's proposed action?

EPA did not receive any comments on the February 13, 2020, proposed approval of New York's RACT for the 2008 8-hour ozone National Ambient Air Quality Standards in the New York Metropolitan Moderate nonattainment area.

III. What action is the EPA taking?

The EPA is approving New York's state-wide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017, and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement for the New York portion of the NYMA, as it applies to CTG requirements for sources of VOC, including industrial cleaning solvents. The EPA is approving the revisions to 6 NYCRR Part 226, ''Solvent Cleaning Processes and Industrial Cleaning Solvents,'' with a State effective date of November 1, 2019.

The EPA is approving New York's November 13, 2017, SIP submittal as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, other than the 2016 oil and natural gas CTG, and to major sources of NO_X.

The EPA is also approving New York's state-wide certifications applicable to the New York portion of NYMA moderate nonattainment area for: (1) Nonattainment new source review; (2) vehicle I/M program; and (3) emission statements.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the 6 NYCRR Part 226, ''Solvent Cleaning Processes and Industrial Cleaning Solvents,'' regulation described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

[1] The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

[2] 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: April 19, 2020.

Peter Lopez,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

■ 2. In § 52.1670:

■ a. In the table in paragraph (c), revise the entry ''Title 6, Part 226''.

■ b. In the table in paragraph (e), add the entries ''2008 8-hour Ozone RACT Analysis and Certification'', ''2008 8-hour Ozone Specific Nonattainment New Source Review Requirements Certification'', ''2008 8-hour Ozone Nonattainment Emission Statement Program Certification'', and ''2008 8-hour Ozone Nonattainment Motor Vehicle Enhanced Inspection and Maintenance (I/M) Program Certification'' in alphabetical order at the end of the table.

The revision and additions read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* *	*	*	*	* *
Title 6, Part 226	Solvent Cleaning Processes and Industrial Cleaning Solvents.	11/1/2019	5/13/2020	
* *	*	*	*	* *

* * * * * (e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISION

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* *	*	*	*	* *
2008 8-hour Ozone RACT Analysis and Certification.	Statewide and to the New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/13/2017 as supplemented on 11/05/2019.	5/13/2020, [insert **Federal Register** citation].	• Full approval. • Addresses the 12/22/2014 conditional approval as it applies to CTG for VOC major sources. • Certifies New York has met the RACT requirements as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, other than the 2016 oil and natural gas CTG, and to major sources of NO_X for the Moderate 2008 8-hour Ozone New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.
2008 8-hour Ozone Specific Nonattainment New Source Review Requirements Certification.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/13/2017	5/13/2020, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Nonattainment Emission Statement Program Certification.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/13/2017	5/13/2020, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Nonattainment Motor Vehicle Enhanced Inspection and Maintenance (I/M) Program Certification.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/13/2017	5/13/2020, [insert **Federal Register** citation].	• Full approval.

[FR Doc. 2020–08860 Filed 5–12–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0208; FRL–10009–05–Region 6]

Air Plan Approval; Oklahoma; Updates to the General SIP and New Source Review Permitting Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule that was published in the **Federal Register** on April 10, 2020 which will be effective on May 11, 2020. The final rule approved revisions to the state implementation plan for Oklahoma (Oklahoma SIP) concerning the incorporation by reference of federal requirements, updates to the general SIP provisions, and updates to the New Source Review (NSR) permit programs to address public notice and modeling requirements, including certain statutory provisions. This correction does not change any final action taken by the EPA on April 10, 2020; today's action merely provides further clarification on the rulemaking citations for the Oklahoma SIP.

DATES: This rule is effective on May 11, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0208. 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115,

wiley.adina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: In FR doc. 2020–06160 at 85 FR 20178 in the issue of April 10, 2020, the following corrections are made:

§ 52.1920 [Corrected]

■ 1. On page 20181, in the second column, amendatory instruction a.ii. is corrected to read ''Adding entries for ''252:4–7–20'', ''252:4–17–1'', ''252:4–17–2'', ''252:4–17–3'', ''252:4–17–4'', ''252:4–17–5'', ''252:4–17–6'', ''252:4–17–7'', ''252:100–8–36.1''; and''

■ 2. On the same page, in the third column, amendatory instruction b.i. is corrected to read ''Amend the table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' by adding a new entry at the end of the table for: ''Letter to Ms. Anne Idsal, Regional Administrator, EPA Region 6, dated May 16, 2018 regarding ''Clarification of PSD Public Participation Procedures under 2017 Revisions to the Oklahoma State Implementation Plan''.''

■ 3. On the same page, in the same column, amendatory instruction b.ii. is corrected to read ''Amend the table titled ''EPA Approved Statutes in the Oklahoma SIP'' by adding new entries at the beginning of the table for ''25 O.S. 304(2)'', ''27A O.S. 2–5–112(E)'', ''27A O.S. 2–14–103'', ''27A O.S. 2–14–301'', ''27A O.S. 2–14–302'', ''27A O.S. 2–14–303'', ''27A O.S. 2–14–304''; ''51 O.S. 24A.3'', ''75 O.S. 302(B)'', and ''75 O.S. 303''.

Dated: April 29, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–09550 Filed 5–11–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0174; FRL–10008–24–OW]

RIN 2040–AF94

Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to amend the federal regulations to withdraw certain human health water quality criteria applicable to waters in the State of Washington. The EPA is taking this action because the State adopted, and the EPA approved, human health criteria that the Agency determined are protective of Washington's designated uses for its waters. In this action, the EPA is amending the federal regulations to withdraw those certain human health criteria applicable to Washington but promulgated by the Agency, as described in the August 6, 2019 proposed rule. The withdrawal will enable Washington to implement its EPA-approved human health criteria, submitted on August 1, 2016, and approved on May 10, 2019, as applicable criteria for Clean Water Act (CWA or the Act) purposes.

DATES: This final rule is effective on June 12, 2020.

ADDRESSES: The EPA has established a docket for this action identified by Docket ID No. EPA–HQ–OW–2015–0174, at *https://www.regulations.gov.* For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

I. General Information
Does this action apply to me?
II. Background
What are the applicable federal statutory and regulatory requirements?
III. What are the Federal Water Quality Criteria that the EPA is withdrawing?
A. Comments in Support of the EPA's Proposal To Withdraw the Federal HHC
B. Comments in Opposition to the EPA's Proposal To Withdraw the Federal HHC
C. Comments Concerning Methylmercury and Bis (2-Chloro-1-Methylethyl) Ether
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
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 and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act
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

Does this action apply to me?

This final action withdraws certain federal human health criteria (HHC) in the State of Washington that are no longer needed due to the EPA's approval of the corresponding State HHC on May 10, 2019. Entities discharging pollutants in Washington waters, citizens, as well as the State of Washington may be interested in this rulemaking, because after the effective date of this rulemaking Washington's EPA-approved HHC, rather than the federal HHC, will be the applicable water quality standards in Washington waters for CWA purposes. This action applies only to waterbodies in the State of Washington and does not apply to waters that are within Indian Country as defined in 18 U.S.C. 1151. If you have questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

What are the applicable federal statutory and regulatory requirements?

Consistent with the CWA, the EPA's water quality standards (WQS) program assigns to states and authorized tribes the primary authority for adopting

WQS.[1] After a state adopts WQS, the state must submit them to the EPA for review and action in accordance with the CWA. If the EPA finds the state WQS are based on sound science and protect the state's designated uses, the CWA requires the EPA to approve those state WQS. The Act authorizes the EPA to promulgate federal WQS following the EPA's disapproval of state WQS or following an Administrator's determination that new or revised WQS are ''necessary to meet the requirements of the Act.'' [2]

On September 14, 2015, the EPA proposed a federal rule to establish updated HHC in Washington based on an Administrator's determination that new or revised WQS were necessary to meet the requirements of the Act. Specifically, in its 2015 proposed rule, the EPA considered data representing regional and local fish consumption that reflected consumption levels much higher than the National Toxics Rule (NTR) fish consumption rate of 6.5 grams/day, and accordingly ''determined that the federal human health criteria in the NTR as applied to Washington no longer protect the relevant designated uses of Washington's waters.'' [3] To address the Administrator's determination pursuant to its CWA Section 303(c) authority, the EPA's proposed rulemaking established HHC using a fish consumption rate of 175 grams/day.[4] The EPA also used all of the inputs from the EPA's recently updated 2015 CWA Section 304(a) national recommended water quality criteria for the protection of human health to calculate the proposed federal criteria.[5]

Following the EPA's 2015 proposed rulemaking, on August 1, 2016, Washington submitted HHC for the EPA's review.[6] Washington's criteria were based on a fish consumption rate of 175 grams/day and incorporated most of the components of the EPA's updated 2015 CWA Section 304(a) HHC recommendations.[7] By using a fish consumption rate of 175 grams/day, which is consistent with the EPA's proposed rulemaking, Washington's HHC addressed the basis for the EPA's 2015 Administrator's determination—that it is necessary to adopt new or revised HHC based on a higher fish consumption rate.

For the reasons explained in the EPA's 2016 disapproval letter and final federal rule, the EPA disapproved a subset of the HHC that Washington submitted to the EPA.[8] The EPA's final federal rule was issued concurrent with its partial disapproval letter.[9] In explaining the rationale underlying the partial disapproval of Washington's August 1, 2016, submittal, the EPA ''agree[d] with Washington's decision to derive the HHC using a FCR of 175 g/day,'' noting that the value was consistent with the EPA's final federal rule.[10] However, the EPA disagreed with some of the risk management decisions the State made during the development of its HHC and its decision not to incorporate all components of the updated 2015 CWA Section 304(a) HHC recommendations.[11]

Although the EPA promulgated HHC for Washington in the NTR, and subsequently in November 2016, the EPA prefers that states maintain primary responsibility and establish their own WQS in keeping with the text and structure of the CWA. In response to a February 21, 2017, petition from several entities asking the EPA to reconsider the partial disapproval of Washington's August 2016 HHC,[12] the EPA issued a letter on August 3, 2018, stating its intent to reconsider the partial disapproval of Washington's HHC and the subsequent promulgation of federal criteria.[13] After a thorough review of the State's 2016 submittal and applicable provisions of the CWA, its implementing regulations, and longstanding EPA guidance, on May 10, 2019, the EPA reconsidered its partial disapproval of Washington's HHC and approved all but two of the criteria that the EPA previously disapproved.[14] In addition, the EPA approved four criteria for two pollutants (thallium and 2,3,7,8–TCDD [dioxin]) that the EPA previously deferred action on in November 2016. The EPA reaffirmed its November 2016 disapproval of the two criteria that Washington submitted for arsenic (water + organism and organism only).

As provided in 40 CFR 131.21(c), federally promulgated WQS that are more stringent than EPA-approved state WQS remain applicable for purposes of the CWA until the EPA withdraws the federal standards. Accordingly, on August 6, 2019 (84 FR 38150) the EPA proposed to amend the federal regulations to withdraw those federally promulgated HHC for which the EPA has approved Washington's HHC and provided an opportunity for public comment on this proposed action. The EPA received comments on the proposed rulemaking and a listing of the comments and the Agency's responses are contained in the document ''Response to Comments, Revision of Certain Federal Water Quality Criteria Applicable to Washington,'' which can be accessed at OW docket number EPA–HQ–OW–2015–0174. The EPA is now taking action to finalize the withdrawal of the federal rule as proposed.

The withdrawal of the federally promulgated criteria will enable

[1] 33 U.S.C. 1313(a), (c).

[2] 33 U.S.C. 1313(c)(4).

[3] *Revision of Certain Water Quality Standards Applicable to Washington,* 80 FR 55063, 55066 (September 14, 2015).

[4] *Id.* at 55066–55067.

[5] *Id. at 55063, 55066.*

[6] Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication no. 16–10–025.

[7] *Id.*

[8] November 15, 2016. Letter (EPA Partial Disapproval Letter) and enclosed Technical Support Document (Partial Disapproval TSD) from Daniel D. Opalski, Director, Office of Water and Watersheds, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: EPA's Partial Approval/Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools; 81 FR 85417 (''Concurrent with this final rule, EPA is taking action under CWA 303(c) to approve in part, and disapprove in part, the human health criteria submitted by Washington'').

[9] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

Contrary to at least one comment letter EPA received prior to its May 10, 2019 Decision to Approve Washington's criteria, the EPA did not provide the State with 90 days to remedy the partial disapproval, as envisioned in Section 303(c)(3) of the Act. *See* May 7, 2019 Letter from the Lower Elwha Klallam Tribe to Administrator Andrew Wheeler, EPA, Re: Washington State Water Quality Standards at 4.

[10] Partial Disapproval TSD at 16.

[11] November 15, 2016. Letter (EPA Partial Disapproval Letter) and enclosed Technical Support Document (Partial Disapproval TSD) from Daniel D. Opalski, Director, Office of Water and Watersheds, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: EPA's Partial Approval/Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools.

[12] February 21, 2017. *Petition for Reconsideration of EPA's Partial Disapproval of Washington's August 1, 2016 submission on Human Health Water Quality Criteria and Implementation Tools, and Repeal of the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington, 81 FR 85417 (November 28, 2016)* submitted by Northwest Pulp & Paper Association, American Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group and Washington Farm Bureau.

[13] August 3, 2018. Letter from David P. Ross, Assistant Administrator, Office of Water, EPA to Penny Shamblin, Counsel for Utility Water Act Group, Re: Petition for Reconsideration of the Environmental Protection Agency's (EPA) Partial Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools submitted by the State of Washington on August 1, 2016, and Repeal of the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington.

[14] May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

Washington to implement its EPA-approved HHC, consistent with the federal and state roles contemplated by the CWA. Consistent with the cooperative federalism structure of the CWA, once the EPA approves state WQS addressing the same pollutants for which the EPA has promulgated federal WQS, it is incumbent on the EPA to withdraw the federal WQS to enable the EPA-approved state WQS to become the applicable WQS for CWA purposes.

III. What are the federal water quality criteria that the EPA is withdrawing?

As discussed in the proposed rulemaking (see 84 FR 38150, August 6, 2019), this final rule amends the federal regulations to withdraw all federal HHC promulgated for Washington in November 2016 at 40 CFR 131.45,[15] with the exception of criteria for arsenic, methylmercury, and bis (2-chloro-1-methylethyl) ether. For arsenic, on May 10, 2019, the EPA reaffirmed its November 2016 disapproval of the two criteria Washington submitted for arsenic (water + organism and organism only), and therefore the federal arsenic criteria, originally promulgated under the NTR and now at 40 CFR 131.45 for Washington remain in place.[16] For priority pollutants methylmercury and bis (2-chloro-1-methylethyl) ether, Washington did not submit criteria for those pollutants in its 2016 WQS submittal. Therefore, the federal methylmercury and bis (2-chloro-1-methylethyl) ether criteria that the EPA promulgated on November 28, 2016 (and that became effective on December 28, 2016) remain in effect in the State.

The EPA did not make any changes in response to the comments received on the proposed rulemaking. The EPA received 333 unique comments on the proposed rulemaking and approximately 5,000 comments as part of mass mailing campaigns. The EPA also held two public hearings on the proposed rulemaking (an online hearing on August 28, 2019 and an in-person hearing in Seattle, Washington on September 25, 2019) and received public comments during those hearings. Brief summaries of the comments and the EPA's responses are provided in this section. As noted previously, a full accounting of the comments and the Agency's responses can be found in the docket for this rulemaking.

A. Comments in Support of the EPA's Proposal To Withdraw the Federal HHC

Some commenters supported the EPA's May 10, 2019 decision to approve Washington's HHC upon reconsideration and the EPA's proposal to withdraw the federal HHC. These commenters asserted that Washington's HHC were sufficiently protective of the applicable designated uses in the State and that the federal HHC were unattainable and costly. These commenters stated that implementation of Washington's HHC will result in meaningful improvements to water quality, rather than regulatory uncertainty. Some commenters also noted that withdrawing the federal HHC could result in significant cost savings.

The EPA appreciates the comments in support of its May 10, 2019 action and proposal to withdraw the federal HHC. More information on the EPA's action to approve Washington's HHC upon reconsideration, including the EPA's approval letter and associated Technical Support Document, can be accessed at *https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington* and in the docket for this proposed rule.

Some of these commenters also asked the EPA to approve, upon reconsideration, Washington's HHC for arsenic. Comments concerning the EPA's disapproval of Washington's 2016 arsenic criteria are beyond the scope of this rulemaking. The EPA's May 10, 2019 decision document sets forth the EPA's rationale for the disapproval.[17]

B. Comments in Opposition to the EPA's Proposal To Withdraw the Federal HHC

Other commenters opposed the EPA's proposal to withdraw the federal HHC and requested that the EPA retain the federal criteria. Many of these commenters focused on and described their opposition to the EPA's May 10, 2019 decision to approve Washington's HHC upon reconsideration. These commenters asserted that Washington's HHC are less stringent than the federal HHC and therefore expressed concern that implementation of Washington's HHC would reduce protections for human health, especially among consumers of large quantities of fish sourced from the waters subject to the HHC. Several commenters asserted that the EPA's approval of Washington's HHC was arbitrary and capricious because they alleged that Washington's HHC are not based on sound scientific rationale, and accordingly urged the EPA to retain the federal criteria which they asserted are based on sound scientific rationale. The EPA disagrees with commenters who asserted or implied that *all* of Washington's HHC are less stringent than the federal HHC. As described in the EPA's May 10, 2019 decision document, some of Washington's HHC are less stringent than the federal HHC, and some are more stringent. Indeed, in 2016 the EPA approved 45 of Washington's HHC that were as stringent or more stringent than the EPA's calculated HHC. The EPA also disagrees with commenters who asserted that the EPA's approval was arbitrary and capricious and that Washington's HHC are not based on sound science. The EPA's rationale is thoroughly described in the EPA's May 10, 2019 decision document, including the EPA's conclusion that Washington's HHC are based on sound science and are protective of Washington's designated uses.

Commenters also raised concerns about the EPA's approval of Washington's HHC for Polychlorinated Biphenyls (PCBs) and requested that EPA retain the federal PCB criteria. Some of these commenters asserted that the EPA lacks authority to reverse its prior disapproval of Washington's HHC and that the reversal and withdrawal of the federal rule would lead to litigation and regulatory uncertainty.

The EPA's authority to promulgate new or revised federal criteria is not at issue in this action to withdraw the federal criteria. Because the EPA has approved certain HHC developed and submitted by the State, the federal HHC that the Agency promulgated after its initial disapproval of the State's 2016 submittal are no longer needed. This action is consistent with the federal and state roles contemplated by the CWA (see 40 CFR 131.21(c)). For the EPA's rationale for approving Washington's HHC, see the May 10, 2019 decision document.[18]

[15] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

[16] May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

[17] May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

[18] May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

C. Comments Concerning Methylmercury and Bis (2-Chloro-1-Methylethyl) Ether

Several commenters stated that the EPA should leave the federal HHC in place for methylmercury and bis (2-chloro-1-methylethyl) ether and that the EPA cannot legally withdraw these HHC and leave nothing in place. Other commenters stated that the federal methylmercury HHC are unattainable and will result in widespread impairments across the State. Some of these commenters questioned the scientific underpinnings of the methylmercury HHC. Some commenters recommended that the EPA promulgate a revised methylmercury HHC for Washington of 0.3 mg/kg in fish tissue, which is the EPA's CWA Section 304(a) national recommended criterion for methylmercury. All commenters who addressed this issue noted that mercury is a ubiquitous pollutant in Washington's waters. No commenters provided information on the presence or absence of bis (2-chloro-1-methylethyl) ether in Washington's waters.

CWA Section 303(c)(2)(B) requires that states ''shall adopt criteria for all toxic pollutants listed pursuant to Section 1317(a)(1) of this title for which criteria have been published under Section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses.'' The EPA is retaining the federal HHC for methylmercury and bis (2-chloro-1-methylethyl) ether, consistent with CWA Section 303(c)(2)(B) for the following reasons: (1) Methylmercury and bis (2-chloro-1-methylethyl) ether are both priority pollutants, (2) commenters and the EPA agree that methylmercury is ubiquitous in Washington's waters, and (3) no commenters provided information that counters the prior conclusion that these priority pollutants could be expected to interfere with Washington's uses. The EPA is not promulgating a revised HHC value for methylmercury. The 0.3 mg/kg CWA Section 304(a) recommended HHC is based on a fish consumption rate of 17.5 g/day rather than the 175 g/day rate adopted by the State of Washington and used by the EPA in deriving the federal HHC for methylmercury. There is nothing in the EPA's rulemaking record that indicates a different fish consumption rate should be used for a methylmercury HHC. However, nothing in this action or in any federal regulation would preclude a future rulemaking for HHC using a different fish consumption rate that is supported by a rulemaking record.

The EPA acknowledges the concerns that some commenters raised about attainability of the existing federal methylmercury HHC. In 2010, the EPA published the comprehensive *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion* (EPA 823–R–10–001) (''2010 Guidance''), to aid states and authorized tribes in implementing the EPA's national CWA Section 304(a) recommended fish tissue-based methylmercury water quality criterion. The EPA recommends that Washington, like certain other states that have adopted a fish tissue-based methylmercury criterion, implement the fish tissue criterion using a combination of pollutant minimization plans, monitoring, and effluent limits or trigger values as appropriate as explained in the EPA's 2010 Guidance.

In circumstances where attaining the methylmercury HHC may not be feasible, the State could undertake a new rulemaking and exercise its discretion in risk management to make adjustments to the HHC factors in the EPA's 2015 304(a) HHC recommendations, including adopting a different fish consumption rate that is supported by a rulemaking record. Additionally, changes to the applicable designated use or adoption of a WQS variance may be an option. The federal regulation at 40 CFR 131.10(g) provides requirements for establishing, modifying, and removing designated uses when attaining the use is not feasible for one of the six factors in the regulation. The federal regulation at 40 CFR 131.3(o) defines a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. A WQS variance may be appropriate if attaining the use and criterion would not be feasible during the term of the WQS variance because of one of the seven factors specified in 40 CFR 131.14(b)(2)(i)(A), including if NPDES permit limits more stringent than technology-based controls would result in substantial and widespread economic and social impact. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to issue NPDES permits with limits that are based on the highest attainable condition during the term of the WQS variance thereby allowing dischargers to make water quality improvements when the WQS is not immediately attainable but may be in the future.

It may be possible for the EPA to identify widely applicable reduction targets for mercury and other hard to treat pollutants by partnering with interested states and authorized tribes to compile literature and share data on available treatment technologies and source reduction measures. The EPA has included in the docket for this rulemaking a brief presentation that the Agency gave to Washington and a handful of other states at a WQS program meeting in September 2019 to begin a dialogue on these technical questions for select pollutants. The EPA anticipates engaging further with Washington and other interested states and authorized tribes on how to best address the challenges associated with implementing the methylmercury HHC. The EPA has established the email address *wqs-implementation@epa.gov* for states and authorized tribes to express interest in and/or provide ideas for future discussion.

IV. Statutory and Executive Order Reviews

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

This action is 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 a deregulatory action under Executive Order 13771.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information-collection burden under the PRA because it is administratively withdrawing federal requirements that are no longer needed in Washington. It does not include any information collection, reporting, or recordkeeping requirements. The OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 and has assigned OMB control number 2040–0049.

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. Small entities, such as small businesses or small governmental

jurisdictions, are not directly regulated by this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action contains no unfunded federal mandates under the provisions of Title II of the UMRA of 1995, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As this action withdraws certain federally promulgated criteria, 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. This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. In the State of Washington, there are 29 federally recognized Indian tribes. As part of today's action, the EPA has met its responsibilities under Executive Order 13175 and its Tribal Consultation Policy.

The EPA initiated consultation with federally recognized tribal officials under the EPA's Policy on Consultation and Coordination with Indian tribes early in the process of developing this rule to allow meaningful and timely input into its development. The EPA initially offered tribal consultation on this rule making on May 21, 2019. EPA staff then offered two informational calls for tribal staff on June 4 and 5, 2019, to assist tribes with the consultation process, including the tribes' decisions on whether to accept the offer to consult. Many tribes expressed dissatisfaction that EPA did not offer consultation prior to its May 10, 2019, decision and questioned how meaningful the EPA's offer for consultation was on this rule making as a result. Between June and November 2019, the EPA's representatives traveled and met in person with 16 tribes. One tribe considered the meeting to be a formal government-to-government consultation. Additionally, members of the Makah Tribe met with Headquarters and Region 10 representatives on October 23, 2019 in Washington, DC, which the tribe considered to be consultation.

The tribes expressed opposition to the EPA's May 10, 2019 decision and the withdrawal of the federal HHC. A central concern voiced by tribes is that they believe the EPA did not engage in meaningful consultation with tribal governments prior to its May 10, 2019 decision. Tribes expressed concern that treaty rights and the federal government's trust responsibility were not considered adequately by the EPA in the May 10, 2019 decision. Some of the tribes questioned the EPA's authority to make such a decision. Tribes described the cultural importance of fish and water to their livelihood and the local economy. Although Washington's HHC do not apply in Indian Country, tribes nonetheless were concerned about the health impacts of Washington's HHC on their off-reservation treaty-reserved fishing rights and expressed a desire for ''pristine'' waters for future generations. Tribes noted that they believe implementation tools exist for the regulated community to adapt and meet the federal criteria. Many of the tribes indicated that they believe environmental protection can be balanced with economic progress, especially through technology improvements.

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

This rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

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

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

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that 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 EPA is taking final action to amend the federal regulations to withdraw certain HHC applicable to waters in the State of Washington. The withdrawal will enable Washington to implement its EPA-approved HHC. The EPA has previously determined that Washington's adopted and EPA-approved criteria are protective of human health.

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 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 17, 2020.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

■ 2. Amend § 131.45 by revising paragraph (b) to read as follows:

§ 131.45 Revision of certain Federal water quality criteria applicable to Washington.

* * * * *

(b) *Criteria for priority toxic pollutants in Washington.* The applicable human health criteria are shown in Table 1 to paragraph (b).

TABLE 1 TO PARAGRAPH (B)—HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (−) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
1. Arsenic*	7440382	1.75				44	[a] 0.018	[a] 0.14
2. Bis (2-Chloro-1-Methylethyl) Ether**.	108601		0.50	0.04	10		400	900
3. Methylmercury	22967926		2.7E–05	0.0001				[b] 0.03 (mg/kg)

[a] This criterion refers to the inorganic form of arsenic only.

[b] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA–823–R–01–001, January 3, 2001) for how this value is calculated using the criterion equation in the EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.

*These criteria were promulgated for Washington in the National Toxics Rule at 40 CFR 131.36, and are moved into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.

**Bis (2-Chloro-1-Methylethyl) Ether was previously listed as Bis (2-Chloroisopropyl) Ether.

* * * * *

[FR Doc. 2020–08497 Filed 5–12–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2020–0005; Internal Agency Docket No. FEMA–8629]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of

1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Tennessee:				
Coffee County, Unincorporated Areas	470355	July 24, 1998, Emerg; June 1, 2005, Reg; May 15, 2020, Susp.	May 15, 2020	May 15, 2020.
Manchester, City of, Coffee County	470035	August 3, 1973, Emerg; October 17, 1978, Reg; May 15, 2020, Susp.	.....do*	Do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 333

[Docket ID FEMA–2020–0019]

RIN 1660–AB04

Emergency Management Priorities and Allocations System (EMPAS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes standards and procedures by which the Federal Emergency Management Agency (FEMA) may require certain contracts or orders that promote the national defense be given priority over other contracts or orders. This rule also sets new standards and procedures by which FEMA may allocate materials, services, and facilities to promote the national defense under emergency and non-emergency conditions pursuant to section 101 of the Defense Production Act of 1950, as amended. These regulations are part of FEMA's response to the ongoing COVID–19 emergency.

DATES: This rule is effective May 13, 2020.

Comment Date: Comments must be received on or before June 12, 2020.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2020–0019, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Marc Geier, Office of Policy and Program Analysis, 202–924–0196, *FEMA-DPA@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA–2020–0019, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public.

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

II. Background

Section 101 of the Defense Production Act of 1950, as amended (DPA or the Act), authorizes the President to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense take priority over performance under any other contract or order.[1] For the purpose of assuring such priority, the President may require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance.[2] Section 101 also authorizes the President to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.[3] For the purposes of this discussion, these authorities are referred to as the

[1] 50 U.S.C. 4511(a)(1).
[2] 50 U.S.C. 4511(a)(1).
[3] 50 U.S.C. 4511(a)(2).

President's ''priorities'' and ''allocations'' authorities.

FEMA is publishing this rule to comply with Section 101(d), which requires agencies delegated authority under Section 101 to issue final rules to establish standards and procedures by which the priorities and allocations authority is used to promote the national defense, under both emergency and non-emergency conditions. Executive Order 13911, ''Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources To Respond to the Spread of COVID–19,'' 85 FR 18403 (Apr. 1, 2020), delegates the President's authority under Section 101 to the Secretary of Homeland Security with respect to health and medical resources needed to respond to the spread of Coronavirus Disease 2019 (COVID–19) within the United States. Executive Order 13911 provides that the Secretary may use the authority under section 101 of the Act to determine, in consultation with the heads of other executive departments and agencies as appropriate, the proper nationwide priorities and allocation of health and medical resources, including by controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the spread of COVID–19 within the United States. Executive Order 13911 also delegates implementing authorities, such as enforcement authority under section 705 of the Act.[4]

The Secretary of Homeland Security has further delegated these authorities to the FEMA Administrator.[5] Priorities authorities (and other authorities delegated by the President to the Secretary of Homeland Security and re-delegated to the FEMA Administrator) may be re-delegated by the Administrator, to the extent consistent with the requirements of 3 U.S.C. 301 and the delegation of Presidential authority under which FEMA is operating. The Administrator retains authority for allocations.

This final rule establishes the Emergency Management Priorities and Allocations System (EMPAS), which will become part of the Federal Priorities and Allocations System (FPAS), which is the body of regulations that establishes standards and procedures for implementing the President's authority under Section 101(a) of the DPA. Pursuant to Section 101(d) of the DPA, heads of Federal agencies to which the President delegates authority under section 101 must issue rules that establish standards and procedures by which the priorities and allocations authority is used, and develop a consistent and unified Federal priorities and allocations system.''

The EMPAS regulations have two principal components: Priorities and allocations. Under the priorities component, contracts, or orders necessary or appropriate to support programs that have been approved for priorities support are required to be accepted and given priority over other contracts or orders to facilitate expedited delivery to promote the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term ''national defense'' is defined broadly and includes critical infrastructure protection and restoration, emergency preparedness and response, and recovery from man-made disasters.[6]

Section 101(d)(2) requires agencies with delegated authority under section 101 to consult as appropriate and to the extent practicable with other Federal agencies to develop a consistent and unified Federal priorities and allocations system. This rule is one of several rules published to implement Section 101 of the Act. The final rules of the agencies with Section 101 authorities, which are the Departments of Commerce, Energy, Health and Human Services, Transportation, and Agriculture,[7] currently constitute the FPAS. FEMA is publishing this interim final rule in compliance with Section 101(d) and FEMA's EMPAS provisions are consistent with the FPAS regulations issued by other agencies.

Given the context in which the President delegated these authorities to the Secretary of Homeland Security, who then redelegated such authorities to the FEMA Administrator, FEMA prioritized consistency with those FPAS regulations that FEMA already uses and are most relevant to the current pandemic crisis. The regulations therefore draw heavily on (1) the Department of Commerce's Defense Priorities and Allocations System (DPAS) regulations, found at 15 CFR part 700, which are the most commonly referenced and used FPAS regulations and which FEMA currently relies upon pursuant to a delegation of authority,[8] and (2) the Department of Health and Human Services' Health Resources Priorities and Allocations System (HRPAS) regulations, found at 45 CFR part 101, which relate to a resource category similar to the immediate impetus for this rulemaking. In general, in choosing between competing provisions, FEMA has favored those provisions that allow FEMA to respond to emergency circumstances, including the current pandemic crisis, with the greatest flexibility and speed.

The specific proposals in this rule are more fully described below.

III. Discussion of the Interim Final Rule

This interim final rule adds 44 CFR part 333 to establish standards and procedures for prioritization of contracts and orders and for allocation of materials, services, and facilities to promote the national defense under both emergency and non-emergency conditions.

A. Subpart A—Purpose

Section 333.1 states that the purpose of the EMPAS, in general terms, is providing standards and procedures for use of those priorities and allocations authorities under the Defense Production Act that are the subject of a delegation from the President to DHS or FEMA. This includes, but is not limited to, use of such authority to support emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and related statutes, with respect to health and medical resources needed to respond to the spread of COVID–19 within the United States pursuant to Executive Order 13911.

FEMA has not limited the applicability of this rule to the COVID–19 context because of FEMA's unique mission set. Although FEMA's current authority under section 101—which relates to health and medical resources needed to respond to the spread of COVID–19 within the United States—is based on Executive Order 13911, FEMA believes that it is critical to ensure that FEMA has an established set of EMPAS

[4] 50 U.S.C. 4555.

[5] DHS Delegation 09052 Rev. 00.1, ''Delegation of Defense Production Act Authority to the Administrator of the Federal Emergency Management Agency'' (Apr. 1, 2020).

[6] See 50 U.S.C. 4552(14).

[7] See Executive Order 13603, ''National Defense Resources Preparedness,'' section 201, 77 FR 16651 (Mar. 22, 2012).

[8] See generally U.S. Dep't of Commerce, DPAS Delegation 4, Delegation of Authority to the Secretary of Homeland Security, *https://www.fema.gov/media-library-data/1484838423965-e82805cf10b55929142fab1fced213d8/DPAS_Delegation_4.pdf* (Mar. 8, 2016) (delegating authority to DHS); DHS Delegation 09052 Rev. 00.1 (Apr. 1, 2020) (delegating authority to FEMA). The Department of Commerce is the resource department for ''all other materials, services, and facilities, including construction materials'' under Executive Order 13603 section 201, 77 FR 16651 (Mar. 22, 2012).

regulations available for immediate use in the event that the President delegates to DHS or FEMA additional priorities and allocations authorities in the future, including during an emergency situation. As stated in the description of section 333.2 below, FEMA does not anticipate a conflict with the delegated authorities of other resource agencies.

B. Subpart B—Overview

1. Section 333.2 Program Eligibility

Consistent with DPAS regulations at 15 CFR 700.2 and HRPAS regulations at 45 CFR 101.3, section 333.2 provides an overview of program eligibility and clarifies FEMA's ability to delegate authority to place priority ratings on contracts or orders to certain Federal Government agencies, to the extent consistent with the delegation of Presidential authority under which FEMA is operating. FEMA will post announcements regarding approved programs to *www.fema.gov.*

2. Section 333.3 Priority Ratings and Rated Orders

Consistent with the DPAS regulations at 15 CFR 700.3, Section 333.3 explains what priority ratings and rated orders are and generally how they will operate within EMPAS. Sections 333.4 through 333.7 are reserved.

C. Subpart C—Definitions

The ''Definitions'' section appears in Section 333.8 and provides definitions for the relevant regulatory terms, consistent with DPAS regulations at 15 CFR 700.8 and the HRPAS regulations at 45 CFR 101.20. Section 333.9 is reserved. For purposes of this rulemaking, FEMA has chosen to define ''health and medical resources'' consistent with the definition of ''health resources'' in the HRPAS and other FPAS regulations for convenience and consistent with currently anticipated needs. FEMA may revise this definition by rulemaking, to the extent consistent with Executive Order 13911, at a future time. FEMA welcomes comment on this issue.

In contrast to other FPAS regulations, FEMA has chosen to specifically define ''written'' and ''in writing'' to make clear that FEMA will accept either tangible or electronic documents as ''written'' communications or records under this rule. FEMA wishes to allow electronic communication to the greatest extent possible, to allow for more efficient operations. In addition, FEMA has defined ''written electronic'' to mean written and in electronic form, except that when electronic form is impracticable under the circumstances, FEMA may construe this term to allow for a tangible format. As noted below, FEMA has made clear in certain provisions that it will not just permit, but also require, electronic communications.

D. Subpart D—Priorities and Placement of Rated Orders

1. Section 333.10 Authority

Section 333.10 describes the authority under which FEMA is implementing DPA Section 101. Consistent with section 333.1, although this rule is being issued to implement the delegation of authority in Executive Order 13911 with respect to health and medical resources needed to respond to the spread of COVID–19 within the United States, section 333.10 provides that FEMA may operate this rule under any authorities that the President may delegate to DHS or FEMA (or through DHS to FEMA) under section 101 of the Defense Production Act. This approach will ensure that FEMA is fully and immediately capable of fulfilling its emergency response and DPA coordination duties, including such duties as DHS and FEMA have long held under 104(b) of Executive Order 13603, to the extent that the President decides to further delegate priorities and allocations authorities to DHS or FEMA to carry out such duties.

FEMA does not anticipate that this approach will result in any conflicts with the delegated authorities of other resource agencies, because these regulations are specifically tied to presidential delegations of authority. Except in contexts where the President has delegated additional priorities and allocations authorities to DHS or FEMA, FEMA will continue to rely on other agencies' existing FPAS regulations, and the delegations issued thereunder, with respect to priorities and allocations issues.

2. Section 333.11 Priority Ratings

Consistent with the DPAS regulations at 15 CFR 700.11 and HRPAS regulations at 45 CFR 101.31, section 333.11 describes the two possible levels of priority and the program identification symbols used when rating an order. FEMA also clarifies that a priorities directive is a directive issued by FEMA regarding priority treatment for a given item. Such directives take precedence over any DX-rated order, DO-rated order, or unrated order, as stipulated in the directive.

3. Section 333.12 Elements of Rated Order

Consistent with the DPAS regulations at 15 CFR 700.12, section 333.12 describes in detail what each rated order must include, consisting of the appropriate priority rating, delivery date information, signatures, and required language. Like the DPAS regulations, this provision requires certain emergency preparedness-related orders to include a statement regarding the time limits for accepting or rejecting the order. Unlike the DPAS regulations, FEMA is requiring that the statement also include specific reference to the mandatory acceptance and rejection provisions of section 333.13. The parallel DPAS regulation does not require this level of specificity, but FEMA thought it appropriate to require this text in the interest of clarity.

FEMA has added new text to section 333.12, to specify additional elements that must be included when FEMA or a Delegate Agency issues a rated order to facilitate a sale from the person to a third party, regardless of the nature of the third party's relationship with the Federal Government, if any. FEMA or a Delegate Agency may take such an action in the event that FEMA determines that such an order is necessary or appropriate to promote the national defense. Paragraph (c) requires all rated orders used to facilitate sales to third parties to include language making clear to the person receiving the order that the order is being placed to facilitate a sale to a third party. FEMA believes the additional required language in these rated orders will ensure those receiving the order clearly understand that the order is for the facilitation of a sale to a third party, and may help avoid any confusion or delay that might otherwise occur. Section 333.19, discussed below, also details special provisions for these orders. Requiring the additional notification in paragraph (c) of this section ensures that persons receiving such orders are fully informed of the applicability of the special provisions in section 333.19.

As part of the COVID–19 response, FEMA is coordinating efforts to assist third parties in obtaining critical health and medical resource supplies. Including this language in each rated order involving a third party ensures clarity, including with respect to the applicability of section 333.19, and is consistent with FEMA's role in facilitating the delivery of these critical resources to effectively respond to the current COVID–19 crisis.

4. Section 333.13 Acceptance and Rejection of Rated Orders

Section 333.13 details when orders placed by FEMA may or must be accepted or rejected, and what the procedures are for both, including customer notification requirements for emergency conditions. Specifically, paragraph (a) requires acceptance of every rated order received regardless of any other rated or unrated orders that have been accepted and prohibits discrimination against rated orders such as by charging higher prices or imposing different terms and conditions. Paragraph (b) requires rejection of rated orders for delivery on a specified date if the person is unable to fill the order by that date, and requires the person to inform the customer of the earliest date on which delivery can be made and offer to accept the order on that basis. Paragraph (b) also provides for mandatory rejection based on the order rating, if other rated orders would be impacted. Paragraph (c) provides for optional rejection of rated orders in limited circumstances, consistent with DPAS regulations at 15 CFR 700.13(c) and HRPAS regulations at 45 CFR 101.33(c). Paragraph (d) details the customer notification requirements for rated orders. Consistent with DPAS regulations at 15 CFR 700.13(d)(2), FEMA is adopting a requirement that persons must accept or reject rated orders for emergency preparedness approved programs within the timeframe stated on the order. The regulation provides minimum time frames of 6 hours after receipt of the order if in response to a hazard (including, for instance, an outbreak of infectious disease) that has occurred, or 12 hours after receipt if the order is issued to prepare for an imminent hazard. FEMA is adopting these timeframes because such orders would require a shorter time frame to ensure delivery in time to provide disaster assistance, emergency response, or similar activities. FEMA believes that the exigent circumstances inherent in such activities justify requiring a shorter response time. Further, FEMA is requiring written electronic confirmation of shipment or performance delays within a 24-hour period (rather than the one-working-day requirement in the DPAS regulations) given the exigent circumstances under which the agency must provide emergency preparedness, mitigation, response, and recovery services and the need for clear, reliable statements regarding such delays to ensure the ultimate timely delivery of these services.

5. Section 333.14 Preferential Scheduling

Consistent with DPAS regulation at 15 CFR 700.14, section 333.14 details procedures for scheduling rated orders. Paragraph (a) explains generally that operations must be scheduled to satisfy delivery requirements of each rated order. Paragraph (b) details the appropriate production preferences based on rating order. Where rating orders conflict, paragraph (c) explains the appropriate preferences. If a person is unable to resolve such a conflict, this section refers them to special priorities assistance provided in Sections 333.20 through 333.24. Paragraph (d) allows the use of inventoried production items to fill rated orders when a person is unable to purchase the needed production items in time to fill a rated order and allows for their replacement with the use of a rated order.

6. Section 333.15 Extension of Priority Ratings

This section requires a person to use rated orders with suppliers to obtain items needed to fill a rated order, allowing the priority rating to ''extend'' from contractor to subcontractor to supplier throughout the entire procurement chain. In paragraph (c), FEMA is adopting the DPAS requirement in 15 CFR 700.15(c) that a person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness order and that the supplier must accept or reject within the required time limit stated in the rated order that is being filled. FEMA is adopting the DPAS requirement to ensure delivery in time to provide disaster assistance, emergency response, or similar services. FEMA believes that the exigent circumstances inherent in such activities justify requiring a shorter response time.

7. Section 333.16 Changes or Cancellations of Priority Ratings and Rated Orders

Consistent with both DPAS regulation at 15 CFR 700.16 and HRPAS regulations at 45 CFR 101.36, this section provides procedures for changing or cancelling a rated order by FEMA, a Federal Government agency authorized by delegation from FEMA to place priority ratings on contracts or orders needed to support approved programs (a ''Delegate Agency''), and/or other persons who placed the order. Paragraph (a) explains how a priority rating on a rated order may be changed or cancelled and requires written electronic notification from the person who placed the rated order to expedite processing. Paragraph (b) explains that suppliers must give the appropriate preferential treatment to the order when it is changed to a higher priority rating. Paragraphs (c) and (d) describe what types of amendments do and do not constitute a new rated order, respectively. Paragraph (e) requires cancellation of rated orders or priority ratings on orders if the person no longer needs the items from suppliers. Paragraph (f) requires prompt notification to all suppliers of rating additions, changes, or cancellations via written electronic notification to expedite processing.

8. Section 333.17 Use of Rated Orders

This section lists what items must be rated. Paragraph (a) details what rated orders must be used to obtain. Consistent with both DPAS regulation at 15 CFR 700.17(b) and HRPAS regulations at 101.37(b), paragraph (b) allows a person to use a rated order to replace inventoried items if such items were used to fill rated orders, under certain circumstances. Paragraphs (c) and (d) describe the use of program identification symbols when rated orders are combined, and detail the procedures for combining two or more rated orders, as well as rated and unrated orders. Paragraph (e) addresses rated orders for the minimum commercially procurable quantity, and paragraph (f) discusses ratings on contracts and orders for less than one half of the Simplified Acquisition Threshold as established by the Federal Acquisition Regulation (FAR). See 48 CFR 2.101. FEMA's provision is consistent with the parallel DPAS and HRPAS provisions, except that FEMA's provision eliminates the specific dollar amount to ensure consistency with the current and future FAR provisions.[9]

9. Section 333.18 Limitations on Placing Rated Orders

Consistent with DPAS regulations at 15 CFR 700.18, section 333.18 prohibits the use of rated orders under specific circumstances. Paragraph (a) sets forth the general limitations on placing a rated order, and paragraph (b) prohibits the use of rated orders to obtain earlier than needed delivery dates, greater than needed quantities of items, items in advance of the receipt of a rated order, or other specific items.

[9] See, *e.g.,* 84 FR 52420 (Oct. 2, 2019) (proposed increase to micro-purchase and simplified acquisition thresholds).

10. Section 333.19 Special Provisions Applicable to Rated Orders for Third Parties

In addition to the required language for each rated order regarding third party facilitations provided in section 333.12, FEMA is adding section 333.19 to specifically address rated orders for third parties. Given the unique circumstances faced in the COVID–19 pandemic, it may be necessary or appropriate for FEMA to use its priority rating authority under section 101(a)(1) of the DPA to facilitate the sale of health and medical resources to third parties. FEMA believes that it may be able to use such transactions to assist third parties in obtaining critical health and medical resource supplies as part of the current response for COVID–19. Such transactions may also be useful in other emergency circumstances. Adding a regulatory provision regarding this type of order benefits all parties, by creating a clear framework for such transactions.

Paragraph (a) makes clear that the EMPAS applies to rated orders placed by FEMA or a Delegate Agency to facilitate sales to third parties, unless otherwise specified. Paragraph (b) provides that where FEMA or a Delegate Agency has placed a rated order to facilitate a sale to a third party, the third party will be responsible for satisfying the applicable terms of sale and payment. The Federal Government will not be liable for any failure to meet the terms of sale or payment for rated orders to facilitate sales to third parties. Paragraph (c) provides that FEMA or the Delegate Agency may amend or cancel the rated order pursuant to section 333.16 if the third party is unable to satisfy the applicable terms of sale or payment. Paragraph (c) confirms that an amendment to such an order to provide for delivery to FEMA, the Delegate Agency, or another third party would not constitute a new rated order. FEMA believes these additional provisions are essential to clarify the requirements for rated orders to facilitate sales to third parties.

In the event that FEMA determines that facilitation of sales to third-parties is necessary or appropriate to support the national defense, this provision of the EMPAS regulations will help clarify the roles and responsibilities of FEMA and/or the Delegate Agency, the third party, and the person(s) receiving the order. FEMA seeks comment on this section.

E. Subpart E—Special Priorities Assistance

1. Section 333.20 General Provisions

Consistent with DPAS regulations at 15 CFR 700.50 and with Department of Agriculture regulations at 7 CFR 789.20, this section lays out how and when FEMA may provide special priorities assistance and how a person should contact FEMA or the Delegate Agency (as appropriate) when seeking assistance. Paragraph (a) describes what special priorities assistance is and the circumstances in which it might be needed. Paragraph (b) explains that special priorities assistance is available for any reason consistent with part 333 and offers specific examples of issues that special priorities assistance may help to resolve, including authorizing the use of priority ratings on orders to obtain items not otherwise ratable under this part. The examples provided in this section are not a full and complete list of the types of issues that special priorities assistance may help to resolve, but merely a sample of common issues offered as guidance. Paragraph (c) provides information about how requests for special priorities assistance may be submitted.

2. Section 333.21 Requests for Priority Rating Authority

Consistent with HRPAS regulations at 45 CFR 101.41, this section identifies circumstances in which a person may request authority to use a priority rating on orders to obtain items not normally rated under this part; provides information on where to submit requests for priority rating authority for production or construction equipment and when such orders may be used to lease such equipment; and details when FEMA may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract, and lists factors FEMA will consider in deciding whether to grant this authority.

Paragraph (a) provides that when a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, the person may request authority to use a priority rating in ordering the items.

Paragraph (b)(1) explains that requests for priority rating authority for production or construction equipment must be submitted to the Department of Commerce using the appropriate form. Paragraph (b)(2) provides that when the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

Paragraph (c) sets forth the requirements for placing a priority rating on an order in advance of the issuance of a rated prime contract. Paragraph (c)(1) provides that upon specific request, FEMA may authorize such a placement to promote the national defense. The requestor must obtain sponsorship of the request from FEMA or the appropriate Delegate Agency, and the requestor must assume any business risk associated with the advanced placement of rated orders in the event the rated prime contract is not issued. Paragraph (c)(2) contains a statement that must be included in requests for authority to place a priority rating on an order in advance of a rated prime contract. This statement, when included as part of a request, ensures the requestors understand and accept the liability they assume, as required in paragraph (c)(1), for any business risk associated with the advance placement of rated orders in the event the rated prime contract is not issued. Paragraph (c)(3) provides that when reviewing requests for rating authority in advance of a rated prime contract, FEMA will consider, among other things, five specific criteria: The probability that the prime contract will be awarded; the impact of the resulting rated orders on suppliers and on other authorized programs; whether the contractor is the sole source; whether the item being produced has a long lead time; and the time period for which the rating is being requested. Paragraph (c)(4) permits FEMA to require periodic reports on the use of the authority granted under paragraph (c), in order to ensure appropriate oversight. Paragraph (c)(5) requires that when advance rating authority has been granted but a rated prime contract is not issued, the person who requested the advance rating authority must promptly notify all suppliers who have receive rated orders pursuant to the advance rating authority that the priority rating on those orders is cancelled.

3. Section 333.22 Examples of Assistance

Consistent with DPAS regulations at 15 CFR 700.52 and HRPAS regulations at 45 CFR 101.42, this section provides a number of examples of situations where special priorities assistance may be provided. Although such assistance may generally be provided for any reason in support of this part, special

priorities assistance is usually provided in situations where there is difficulty obtaining delivery against a rated order by the required delivery date or difficulty locating a supplier for an item needed to fill a rated order. The examples provided in this section are not a full and complete list of the types of assistance available under this subpart, but merely an illustrative sample offered as guidance.

4. Section 333.23 Criteria for Assistance

Consistent with both DPAS regulations at 15 CFR 700.53 and HRPAS regulations at 45 CFR 101.43, this section provides criteria for granting requests for special priorities assistance. Consistent with the requirements of this part, requests for special priorities assistance must establish that there is an urgent need for the item and that the person making the request has made a reasonable effort to resolve the problem. Requests should also be submitted in a timely manner, to allow sufficient time for FEMA or the Delegate Agency to provide a meaningful resolution to the problem; requests submitted too late to allow for such a resolution waste limited administrative resources and time, both of which are crucial in emergency situations.

5. Section 333.24 Instances Where Assistance Will Not Be Provided

Consistent with both DPAS regulations at 15 CFR 700.54 and HRPAS regulations at 45 CFR 101.44, this section makes clear that special priorities assistance is provided at the discretion of FEMA or the Delegate Agency and provides examples of instances in which assistance may not be provided. The examples provided are not a full and complete list of the cases in which assistance may not be provided, but simply a few common cases where assistance is not warranted to meet the objectives of this part, and therefore may not be granted.

F. Subpart F—Allocation Actions

Generally, the standards set forth in Sections 333.30 through 333.32 mirror similar provisions in the DPAS regulations at 15 CFR 700.30 through 700.32 and HRPAS regulations at 45 CFR 101.50 through 101.52 and provide reasonable assurance that allocation orders will be used only in situations where the circumstances justify such orders. Sections 333.33 through 333.36 address the types of allocation orders, elements required for an allocation order, and the process for acceptance, modification, and cancellation of allocation orders.

1. Section 333.30 Policy

The DPAS regulations at 15 CFR 700.30 and HRPAS regulations at 45 CFR 101.50 include statements of allocations policy. Under these provisions, allocation orders will only be used if priorities authority will not provide a sufficient supply of materials, services, or facilities for national defense requirements, or when use of priorities authority will cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities. Allocation orders will not be used to ration materials or services at the retail level. Allocation orders will be distributed equitably among the suppliers of the resource(s) being allocated and will not require any person to relinquish a disproportionate share of the civilian market. Although these policies may be prudent outside the context of a national emergency, and FEMA will strive to abide by such policies to the extent practicable and appropriate, FEMA requires flexibility to depart from them in the emergency context. Many different forms of allocations may need to be exercised in the emergency context when a hazard has occurred or is imminent, including but not limited to, full allocation of the entire supply of a material, end-use restrictions, conservation measures, set-asides or allotments for emergency requirements, set-asides or allotments for small businesses, inventory restrictions, and other appropriate measures of control as warranted by the emergency conditions. FEMA must be able to order such allocations regardless of whether such allocations implicate paragraphs (a) or (b) of section 333.30.

FEMA has therefore incorporated these general policies in section 333.30, with an exception for emergency situations where a hazard has occurred or is imminent.

2. Section 333.31 General Procedures

Before FEMA uses its allocations authority to address a supply problem, the agency will develop a plan pursuant to section 333.31 that includes a copy of the written determination that the program or programs to be supported by the allocation action are necessary or appropriate for the national defense, as well as other elements consistent with the requirements found in the DPAS regulations at 15 CFR 700.31 and HRPAS regulations at 45 CFR 101.51.

3. Section 333.32 Controlling the General Distribution of a Material in the Civilian Market

Section 333.32 prohibits allocation action by FEMA to control the general distribution of a material in the civilian market unless very specific conditions are met. Consistent with DPAS regulations at 15 CFR 700.32, FEMA's Administrator must make a written finding that such material is a scarce and critical material essential to the national defense, and that national defense requirements cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

With respect to the present COVID–19 emergency, the President has already found that health and medical resources needed to respond to the spread of COVID–19, including personal protective equipment and ventilators, meet the criteria specified in section 101(b) of the Act. The President has specifically delegated, to the Secretary of Health and Human Services and the Secretary of Homeland Security, authority to identify additional specific health and medical resources that meet the criteria of section 101(b). 85 FR 16227 (Mar. 23, 2020) (delegation to HHS); 85 FR 18403 (delegation to DHS). The Administrator has already issued an allocation order on the basis of that Presidential determination and related direction. See 85 FR 20195 (Apr. 10, 2020).[10] Thus, with respect to health and medical resources needed to respond to the spread of COVID–19, no further action under new section 333.32 is necessary.

4. Section 333.33 Types of Allocation Orders

Section 333.33 describes the three types of allocation orders that FEMA might issue. The types of allocation orders are a set-aside, a directive, and an allotment. A set-aside is an official action that will require a person to reserve resource capacity in anticipation of receipt of rated orders. An allocation directive is an official action that will require a person to take or refrain from taking certain actions in accordance with its provisions (a directive may, among other things, require a person to stop or reduce production of an item, prohibit the use of selected materials, or

[10] Although FEMA effectuated such allocation order via a temporary rule that predates the regulations announced here, FEMA retains authority to administer and enforce that allocation order according to its terms, and to issue future allocation orders consistent with the procedures announced here.

divert the use of materials, services, or facilities from one purpose to another). An allotment is an official action that will specify the maximum quantity of a resource authorized for a specific use. Consistent with DPAS regulations at 15 CFR 700.33 and HRPAS regulations at 45 CFR 101.53, FEMA is specifying these three types of allocation orders because it believes that, collectively, they describe the types of actions that might be taken in any situation in which allocation is justified.

5. Section 333.34 Elements of an Allocation Order

FEMA sets forth the elements of an allocation order in section 333.34. Specifically, FEMA is adopting the DPAS regulation at 15 CFR 700.34 to allow allocation orders to be issued directly to the affected persons or by constructive notice. Pursuant to paragraph (a), all allocation orders must include a detailed description of the required allocation action(s), including its relationship to previously or subsequently received rated and/or unrated orders, and specific start and end calendar dates for each required allocation action. Paragraph (b) sets forth the elements of the allocation order when issued directly to the affected persons, including the necessary statement regarding to whom the allocation order is issued, the purpose of the allocation order (for national defense), a citation to the EMPAS regulations, and the written signature of the Administrator. Paragraph (c) sets forth the elements of the allocation order when issued by constructive notice through publication in the **Federal Register**. Specifically, paragraph (c) requires FEMA to publish a notice in the **Federal Register** with a statement regarding to whom the allocation order is issued, the purpose of the allocation order, a citation to the EMPAS regulations, and the signature of the Administrator.

FEMA is adopting constructive notice to ensure timely notice to impacted persons. Given the unique emergency preparedness, mitigation, response, and recovery conditions under which FEMA will utilize this authority, the agency believes allowing for constructive notice, similar to the DPAS regulations, is appropriate.

Consistent with DPAS regulations at 15 CFR 700.34 and HRPAS regulations at 45 CFR 101.54, FEMA requires the specific elements for each order because it believes that they provide a proper balance between the need for standards to permit the public to recognize and understand an allocation order if one is issued, and the expectation that any actual allocation orders will have to be tailored to meet unforeseeable circumstances.

6. Section 333.35 Mandatory Acceptance of an Allocation Order

Section 333.35(a) requires that except as otherwise specified in this section, an allocation order must be accepted. Section 333.35(b) prohibits persons from discriminating against an allocation order in any manner, such as by charging higher prices or imposing terms and conditions different than what the person imposed on contracts or orders for the same resource(s) that were received prior to receiving the allocation order. If a person is unable to comply fully with the required actions specified in an allocation order, Section 333.35(c) requires the person to notify FEMA immediately, explain the extent to which compliance is possible, and give reasons why full compliance is not possible. FEMA is adopting the requirement that if such notification is given verbally, written electronic confirmation must be provided within 24 hours (rather than the one-working-day requirement in the DPAS regulations) given the urgency with which emergency preparedness, mitigation, response, and recovery operations must occur and the need for clear, reliable statements regarding such delays to ensure the ultimate timely delivery of these operations. Section 333.35 makes it clear to the public that the limited circumstances and emergency situations that trigger issuance of an allocation order require immediate response to address the situation in an expeditious fashion.

7. Section 333.36 Changes or Cancellations of Allocation Orders

Section 333.36 requires an official action from FEMA to change or cancel an allocation order. Consistent with DPAS regulations at 15 CFR 700.36, FEMA is allowing notice of changes or cancellations of allocation orders to be provided either directly to persons to whom the order applies or by constructive notice. FEMA may complete constructive notice by publication in the **Federal Register**.

G. Subpart G [Reserved]

H. Subpart H—Official Actions

1. Section 333.50 General Provisions

From time to time, FEMA may take specific official actions to implement or enforce the EMPAS regulations. Consistent with DPAS regulations at 15 CFR 700.60, Section 333.50 provides an overview of this subpart and clarifies in paragraph (b) that some official actions pertaining to compliance are discussed in section 333.61, which is in Subpart I.

2. Section 333.51 Rating Authorizations

Consistent with both the DPAS regulations at 15 CFR 700.61 and HRPAS regulations at 45 CFR 101.61, section 333.51 defines a rating authorization as an official action granting specific priority rating authority and refers persons to section 333.21 to request such priority rating authority.

3. Section 333.52 Directives

Section 333.52(a) defines a directive as an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. Paragraph (b) details directive compliance for the public, prohibiting persons from using or extending a directive to obtain items from a supplier, unless expressly authorized to do so in the directive. Consistent with HRPAS regulations at 45 CFR 101.62(c) and (d), FEMA is clarifying in paragraph (c) that a priorities directive takes precedence over all rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive. FEMA is also clarifying in paragraph (d) that an allocations directive takes precedence over all priorities directives, rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive. FEMA believes this additional clarification helps better explain the role of directives in the EMPAS process.

4. Section 333.53 Letters and Memoranda of Understanding

Consistent with HRPAS regulations at 45 CFR 101.63, FEMA defines a letter or memorandum of understanding as an official action that may be issued to resolve special priorities assistance cases to reflect an agreement reached by all parties, and explains its use. FEMA is clarifying in paragraph (a) that letters and memorandum of understanding may be issued electronically for efficiency. Given the urgency with which emergency preparedness, response, and recovery operations must occur, FEMA believes written electronic communication is the most efficient and effective method for these official actions.

I. Subpart I—Compliance

1. Section 333.60 General Provisions

This section details the actions which may be taken by FEMA to enforce or

administer the DPA and other applicable statutes. FEMA is clarifying in paragraph (a) that compliance actions include audits, investigations, and other inquiries. The agency may use other official actions such as administrative subpoenas, demands for information, or inspection authorizations as part of the compliance process. Consistent with HRPAS regulations at 45 CFR 101.70(b), paragraph (b) reiterates that any person who places or receives a rated order or an allocation order must comply with this part and paragraph (c) states that willful violation of the provisions of title I or section 705 of the DPA or other applicable statutes, this part, or a FEMA official action is a criminal act punishable as provided in the DPA and other applicable statutes. FEMA is mirroring the HRPAS regulations at 45 CFR 101.70(b) and (c) in paragraphs (b) and (c) as they provide clarity to the public regarding the need for compliance and the repercussions of failing to comply.

2. Section 333.61 Audits and Investigations

Consistent with the DPAS regulations at 15 CFR 700.71 and HRPAS regulations at 45 CFR 101.71, Section 333.61 details the procedures for audits and investigations. Paragraph (a) defines audits and investigations as official actions involving the examination of books, records, documents, and other writings and information, including electronically stored information, to ensure that the provisions of the DPA and other applicable statutes, this part, and official actions taken by FEMA have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part. Paragraph (b) explains that FEMA will define the scope and purpose in the official action given to the person under investigation and confirm that the information sought is not available from any Federal or other responsible agency. Consistent with HRPAS regulations at 45 CFR 101.71(c), paragraph (c) discusses how FEMA will administer audits and investigations, including how the agency will utilize administrative subpoenas, demands for information, and inspection authorizations. Paragraph (d) discusses how writings and information will be reviewed and paragraph (e) details the required elements of administrative subpoenas, demands for information, and inspection authorizations. Paragraph (f) provides an explanation of how service of documents will be made. As compared to other FPAS regulations, paragraph (f) contains an additional flexibility appropriate to FEMA's emergency response functions. Specifically, this paragraph provides that when a hazard has occurred or is imminent, service of a demand for information or inspection authorization may additionally be made by written electronic communication.

3. Section 333.62 Compulsory Process

Paragraph (a) of section 333.62 provides that if a person refuses to permit a duly authorized FEMA representative to have access to necessary information, FEMA may seek to institute appropriate legal action, including *ex parte* application for an inspection warrant, in any forum of appropriate jurisdiction. Consistent with DPAS regulations at 15 CFR 700.72(b), paragraph (b) explains that compulsory process may be sought in advance of an audit, investigation, or other inquiry if in the judgment of the Administrator, in consultation with the FEMA Chief Counsel, there is a reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

4. Section 333.63 Notification of Failure To Comply

Consistent with HRPAS regulations at 45 CFR 101.73, section 333.63(a) states that FEMA may provide notification, following an audit, investigation, or other inquiry, of failure to comply with the DPA, other applicable statutes, these regulations, or official actions. FEMA has revised paragraph (a), as compared to other FPAS regulations, to make clear that FEMA may provide such notification irrespective of whether the person's failure to comply was inadvertent or willful. Paragraph (b) permits FEMA to allow for corrective action to be taken for an inadvertent failure to comply with the DPA, and notes that failure to take corrective action may be construed as willful violation of the relevant authority.

5. Section 333.64 Violations, Penalties, and Remedies

Section 333.64 describes the resulting penalties and remedies for failure to comply, as well as other measures that may be taken and actions that are prohibited. FEMA is mirroring the HRPAS regulations at 45 CFR 101.74 for this section.

6. Section 333.65 Compliance Conflicts

This section requires that persons immediately contact FEMA should compliance with the DPA or other applicable statutes, this part, or an official action prevent a person from filling a rated order or from complying with another provision of the DPA or other applicable statutes, this part, or an official action.

J. Subpart J—Adjustments, Exceptions, and Appeals

1. Section 333.70 Adjustments or Exceptions

Section 333.70 reflects the procedures necessary to request an adjustment or exception to the provisions of these regulations. Paragraph (a) allows a person to submit a request to FEMA for an adjustment or exception where (1) a provision of this part or an official action results in undue or exceptional hardship not suffered generally by others in similar situations and circumstances; or (2) the consequences of following a provision of this part or an official action is contrary to the intent of the DPA and other applicable statutes, or this part. Paragraph (b) details the required elements of each request for adjustment or exception. Paragraph (c) explains that a request for adjustment of exception does not relieve any person from the obligation of complying while the request is being considered, unless interim relief is granted in writing. Similar to the corresponding HRPAS provision at 45 CFR 101.80(c), and in contrast to the corresponding DPAS provision at 15 CFR 700.80(c), FEMA does not impose a specific deadline for responding to such a request, to provide maximum flexibility in the event of a surge in such requests. FEMA intends to respond to all such requests within a reasonable timeframe. Paragraph (d) states that decisions may be appealed to the Administrator.

2. Section 333.71 Appeals

This section provides the procedures, timing, and contact information for appealing a decision made on a request for relief in the previous section and is generally consistent with DPAS regulations at 15 CFR 700.81 and HRPAS regulations at 45 CFR 101.81. Paragraph (b) incorporates the timeline in HRPAS regulations for adjustment or exception involving rated orders placed for the purpose of health and medical resources, set at 15 days after receipt of a written notice of denial consistent with the exigent circumstances under which FEMA is operating in emergency preparedness situations where a hazard has occurred or is imminent. Paragraph (g) reiterates that filing an appeal does not relieve any obligation to comply

with the provisions of this part or any official action in question while the appeal is being considered, unless such relief is granted in writing by FEMA. Paragraph (h) incorporates the requirements from the DPAS regulations at 15 CFR 700.81(h) that a decision be made in writing within a reasonable time after receipt of the appeal and shall be the final administrative action.

K. Subpart K—Miscellaneous Provisions

1. Section 333.80 Protection Against Claims

Consistent with DPAS regulations at 15 CFR 700.90 and HRPAS regulations at 45 CFR 101.90, this section provides that a person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any part of this regulation or an official action.

2. Section 333.81 Records and Reports

Section 333.81 requires persons to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action. Various requirements and procedures regarding such records are provided in this section. The confidentiality provisions of the DPA governing the disclosure of information submitted pursuant to the DPA and this part are also set forth. Although the corresponding DPAS provision at 15 CFR 700.91(e) applies to ''information obtained under this section [15 CFR 700.91],'' the confidentiality provisions of section 705(d) of the Act apply to all information obtained under section 705. FEMA's section 333.81(e) therefore refers to all information obtained under section 705 of the act, rather than information obtained under 44 CFR 333.81.

3. Section 333.82 Applicability of This Part and Official Actions

Consistent with the DPAS regulations at 15 CFR 700.92 and HRPAS regulations at 101.92, section 333.82 provides the scope and jurisdictional applicability of this part and official actions.

4. Section 333.83 Communications

Section 333.83 provides a FEMA point of contact for general communications regarding this part.

5. Section 333.84 Severability

Section 333.84 provides that FEMA intends the various provisions of this part to be severable from each other to the extent practicable, such that if a court of competent jurisdiction were to vacate or enjoin any one provision, the other provisions are intended to remain in effect unless they are dependent upon the vacated or enjoined provision.

IV. Regulatory Analysis

A. Administrative Procedure Act (APA)

For the reasons that follow, FEMA is issuing this rule as an interim final rule pursuant to the APA's ''good cause'' exception for rules with respect to which ''notice and public procedure'' is ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

Under section 709(a) of the Act (50 U.S.C. 4559(a)), rules implementing the DPA are generally not subject to sections 551 through 559 of title 5, which includes the informal rulemaking procedures of the Administrative Procedure Act (APA) at 5 U.S.C. 553. However, section 101(d)(1) of the DPA, which this rule specifically implements, contains an exception to section 709(a), because it specifically directs resource agencies to issue, ''in accordance with section 553 of title 5,'' rules establishing the standards and procedures by which the priorities and allocations authority is used to promote the national defense, under both emergency and nonemergency conditions. FEMA is issuing this interim final rule ''in accordance with'' the requirements of 5 U.S.C. 553, including the good cause provisions in 5 U.S.C. 553(b)(B) and (d).

The exigent need for this rule is related to the COVID–19 pandemic. COVID–19 is a communicable disease caused by a novel (new) coronavirus, SARS–CoV–2, that was first identified as the cause of an outbreak of respiratory illness that began in Wuhan, Hubei Province, People's Republic of China. In severe cases, manifestations of the COVID–19 disease have included severe pneumonia, acute respiratory distress syndrome, septic shock, multi-organ failure, and death.

On January 30, 2020, the Director General of WHO declared that the outbreak of COVID–19 is a Public Health Emergency of International Concern under the International Health Regulations.[11] The following day, the Secretary of HHS declared COVID–19 a public health emergency under the Public Health Service Act.[12] On March 11, 2020, the WHO declared COVID–19 a pandemic.[13] On March 13, 2020, the President declared a national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*),[14] and declared a nationwide emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), authorizing FEMA to provide assistance for emergency protective measures to respond to the COVID–19 pandemic.[15]

The President exercised his authority pursuant to the DPA to respond to the COVID–19 pandemic in Executive Orders 13909 and 13910, authorizing the Secretary of Health and Human Services to prioritize and allocate health and medical resources under section 101 of the DPA and prevent hoarding of such resources under section 102 of the DPA to respond to the spread of COVID–19.[16] In Executive Order 13911, the President delegated additional authority under the DPA, including delegating to the Secretary of Homeland Security the authority conferred by section 101 of the DPA. The President has also delegated to the Secretary of Homeland Security the authority to promulgate regulations necessary to implement the Executive Order. The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.[17] Any future COVID–19-related rated orders or allocations pursued under these delegations of authority would occur within the context of the framework established by these regulations.

As of April 30, 2020, there were over 1 million confirmed cases of COVID–19 reported in the United States, resulting in over 60,000 confirmed deaths due to the disease, with new cases reported daily.[18] Worldwide there have been

[11] Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019–nCoV) (January 30, 2020), available at *https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).*

[12] HHS, ''Determination that a Public Health Emergency Exists,'' available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/*2019-nCoV.aspx.

[13] ''WHO Director-General's opening remarks at the media briefing on COVID–19—11 March 2020,'' available at *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

[14] ''Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak,'' March 13, 2020, available at *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[15] ''Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act,'' March 13, 2020, available at *https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/.*

[16] Executive Order 13909, 85 FR 16227 (Mar. 23, 2020); Executive Order 13910, 85 FR 17001 (Mar. 26, 2020).

[17] DHS Delegation 09052 Rev. 00.1 (Apr. 1, 2020).

[18] Information obtained from *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html* (accessed April 30, 2020).

over 3 million confirmed cases, resulting in over 217,000 deaths.[19] At this time, there is no vaccine that can prevent infection with COVID–19. Treatment is mainly limited to supportive (or palliative) care for patients who need it. Clinical management for hospitalized patients with COVID–19 is focused on supportive care for complications, including supplemental oxygen and advanced organ support for respiratory failure, septic shock, and multi-organ failure.[20]

Within the United States, widespread transmission of COVID–19 has occurred. Such transmission has resulted and will continue to result in large numbers of people needing medical care at the same time. Public health and healthcare systems may become overloaded, with elevated rates of hospitalizations and deaths, as well as elevated demand for health and medical resources.

To summarize, the current situation is such that FEMA must establish the relevant regulatory framework without delay, so as to be able to respond with dispatch and without unnecessary confusion regarding the applicable standards and procedures. The Federal Government urgently needs to address issues related to production and distribution of critical medical supplies, equipment, and facilities associated with the response to COVID–19. FEMA has the lead role in coordinating the Federal response to COVID–19 and requires a clear, robust, and enforceable mechanism for exercising its authority under section 101 of the DPA and other applicable authorities. Given the national emergency caused by COVID–19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay these implementing regulations until a full public notice-and-comment process is completed. Pursuant to 5 U.S.C. 553(b)(B), consistent with sections 101(d)(1) of the DPA, and for the reasons stated above, FEMA therefore concludes that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, FEMA has determined, pursuant to section 553(d) of the APA, that there is good cause to make this interim final rule effective immediately upon publication.

While FEMA believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, FEMA is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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. Executive Order 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 interim final rule has been drafted and reviewed in accordance with Executive Order 12866. DHS, in coordination with the Office of Management and Budget (OMB), has determined this rule to be an economically significant regulatory action as defined in Section 3(f) of the Executive Order. Although this rule has been deemed economically significant, FEMA proceeds without additional economic analysis under the emergency provision of section 6(a)(3)(D) of Executive Order 12866, for the reasons stated in the APA section above.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, FEMA is not issuing a notice of proposed rulemaking. Accordingly, FEMA has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, FEMA seeks comment on whether, and the extent to which, the interim final rule would have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

FEMA has not issued a notice of proposed rulemaking for this regulatory action; therefore, the written statement provisions of the Unfunded Mandates Reform Act of 1995, as amended, do not apply to this regulatory action.

E. Paperwork Reduction Act of 1995

This rule contains information collections necessary to support FEMA's implementation of the President's priorities and allocations authority under Title I of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*). The purpose of this authority is to ensure the timely delivery of products, materials, and services necessary or appropriate to promote the national defense.

This new collection was submitted under OMB's emergency clearance procedures. Additionally, FEMA will seek public comments on the collection through the normal clearance process.

F. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this rule. DHS has determined that this rulemaking does not affect the 1660–NW122 OMB Control Number's compliance with the E-Government Act

[19] Information obtained from *https://covid19.who.int/* (accessed April 30, 2020).

[20] Information obtained from *https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html* (accessed April 30, 2020).

of 2002 or the Privacy Act of 1974, as amended. Specifically, DHS has concluded that the 1660–NW122 OMB Control Number is covered by the DHS/ALL/PIA–065 Electronic Contract Filing System (ECFS) Privacy Impact Assessment (PIA). Additionally, DHS has decided that the 1660–NW122 OMB Control Number is covered by the DHS/ALL–021 Department of Homeland Security Contractors and Consultants, 73 FR 63179 (Oct. 23, 2008) System of Records Notice (SORN).

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

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA has reviewed this interim final rule under Executive Order 13175 and has determined that this interim final rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

H. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order.

I. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This interim final rule meets Categorical Exclusion A3(a), ''[t]hose of a strictly administrative or procedural nature,'' and A3(b), ''[t]hose that implement, without substantive change, statutory or regulatory requirements.''

J. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must: Submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has submitted this rule to the Congress and to GAO pursuant to the CRA. The Office of Management and Budget has determined that this rule is a ''major rule'' within the meaning of the CRA. Pursuant to 5 U.S.C. 808(2), since this rule is promulgated under the ''good cause'' exemption of the APA, there is no delay in its effective date under the CRA.

List of Subjects in 44 CFR Part 333

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

■ For the reasons discussed in the preamble, the Federal Emergency Management Agency (FEMA) adds part 333 to subchapter F of title 44 of the Code of Federal Regulations, to read as follows:

PART 333—EMERGENCY MANAGEMENT PRIORITIES AND ALLOCATIONS SYSTEM

Subpart A—Purpose

Sec.
333.1 Purpose of this part.

Subpart B—Overview

333.2 Program Eligibility.
333.3 Priority ratings and rated orders.
333.4–333.7 [Reserved]

Subpart C—Definitions

333.8 Definitions.

Subpart D—Priorities and Placement of Rated Orders

333.10 Authority.
333.11 Priority ratings.
333.12 Elements of a rated order.
333.13 Acceptance and rejection of rated orders.
333.14 Preferential scheduling.
333.15 Extension of priority ratings.
333.16 Changes or cancellations of priority ratings and rated orders.
333.17 Use of rated orders.
333.18 Limitations on placing rated orders.
333.19 Special provisions applicable to rated orders for third parties.

Subpart E—Special Priorities Assistance

333.20 General provisions.
333.21 Requests for priority rating authority.
333.22 Examples of assistance.
333.23 Criteria for assistance.
333.24 Instances where assistance will not be provided.

Subpart F—Allocation Actions

333.30 Policy.
333.31 General procedures.
333.32 Controlling the general distribution of a material in the civilian market.

333.33 Types of allocation orders.
333.34 Elements of an allocation order.
333.35 Mandatory acceptance of an allocation order.
333.36 Changes or cancellations of allocation orders.

Subpart G [Reserved]

Subpart H—Official Actions

333.50 General provisions.
333.51 Rating authorizations.
333.52 Directives.
333.53 Letters and memoranda of understanding.

Subpart I—Compliance

333.60 General provisions.
333.61 Audits and investigations.
333.62 Compulsory process.
333.63 Notification of failure to comply.
333.64 Violations, penalties, and remedies.
333.65 Compliance conflicts.

Subpart J—Adjustments, Exceptions, and Appeals

333.70 Adjustments or exceptions.
333.71 Appeals.

Subpart K—Miscellaneous Provisions

333.80 Protection against claims.
333.81 Records and reports.
333.82 Applicability of this part and official actions.
333.83 Communications.
333.84 Severability.

Authority: 6 U.S.C. 313, 314; Sections 101 *et seq.* of the Defense Production Act of 1950, 50 U.S.C. 4511, *et seq.;* Executive Order 13603, 77 FR 16651 (Mar. 22, 2012); Executive Order 13909, 85 FR 16227 (Mar. 23, 2020); Executive Order 13911, 85 FR 18403 (Apr. 1, 2020); DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020).

Subpart A—Purpose

§ 333.1 Purpose of this part.

The Federal Emergency Management Agency (FEMA) refers to this part as the Emergency Management Priorities and Allocations System (EMPAS). The EMPAS implements those priorities and allocations authorities under the Defense Production Act that are the subject of a delegation from the President to the Secretary of DHS and re-delegated to the FEMA Administrator, or to the FEMA Administrator directly, as described in § 333.10 of this part. This includes the use of authority to support critical infrastructure restoration and protection, stockpiling, and emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and related statutes, with respect to health and medical resources needed to respond to the spread of COVID–19 within the United States.

Subpart B—Overview

§ 333.2 Program Eligibility.

(a) Certain programs to promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, deployment and sustainment of military forces, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration. For a current and complete list reflecting the latest changes to approved programs, please visit FEMA's website at *www.FEMA.gov.*

(b) FEMA may delegate authority to place priority ratings on contracts or orders necessary to promote the national defense to appropriate officials in certain Federal Government agencies that issue such contracts or orders, to the extent consistent with the delegation of Presidential authority under which FEMA is operating. Such delegations may include authority to authorize recipients of rated orders to place ratings on contracts or orders to contractors, subcontractors, and suppliers.

§ 333.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take precedence over DO rated orders.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by FEMA or a Delegate Agency, or are otherwise permitted to do so by this part.

§§ 333.4–333.7 [Reserved]

Subpart C—Definitions

§ 333.8 Definitions.

The definitions in this section apply throughout this part:

Act or DPA means the Defense Production Act of 1950, as amended (50 U.S.C. 4501, *et seq.*).

Administrator means the Administrator of the Federal Emergency Management Agency.

Allocation means the control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act and Executive Order 13603.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Delegate Agency means a Federal Government agency authorized by delegation from FEMA to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the

immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. ''Emergency preparedness'' includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for firefighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Facilities includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services related to the use of any such building, structure, or other improvement.

Hazard means an emergency or disaster resulting from:

(1) A natural disaster, or

(2) An accidental or man-caused event.

Health and medical resources means drugs, biological products, medical devices, materials, facilities, health supplies, services, and equipment required to diagnose, mitigate, prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

Homeland security includes efforts:

(1) To prevent terrorist attacks within the United States;

(2) To reduce the vulnerability of the United States to terrorism;

(3) To minimize damage from a terrorist attack in the United States; and

(4) To recover from a terrorist attack in the United States.

Industrial resources means all materials, services, and facilities, including construction materials, but not including: food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; all forms of health resources; all forms of civil transportation; and water resources. This term also includes the term ''item'' as defined and used in this part.

Item means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and/or operating supplies (MRO).

(1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(3) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Materials includes:

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

National defense means programs for military and energy production, or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

Official action means an action taken by FEMA under the authority of the Defense Production Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act and related statutes, or this part. Such actions include the issuance of rating authorizations, directives, letters and memoranda of understanding, demands for information, inspection authorizations, administrative subpoenas, and allocation orders.

Person includes any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any State or local government or agency thereof; and for purposes of administration of this part, includes the Federal Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

Priorities authority means the authority of FEMA, pursuant to Section 101 of the Defense Production Act, to require acceptance and priority performance of contracts and orders for health and medical resource items and other resources as further delegated by the President to the Secretary of Homeland Security or Administrator for use in approved programs.

Priority rating means an identifying code assigned by a Delegate Agency, FEMA, or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol.

Production equipment means any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of $2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Program identification symbols means abbreviations used to indicate which approved program is supported by a rated order.

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Services includes any effort that is needed for or incidental to:

(1) The development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(2) The construction of facilities;

(3) The movement of individuals and property by all modes of civil transportation; or

(4) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Written and *in writing* mean documented via printing, typewriting, handwriting, or similar means, whether in tangible or electronic form.

Written electronic means written and in electronic form, except that when electronic form is impracticable under the circumstances, FEMA may construe this term to allow for a tangible format.

Subpart D—Priorities and Placement of Rated Orders

§ 333.10 Authority.

(a) The priorities and allocations authorities of the President under Title I of the Act that have been delegated to the Secretary of Homeland Security have been redelegated to the Administrator. These rules are issued pursuant to Title I of the Act, and implementing authorities, including such authorities as are contained in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560), which have been delegated to FEMA.

(b) *Delegations by FEMA.* FEMA may authorize Delegate Agencies to assign priority ratings to orders under these regulations as authorized.

(c) *Jurisdictional limitations.* Unless delegated by the President to DHS or FEMA, the provisions of this part are not applicable to the following resource categories, as defined in Executive Order 13603, a successor executive order, or implementing regulations issued thereunder:

(1) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Resource department with jurisdiction—Department of Agriculture);

(2) Energy supplies (Resources agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource department with jurisdiction—Department of Transportation);

(4) Health resources (Resource department with jurisdiction—Department of Health and Human Services), except that pursuant to Executive Order 13911, the provisions of this part are applicable to health and medical resources needed to respond to the spread of COVID–19;

(5) Water resources (Resource department with jurisdiction—Department of Defense); and

(6) All other materials, services, and facilities, including construction materials (''industrial resources'') (Resource department with jurisdiction—Department of Commerce).

§ 333.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by Federal Priorities and Allocations System regulations, identified by the rating symbols ''DO'' and ''DX.''

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 333.14(c)).

(3) In addition, a Directive issued by FEMA regarding priority treatment for a given item takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 333.52).

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO or DX—and the program identification symbol.

§ 333.12 Elements of a rated order.

(a) *Elements required for all rated orders.* (1) The appropriate priority rating and program identification symbol;

(2) A required delivery date or dates. The words ''immediately'' or ''as soon as possible'' do not constitute a delivery date. When a ''requirements contract,'' ''basic ordering agreement,'' ''prime vendor contract,'' or similar procurement document bearing a priority rating contains no specific delivery date or dates, but provides for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as ''calls,'' ''requisitions,'' and ''delivery orders,'' the purchase orders under such contracts or agreements must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement that reads in substance: ''This is a rated order certified for national defense use and you are required to follow all the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333).''

(b) *Additional element required for certain emergency preparedness rated orders.* If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements, the following statement must be included in the order: ''This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert a time limit no less than the minimum applicable time limit specified in § 333.13(d)(2)].''

(c) *Additional elements required for rated orders issued by FEMA or a Delegate Agency to facilitate sales to third parties.* If a rated order is placed by FEMA or the Delegate Agency to facilitate a sale to a third party who desires to order the materials, the following statement must also be included in the order: ''This rated order is placed for the purpose of facilitating a sale to [Insert third party] to promote the national defense. It must be accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert the applicable time limit consistent with § 333.13(d)], and it is subject to the additional requirements of 44 CFR 333.19. [Third party] is responsible for satisfying the applicable terms of sale and payment. The Federal Government is not be liable for any failure to meet the terms of sale or payment. For purposes of these and any other notification requirements set forth in FEMA's Emergency Management Priorities and Allocations System regulations (44 CFR part 333), both [Insert FEMA or Delegate Agency] and [Insert third party] are the 'customer.'''

§ 333.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a

person must accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person must not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by FEMA:

(1) A person must not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person must not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person must not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by FEMA, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the Federal Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of FEMA issued under the authority of the Defense Production Act or another relevant statute.

(d) *Customer notification requirements.* (1) Except as provided in paragraph (d)(2) of this section, a person must accept or reject a rated order in written electronic format within 15 working days after receipt of a DO rated order and within 10 working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in written electronic format for the rejection.

(2) If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the order includes the statement set forth in § 333.12(b), a person must accept or reject the rated order and transmit the acceptance or rejection in written electronic format within the time specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are 6 hours after receipt of the order if the order is issued by an authorized person in response to a hazard that has occurred, or 12 hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

(3) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written electronic confirmation must be provided within 24 hours of the verbal notice.

§ 333.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary, to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

(1) *Examples:* If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.

(2) [Reserved]

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person must give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person must give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in subpart E of this part. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in subpart E of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 333.13(d)(3).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 333.17(b).

§ 333.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as

otherwise provided in this part or as directed by FEMA.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. Therefore, the inclusion of the rating will continue from contractor to subcontractor to supplier throughout the entire supply chain.

(c) A person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness rated order. That person must require acceptance or rejection, and transmission of that acceptance or rejection by the supplier within the time limit stated in the rated order that is being filled.

§ 333.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of FEMA; or

(2) Written electronic notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 333.13.

(d) The following amendments do not constitute a new rated order: A change in shipping destination; A reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) A person must cancel any rated orders that the person (or a predecessor in interest) has placed with suppliers or cancel the priority ratings on those orders if the person no longer needs the items in those orders to fill a rated order.

(f) A person adding a rating to an unrated order, or changing or cancelling a priority rating must promptly provide written electronic notification to all suppliers to whom the order was sent of the addition, change, or cancellation.

§ 333.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined.

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly.

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The elements of a rated order, as required by § 333.12, are included on the order with the statement required in § 333.12(d) modified to read in substance: ''This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333) as it pertains to the rated quantities.''

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 333.13 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 333.70.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 333.18 Limitations on placing rated orders.

(a) *General limitations on placing rated orders.* A person may not place a DO or DX rated order pursuant to this part unless the person is in receipt of a rated order, has been explicitly authorized to do so by FEMA or a Delegate Agency or is otherwise permitted to do so by this part.

(b) *Specific limitations on placing rated orders.* Rated orders may not be used to obtain:

(1) Delivery on a date earlier than needed;

(2) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order;

(3) Items in advance of the receipt of a rated order, except as specifically authorized by FEMA (see § 333.21(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(4) Any of the following items unless specific priority rating authority has been obtained from FEMA, a Delegate Agency, or the Department of Commerce:

(i) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(ii) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 333.21).

(5) Any items related to the development of chemical or biological

warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

§ 333.19 Special provisions applicable to rated orders for third parties.

(a) The provisions of this part apply to rated orders placed by FEMA or a Delegate Agency to facilitate sales to third parties, regardless of the nature of their relationship to the Federal Government, unless otherwise specified.

(b) Where FEMA or a Delegate Agency has placed a rated order to facilitate a sale to a third party, the third party is responsible for satisfying the applicable terms of sale and payment. The Federal Government shall not be liable for any failure to meet the terms of sale or payment.

(c) If a third party is unable to satisfy the applicable terms of sale or payment, FEMA or the Delegate Agency may amend or cancel the rated order pursuant to § 333.16 of this part. If FEMA or the Delegate Agency amend the rated order to provide that delivery shall be made to FEMA, the Delegate Agency, or another third party instead of the original third party, and the amendment shall not constitute a new rated order.

Subpart E—Special Priorities Assistance

§ 333.20 General provisions.

(a) EMPAS is designed to be largely self-executing. However, if production or delivery problems arise, a person should immediately contact FEMA (or the Delegate Agency, as appropriate) for special priorities assistance pursuant to §§ 333.20 through 333.24 and as directed by § 333.83. If FEMA (or the Delegate Agency, as appropriate) is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, FEMA (or the Delegate Agency, as appropriate) may forward the request to another resource agency, as appropriate, for action. Special priorities assistance is a service provided to alleviate problems.

(b) Special priorities assistance can be provided for any reason consistent with this part, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not otherwise ratable under this part. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority may be submitted on FEMA Form 009–0–142 (OMB control number 1660–NW122) to FEMA. Form 009–0–142 may be obtained from the Delegate Agency or from FEMA.

§ 333.21 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment, if needed, must be submitted to the U.S. Department of Commerce on Form BIS–999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases, and upon specific request, FEMA, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from FEMA or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request: ''It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from FEMA (or a Delegate Agency) and our use of that priority rating with our suppliers in no way commits the Delegate Agency, FEMA, or any other Federal Government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.''

(3) In reviewing requests for rating authority in advance of a rated prime contract, FEMA will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time; and

(v) The time period for which the rating is being requested.

(4) FEMA may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person must promptly notify all suppliers who have received rated orders pursuant to the advance rating authority that the priority rating on those orders is cancelled.

§ 333.22 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 333.23 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.,* the request must be submitted promptly and in enough time for FEMA or the Delegate Agency to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 333.24 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of FEMA or the Delegate Agency when it is determined that such assistance is warranted to meet the objectives of this

part. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

Subpart F—Allocation Actions

§ 333.30 Policy.

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

(c) When a hazard has occurred or is imminent, an allocation order may be used without regard to paragraphs (a) and (b) of this section whenever it is deemed by the Administrator to be necessary or appropriate to promote the national defense.

§ 333.31 General procedures.

Before FEMA uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*e.g.,* anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

§ 333.32 Controlling the general distribution of a material in the civilian market.

No allocation action by FEMA may be used to control the general distribution of a material in the civilian market unless the President, the Administrator, or another official with lawful authority under section 101(b) of the Act has made a written finding that:

(a) Such material is a scarce and critical material essential to the national defense, and

(b) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

§ 333.33 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions.

(a) *Set-aside.* A set-aside is an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive.* A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

(c) *Allotment.* An allotment is an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

§ 333.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice through publication in the **Federal Register**. This section describes the elements that each order must include.

(a) *Elements to be included in all allocation orders.*

(1) A detailed description of the required allocation action(s), including its relationship to previously or subsequently received DX rated orders, DO rated orders, and unrated orders.

(2) Specific start and end calendar dates for each required allocation action.

(b) *Elements to be included in orders issued directly to affected persons.*

(1) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.''

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the FEMA Administrator.

(c) *Elements to be included in an allocation order that gives constructive notice through publication in the* ***Federal Register*** (1) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.''

(2) The order must be signed by the FEMA Administrator.

§ 333.35 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person must accept and comply with every allocation order received.

(b) A person must not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify FEMA immediately,

explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written, electronic confirmation must be provided within 24 hours. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by FEMA that the order has been changed or cancelled.

§ 333.36 Changes or cancellations of allocation orders.

An allocation order may be changed or cancelled by an official action from FEMA. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the **Federal Register**.

Subpart G—[Reserved]

Subpart H—Official Actions

§ 333.50 General provisions.

(a) FEMA may, from time-to-time, take specific official actions to implement or enforce the provisions of this part.

(b) Some of these official actions (rating authorizations and letters and memoranda of understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 333.61(c). Directives are discussed in § 333.52.

§ 333.51 Rating authorizations.

(a) A rating authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 333.21.

§ 333.52 Directives.

(a) A directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each directive issued. However, a person may not use or extend a directive to obtain any items from a supplier, unless expressly authorized to do so in the directive.

(c) A priorities directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

(d) An allocations directive takes precedence over all priorities directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

§ 333.53 Letters and memoranda of understanding.

(a) A letter or memorandum of understanding is an official action, which may be issued electronically, to resolve special priorities assistance cases to reflect an agreement reached by all parties (FEMA, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer).

(b) A letter or memorandum of understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part, or to take other official actions. Rather, letters or memoranda of understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart I—Compliance

§ 333.60 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and related statutes, this part, or an official action. Compliance actions include audits, investigations, or other inquiries and FEMA may utilize other official actions, such as administrative subpoenas, demands for information, and inspection authorizations as part of the compliance actions under this part.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of FEMA, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in § 333.64 of this part.

§ 333.61 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, FEMA must:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought, or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, FEMA may issue the following documents, which constitute official actions:

(1) *Administrative subpoenas.* An administrative subpoena requires a person to appear as a witness before an official designated by FEMA to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An administrative subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for information.* A demand for information requires a person to furnish to a duly authorized representative of FEMA any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of FEMA to interview the person's employees or agents; to inspect books, records, documents, other writings and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise; and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of FEMA is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized

official of FEMA as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization must include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the administrative subpoena, demand for information, or inspection authorization will describe them with particularity.

(f) Service of documents must be made in the following manner:

(1) Service of a demand for information or inspection authorization must be made personally, or by certified mail—return receipt requested at the person's last known address. Service of an administrative subpoena must be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years of age at the person's last known dwelling or place of business. When a hazard has occurred or is imminent, service of a demand for information or inspection authorization may additionally be made by written electronic communication.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document must be mailed to the person named in the document.

(3) Any individual 18 years of age or older may serve an administrative subpoena, demand for information, or inspection authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure must be stated on the original document.

§ 333.62 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of FEMA to have access to any premises or source of information necessary to the administration or enforcement of the Defense Production Act and other applicable statutes, this part, or official actions, FEMA may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Administrator, in consultation with the FEMA Chief Counsel, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 333.63 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, FEMA may inform the person in writing where compliance with the requirements of the Defense Production Act and other applicable statutes, this part, or an official action were not met.

(b) In cases where FEMA determines that a person, either willingly or inadvertently, has failed to comply with the provisions of the Defense Production Act and other applicable statutes, this part, or an official action, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act and other applicable statutes, this part, or an official action.

§ 333.64 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and other applicable statutes, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act and other applicable statutes, this part, and official actions, the following are prohibited (see section 705 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18 United States Code):

(1) No person may solicit, influence, or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify FEMA that, in accordance with this section, delivery has not been made.

§ 333.65 Compliance conflicts.

If compliance with any provision of the Defense Production Act and other applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this part, or an official action, the person must immediately notify FEMA for resolution of the conflict.

Subpart J—Adjustments, Exceptions, and Appeals

§ 333.70 Adjustments or exceptions.

(a) A person may submit a request to FEMA for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this part or an official action is contrary to the intent of the Defense Production Act, other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the request is being considered unless such interim relief is granted in writing by FEMA.

(d) A decision of FEMA under this section may be appealed to the Administrator. (For information on the appeal procedure, see § 333.71.)

§ 333.71 Appeals.

(a) Any person who has had a request for adjustment or exception denied by FEMA under § 333.70 may appeal to the Administrator, who shall review and reconsider the denial. Such appeals should be submitted to the Office of Policy and Programs at *FEMA-DPA@fema.dhs.gov,* Ref: EMPAS Appeals.

(b)(1) Appeals of denied requests for exceptions from or adjustments to compliance with the provisions of this part or an official action must be received by FEMA no later than 45 days after receipt of a written notice of denial from FEMA. After this 45-day period, an appeal may be accepted at the discretion of the Administrator.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness in response to a hazard that has occurred or is imminent, an appeal must be received by FEMA no later than 15 days after receipt of a written notice of denial.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Administrator.

(e) When a hearing is granted, the Administrator may designate an employee of FEMA to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Administrator may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to FEMA, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Administrator.

(h) The decision of the Administrator shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart K—Miscellaneous Provisions

§ 333.80 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 333.81 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any particular method or system to be used.

(c) Records required to be maintained by this part must be made available for examination on demand by duly authorized representatives of FEMA as provided in § 333.61.

(d) In addition, persons must develop, maintain, and submit any other records and reports to FEMA that may be required for the administration of the Defense Production Act and other applicable statutes, and this part.

(e) Under section 705(d) of the Act and the ultimate delegation of that authority to the FEMA Administrator, information obtained under section 705 of the Act which the Administrator deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the Administrator determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to FEMA in connection with the enforcement or administration of the Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Act and shall not be published or disclosed except as required by applicable Federal law.

§ 333.82 Applicability of this part and official actions.

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part shall not be construed to affect any administrative actions taken by FEMA, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules, or delegations of authority issued by FEMA prior to May 13, 2020. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

§ 333.83 Communications.

General communications concerning this part, including how to obtain copies of this part and explanatory information, requests for guidance or clarification, may be addressed to FEMA's Office of Policy and Program Analysis at *FEMA-DPA@fema.dhs.gov.*

§ 333.84 Severability.

FEMA intends the various provisions of this part to be severable from each other to the extent practicable, such that if a court of competent jurisdiction were to vacate or enjoin any one provision, the other provisions are intended to remain in effect unless they are dependent upon the vacated or enjoined provision.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10294 Filed 5–11–20; 4:15 pm]

BILLING CODE 9111–19–P

Proposed Rules

Federal Register
Vol. 85, No. 93
Wednesday, May 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2020–0050]

RIN 3150–AK47

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by revising the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for multipurpose canisters MPC–89 and MPC–37; add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

DATES: Submit comments by June 12, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC 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 *https://www.regulations.gov* and search for Docket ID NRC–2020–0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–8342; email: *Vanessa.Cox@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–050 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–2020–050.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2020–0050 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. You should also inform those persons 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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on July 27, 2020. However, if the NRC receives any significant adverse comment by June 12, 2020, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring

republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. Responses are considered substantive when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record;

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC; or

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 28, 2011 (76 FR 17019), that approved the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1032.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. 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./Web link/ **Federal Register** Citation
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Resubmittal dated June 15, 2018.	ML18179A100 (package).
Holtec International Modification to Requested Changes on HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Request dated September 20, 2018.	ML18268A139.
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Supplemental Information dated April 1, 2019.	ML19108A081 (package)
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Request for Supplemental Information 6–1 for Certificate of Compliance No. 1032 dated April 30, 2019.	ML19127A267 (package).
Submittal of Holtec International Certificate of Compliance No. 1032 dated June 14, 2019	ML19177A239 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Additional Information—Batch 1 dated October 4, 2019.	ML19289A626 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Response to Request for Additional Information—Batch 2 dated October 21, 2019.	ML19317D392 (package).
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment 5 Consolidated Changed Pages dated December 18, 2019.	ML20002A643 (package).
Memo re User Need for Rulemaking for the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 5 dated February 14, 2020.	ML20014E617.
Draft Proposed Certificate of Compliance No. 1032, Amendment 5	ML20014E618.
Proposed Certificate of Compliance No. 1032, Amendment 5—Appendix A, Technical Specifications	ML20014E619.
Proposed Certificate of Compliance No. 1032, Amendment 5—Appendix B	ML20014E620.
Preliminary Certificate of Compliance No. 1032, Amendment 5—Safety Evaluation Report	ML20014E621.

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–2020–0050. 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–2020–0050); (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 this 29th day of April, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–10088 Filed 5–12–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0355; Airspace Docket No. 20–AGL–18]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace; Jackson and Lakeview, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D airspace and Class E airspace extending upward from 700 feet above the surface at Jackson County Airport-Reynolds Field, Jackson, MI, and the Class E airspace extending upward from 700 feet above the surface at Lakeview Airport-Griffith Field, Lakeview, MI. The FAA is proposing this action as the result of airspace reviews caused by the decommissioning of the Jackson and Muskegon VHF omnidirectional range (VOR) navigation aids, which provided navigation information for the instrument procedures these airports, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airports and the name of Jackson County Airport-Reynolds Field would also be updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before June 29, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0355/Airspace Docket No. 20–AGL–18, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace and Class E airspace extending upward from 700 feet above the surface at Jackson County Airport-Reynolds Field, Jackson, MI, and the Class E airspace extending upward from 700 feet above the surface at Lakeview Airport-Griffith Field, Lakeview, MI, to support IFR operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0355/Airspace Docket No. 20–AGL–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class D airspace at Jackson County Airport-Reynolds Field, Jackson, MI, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile (decreased from a 7-mile) radius of Jackson County Airport-Reynolds Field (previously the Jackson VOR/DME); updating the name and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removing the Jackson VOR/DME from the airspace legal description;

And amending the Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius (decreased from a 7.6-mile radius) of Lakeview Airport-Griffith Field, Lakeview, MI; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of airspace reviews caused by the decommissioning of the Jackson and Muskegon VORs, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AGL MI D Jackson, MI [Amended]

Jackson County Airport-Reynolds Field, MI
(Lat. 42°15′38″ N, long. 84°27′44″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County Airport-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL MI E5 Jackson, MI [Amended]

Jackson County Airport-Reynolds Field, Jackson, MI
(Lat. 42°15′38″ N, long. 84°27′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Jackson County Airport-Reynolds Field.

* * * * *

AGL MI E5 Lakeview, MI [Amended]

Lakeview Airport-Griffith Field, MI
(Lat. 43°27′08″ N, long. 85°15′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Lakeview Airport-Griffith Field.

Issued in Fort Worth, Texas, on May 6, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–10006 Filed 5–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104591–18]

RIN 1545–BO67

Denial of Deduction for Certain Fines, Penalties, and Other Amounts; Information With Respect to Certain Fines, Penalties, and Other Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on section 162(f) of the Internal Revenue Code (Code), as amended by legislation enacted in 2017, concerning the deduction of certain fines, penalties, and other amounts. This document also contains proposed regulations that provide guidance relating to the information reporting requirements under new section 6050X of the Code with respect to those fines, penalties, and other amounts. The proposed regulations affect taxpayers that pay or incur amounts to, or at the direction of, governments, governmental entities or certain nongovernmental entities treated as governmental entities (nongovernmental entities) in relation to the violation of a law or investigations or inquiries by such governments, governmental entities, or nongovernmental entities into the potential violation of a law. The proposed regulations also affect governments, governmental entities, and

nongovernmental entities subject to the related reporting requirement.

DATES: Written or electronic comments and requests for a public hearing must be received by July 13, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–104591–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–104591–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations on amended section 162(f), Sharon Y. Horn (202) 317–4426; concerning the information reporting requirement, Nancy L. Rose (202) 317–5147; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers). The phone numbers above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to 26 CFR part 1 under section 162(f) and proposed additions to 26 CFR part 1 under section 6050X. The proposed revisions implement the disallowance of deductions for amounts paid or incurred to, or at the direction of, a government, governmental entity, or nongovernmental entity in relation to the violation, or investigation or inquiry into the potential violation, of a law under section 162(f), as amended by section 13306(a) of Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). The proposed additions implement the reporting requirements, under section 6050X, added to the Code by section 13306(b) of the TCJA.

Prior law under section 162(f) was enacted in 1969. Public Law 91–172, 83 Stat. 487 (1969). Unless certain exceptions applied, prior law under section 162(f) disallowed an ordinary and necessary deduction, under section 162(a), for any fine or similar penalty paid to a government for the violation of a law. This provision codified existing case law that denied an ordinary and necessary business expense deduction for fines or similar penalties because ''allowance of the deduction would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof.'' *See* S. Rep. No. 552–91 at 273—274 (1969). On February 20, 1975, the Treasury Department and the IRS issued final regulations concerning prior law under section 162(f) (TD 7345, 40 FR 7437) (1975 regulations). *See* § 1.162–21. Amendments were published on July 11, 1975 (T.D. 7366, 40 FR 29290). Section 1.162–21(a) of the 1975 regulations describe the term ''paid to'' a government. Section 1.162–21(b)(1) of the 1975 regulations describes certain amounts that constitute fines or similar penalties; § 1.162–21(b)(2) provides that compensatory damages paid to a government do not constitute a fine or penalty. Section 1.162–21(c) provides examples to illustrate the application of the 1975 regulations.

As amended by section 13306(a)(1) of the TCJA, the general rule of section 162(f)(1) provides that no deduction otherwise allowable under chapter 1 of the Code (chapter 1) shall be allowed for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government, governmental entity, or nongovernmental entity in relation to the violation of a law or the investigation or inquiry by such government or governmental entity into the potential violation of a law.

Section 162(f)(5) describes certain self-regulating nongovernmental entities treated as governmental entities. Because section 162(f)(5) treats these nongovernmental entities as governmental entities, exclusively for purposes of section 162(f) and the related provisions of section 6050X, the term ''governmental entities'' includes those nongovernmental entities treated as governmental entities.

Section 162(f)(2) provides an exception to the general rule and allows a taxpayer to deduct certain amounts paid or incurred that are otherwise allowable under chapter 1 for restitution, remediation, or paid to come into compliance with a law. Section 162(f)(3) provides an exception to the general rule for amounts paid or incurred with respect to private party suits; section 162(f)(4) provides an exception for certain taxes due.

Under section 162(f)(2)(A)(i) and (ii), section 162(f)(1) shall not disallow a deduction for amounts that (i) the taxpayer establishes were paid or incurred as restitution (including remediation of property) or to come into compliance with a law (establishment requirement), and (ii) are identified in the court order (order) or settlement agreement (agreement) as restitution, remediation, or amounts paid or incurred to come into compliance with a law (identification requirement).

Section 162(f)(2)(B) states that restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred as reimbursement to a government or governmental entity for the costs of any investigation or litigation.

To the extent that the amount paid would otherwise be deductible under chapter 1, section 162(f)(2)(A)(iii), (f)(3), and (f)(4) provide that section 162(f)(1) shall not disallow a deduction for amounts paid or incurred (1) as restitution for failure to pay any tax imposed under Title 26 had it been timely paid; (2) pursuant to an order or agreement with respect to a suit in which no government or governmental entity is a party; or (3) as taxes due.

Section 13306(b) of the TCJA added new section 6050X. Section 6050X(a)(1) and 6050X(a)(2)(A) requires the appropriate official of any government or any entity described in section 162(f)(5), involved in a suit, agreement, or otherwise to which section 162(f) applies, to file an information return if the aggregate amount involved in all orders or agreements with respect to the violation, investigation, or inquiry is $600 or more. Section 6050X(a)(2)(B) authorizes the Secretary of the Treasury or his delegate (Secretary) to adjust the threshold amount for filing the information return as necessary to ensure the efficient administration of the internal revenue laws. Pursuant to section 6050X(a)(1), the information return must set forth (1) the amount required to be paid as a result of the order or agreement; (2) any amount required to be paid as a result of the order or agreement that constitutes restitution or remediation of property; and (3) any amount required to be paid

as a result of the order or agreement for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry.

Section 6050X(a)(3) provides that the government or governmental entity shall file the information return at the time the agreement is entered into, as determined by the Secretary. Section 6050X(b) requires the government or governmental entity to furnish to each person who is a party to the suit, agreement, or otherwise a written statement, at the time the information return is filed with the IRS, that includes (1) the name of the government or entity and (2) the information submitted to the IRS.

Under section 13306(a)(2) and (b)(3) of the TCJA, the amendments to section 162(f) and new section 6050X apply to amounts paid or incurred on or after the date of the enactment of the TCJA (December 22, 2017). However, they do not apply to amounts paid or incurred under any binding order or agreement entered into before December 22, 2017 and, if such order or agreement requires court approval, the required approval is obtained before December 22, 2017.

On April 9, 2018, the IRS published Notice 2018–23, 2018–15 I.R.B. 474, to provide transitional guidance on the identification requirement of section 162(f)(2)(A)(ii) and the information reporting requirement under section 6050X. Notice 2018–23 provides that information reporting is not required until the date specified in proposed regulations under section 6050X. Notice 2018–23 also provides that, until the Treasury Department and the IRS issue proposed regulations, the identification requirement is treated as satisfied if the order or agreement specifically states on its face that an amount is paid or incurred as restitution, remediation, or to come into compliance with a law.

Under these proposed regulations, the identification requirement applies to taxable years beginning on or after the date the proposed regulations are adopted as final regulations. Until that date, taxpayers, governments, and governmental entities may rely on the identification requirement as provided in Notice 2018–23. Alternatively, if taxpayers, governments, and governmental entities, apply the rules in their entirety and in a consistent manner, taxpayers, governments, and governmental entities may rely on the proposed regulations.

Explanation of Provisions

1. Denial of Deduction for Certain Fines, Penalties, and Other Amounts

The proposed regulations revise § 1.162–21 and provide operational and definitional guidance concerning the application of section 162(f), as amended by the TCJA. The terms used in section 162(f), and throughout these proposed regulations, are defined in proposed § 1.162–21(f) and discussed in this section. In addition, this section describes the exceptions to the general rule of section 162(f)(1). Proposed § 1.162–21(g) provides examples for the application of this section.

A. General Rule

Proposed § 1.162–21(a) provides generally that a taxpayer may not take a deduction under any provision of chapter 1 (see section 161, and the related regulations, concerning items allowed as deductions) for amounts (1) paid or incurred by suit, agreement, or otherwise; (2) to, or at the direction of, a government or governmental entity; (3) in relation to the violation, or investigation or inquiry into the potential violation, of any civil or criminal law. This general rule applies regardless of whether the taxpayer admits guilt or liability or pays the amount imposed for any other reason, including to avoid the expense or uncertain outcome of an investigation or litigation.

Proposed § 1.162–21(b) describes an exception to the general rule, which allows a deduction for certain amounts identified in the order or agreement as restitution, remediation, or paid or incurred to come into compliance with a law and the taxpayer establishes that the amount was paid or incurred for the purpose identified.

In general, section 6050X imposes a reporting requirement on governments and governmental entities with respect to the payment amount identified pursuant to certain suits, agreements, or otherwise. Proposed § 1.6050X–1 provides rules for complying with the reporting requirement.

Under sections 162(f) and 6050X and proposed §§ 1.162–21 and 1.6050X–1, suit, agreement, or otherwise includes, but is not limited to, settlement agreements; non-prosecution agreements; deferred prosecution agreements; judicial proceedings; administrative adjudications; decisions issued by officials, committees, commissions, or boards of a government or governmental entity; and any legal actions or hearings in which a liability for the taxpayer is determined or pursuant to which the taxpayer assumes liability.

B. Definitions

Proposed § 1.162–21(f) provides definitions relating to section 162(f).

Government, Governmental Entity, or Nongovernmental Entity Treated as a Governmental Entity

The definition of ''government or governmental entity'' under proposed § 1.162–21(f)(1) reflects the term ''paid to'' a government as described in the 1975 regulations but uses the term ''territory'' instead of ''possession'' and ''Commonwealth'' and includes additional territories. The definition of government or governmental entity under proposed § 1.162–21(f)(1) also includes (1) the government of a federally recognized Indian tribal government or a subdivision of an Indian tribal government; (2) a political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any government; or (3) a nongovernmental entity treated as a governmental entity. Under proposed § 1.162–21(f)(2)(i), certain nongovernmental entities are treated as governmental entities.

Proposed § 1.162–21(f)(2)(ii) adopts the definition of a nongovernmental entity in section 162(f)(5) in its entirety. Proposed § 1.162–21(f)(2)(ii) provides that a nongovernmental entity is treated as a governmental entity if it (1) exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)); or (2) exercises self-regulatory powers, including adopting, administering, or enforcing laws and imposing sanctions, as part of performing an essential governmental function. Although nongovernmental entities are not governmental entities, for purposes of proposed §§ 1.162–21 and 1.6050X–1 only, the term ''governmental entities'' includes the nongovernmental entities treated as governmental entities.

Restitution and Remediation

Under proposed § 1.162–21(f)(3)(i), an amount is paid or incurred for restitution or remediation if it restores, in whole or in part, the person, as defined in section 7701(a)(1); the government; the governmental entity; or property harmed by the violation or potential violation of a law. In response to Notice 2018–23, commenters disagreed about whether restitution, for purposes of section 162(f), includes forfeiture and disgorgement.

Forfeiture and disgorgement focus on the unjust enrichment of the wrongdoer, not the harm to the victim. In *Kokesh* v. *Securities and Exchange Commission,* 137 S. Ct. 1635, 1643 (2017), the Supreme Court held that disgorgement, when imposed as a sanction for violating a Federal securities law, was treated as a penalty for purposes of the related five-year statute of limitations because ''[t]he primary purpose of disgorgement orders is to deter violations of the securities laws by depriving violators of their ill-gotten gains.'' In *Nacchio* v. *United States,* 824 F.3d 1370 (Fed. Cir. 2016), *cert. denied,* 137 S. Ct. 2239 (2017), the United States Court of Appeals for the Federal Circuit noted that, ''[w]hile restitution seeks to make victims whole by reimbursing them for their losses, forfeiture is meant to punish the defendant by transferring his ill-gotten gains to the United States Department of Justice.'' *Nacchio,* 824 F.3d at 1378 (*citing United States* v. *Joseph,* 743 F.3d 1350, 1354 (11th Cir. 2014)).

Section 162(f)(2)(A)(i)(I) provides that restitution and remediation payments relate to the damage or harm caused, or that may be caused, by the violation, or the potential violation, of a law. The statute does not characterize restitution or remediation in connection with an unjust enrichment to a wrongdoer. Consistent with the statutory language, proposed § 1.162–21(f)(3)(i) provides that the purpose of restitution or remediation is to restore the person or property, in whole or in part, to the same or substantially similar position or condition as before the harm caused by the taxpayer's violation, or potential violation, of a law. Hence, under proposed § 1.162–21(f)(3)(iii)(B)–(C), restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred which the taxpayer elects to pay in lieu of a fine or penalty or as forfeiture or disgorgement. In addition, under proposed § 1.162–21(f)(3)(iii)(D), restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred to an entity; to a fund, including a restitution, remediation, or other fund; to a group; or to a government or governmental entity, to the extent it was not harmed by the taxpayer's violation or potential violation of a law. In addition, proposed § 1.162–21(f)(3)(iii)(A) adopts the rule in section 162(f)(2)(B) to exclude any amounts paid or incurred as reimbursement to the government or governmental entity for investigation costs or litigation costs from restitution or remediation.

Coming Into Compliance With a Law

Under proposed § 1.162–21(f)(3)(ii), a payment for a specific corrective action, or to provide specific property, is treated as an amount paid to come into compliance with a law. Proposed § 1.162–21(f)(3)(iii) lists amounts that will not be treated as paid or incurred to come into compliance with a law.

C. Investigation or Inquiry Into a Potential Violation of a Law

In response to Notice 2018–23, a commenter requested clarification that an amount paid or incurred in relation to the investigation or inquiry into the potential violation of a law does not include amounts paid in the ordinary course of business as required by law. In general, section 162(f) does not disallow a deduction for amounts paid or incurred for audits, inspections, or reviews conducted in the ordinary course of business if the payment is otherwise deductible as an ordinary and necessary business expense and is not related to the violation of a law or the investigation or inquiry into the potential violation of a law as described in section 162(f)(1). The Treasury Department and the IRS request comments about specific examples of audits, inspections, or reviews conducted in the ordinary course of business that are not investigations or inquiries of potential violations of law intended to fall within the ambit of section 162(f).

D. Material Change

A commenter asked for clarification that an amendment to an order or agreement, entered into before December 22, 2017, that does not change the nature or purpose of the payment obligation or create a new payment obligation, does not cause the order or agreement to be treated as entered into after December 22, 2017. Proposed § 1.162–21(e) provides that, if the parties to an order or agreement, that became binding under applicable law, before December 22, 2017, make a material change to the terms of this original order or agreement on or after the applicability date of the final regulations, proposed § 1.162–21(a) will apply to any amounts paid or incurred, or any obligation to provide property or services, after the date of the material change. Material changes are described in proposed § 1.162–21(e)(2).

E. Establishment Requirement

Section 162(f)(2)(A)(i) requires that a taxpayer establish that an amount was paid as restitution or remediation, or that the amount was paid to come into compliance with a law.

Proposed § 1.162–21(b)(3)(i) provides that the taxpayer may satisfy the establishment requirement by providing documentary evidence (1) That the taxpayer was legally obligated to pay the amount the order or agreement identified as restitution, remediation, or to come into compliance with a law; (2) of the amount paid or incurred; and (3) of the date on which the amount was paid or incurred.

Commenters requested that the regulations address the documents, or other evidence, that a taxpayer may present to meet the establishment requirement. In addition, commenters expressed concern that it may be difficult for taxpayers to meet the requirement when the government has control of the information that establishes the amount identified in the order or agreement. Proposed § 1.162–21(b)(3)(ii) provides a non-exhaustive list of documents that taxpayers may use to satisfy the establishment requirement. Reporting of the amount by a government or governmental entity under section 6050X and proposed § 1.6050X–1(a) alone does not satisfy the establishment requirement. The Treasury Department and the IRS request comments about other evidence and supporting documentation taxpayers may use to meet the establishment requirement.

F. Identification Requirement

Section 162(f)(2)(A)(ii) requires an order or agreement to identify an amount paid or incurred as restitution, remediation, or to come into compliance with a law. Under proposed § 1.162–21(b)(2)(i), an order or agreement identifies a payment by stating the nature of, or purpose for, each payment each taxpayer is obligated to pay and the amount of each payment identified.

To satisfy the identification requirement, proposed § 1.162–21(b)(2)(ii) requires the order or agreement to specifically state that the payment, and the amount of the payment, constitutes restitution, remediation, or an amount paid to come into compliance with a law. The proposed rule provides that the identification requirement may be met if the order or agreement uses a different form of the requisite words, such as ''remediate'' or ''comply with a law.''

Commenters expressed the concern that it may not be possible to satisfy the identification requirement in an order or agreement that imposes lump-sum judgments or settlements, multiple damage awards, or involves multiple

taxpayers because it is unlikely that the order or agreement will distinguish the amount to be paid as restitution, remediation, or to come into compliance with a law from the disallowed amounts, or allocate the payments among the multiple taxpayers. Therefore, the commenters recommended that the regulations exclude these orders and agreements from the identification requirement of section 162(f)(2)(A)(ii) altogether. The proposed regulations do not adopt the commenters' recommendation because such an exception would be inconsistent with the statute. The Treasury Department and the IRS request comments on how taxpayers may meet the identification requirement with respect to lump-sum payments, multiple damage awards, and multiple taxpayers.

One commenter expressed the concern that it is beyond the expertise of a government or governmental entity to place a value on restitution or remediation costs, or costs to come into compliance with a law. Another stated that, in general, the compliance or restitution provisions of an order or agreement may not include quantified amounts because neither the up-front, nor ultimate, costs can be determined. The Treasury Department and the IRS request comments about orders or agreements meeting the identification requirement, including when an order or agreement identifies a payment amount which is less than the amount the taxpayer establishes was paid as restitution, remediation, or to come into compliance with a law.

Other commenters explained that an order or agreement may require the taxpayer to provide services, provide property, or undertake specific action, to satisfy the legal obligation. These commenters requested that the regulations provide a rule that an order or agreement may meet the identification requirement if it identifies the in-kind settlement or the specified performance as restitution, remediation, or amount paid to come into compliance with a law, even if an actual payment amount is not identified.

To treat taxpayers that, pursuant to the order or agreement, in whole or in part, discharge their liability in-kind in the same manner as taxpayers who make a monetary payment, and to administer the statute in a manner consistent with congressional intent, proposed § 1.162–21(b)(2)(iii) addresses how an order or agreement may meet the identification requirement with respect to any amount paid or incurred that is not identified. The proposed rule provides, if the order or agreement identifies a payment as restitution, remediation, or to come into compliance with a law but does not identify some or all of the aggregate amount the taxpayer must pay, the order or agreement must describe the damage done, harm suffered, or manner of noncompliance with a law, and describe the action required by the taxpayer (such as incurring costs to provide services or to provide property) with respect to the damage, harm, or noncompliance.

Under proposed § 1.162–21(b)(2)(iv), the IRS may challenge the characterization of an amount identified under proposed § 1.162–21(b)(2). No deduction is allowable unless the identification requirement is met. H.R. Rep. No. 115–466, at 430 (2017). Reporting of the amount by a government or governmental entity under section 6050X and proposed § 1.6050X–1(a) alone does not satisfy the identification requirement.

G. Suits Between Private Parties

If the amount is otherwise deductible under chapter 1, section 162(f)(3) allows a deduction for an amount paid or incurred pursuant to an order or agreement in which no government or governmental entity is a party to a suit. Therefore, section 162(f)(1) disallows a deduction for amounts paid or incurred to, or at the direction of, a government or governmental entity only when a government or governmental entity is a complainant or investigator with respect to the violation or potential violation of a law. A court-directed payment or the entry of a judgment in a lawsuit between private parties is not a payment made at the direction of a government. H.R. Rep. No. 115–466, at 430 (2017). Proposed section 1.162–21(c)(1) provides that section 162(f)(1) does not apply to any amount paid or incurred by reasons of any order or agreement in a suit in which no government or governmental entity is a party.

H. Taxes and Related Interest

Section 162(f)(4) provides that section 162(f)(1) does not apply to any amount paid or incurred as ''taxes due.'' ''Taxes due'' includes interest on taxes but not interest, if any, with respect to any related penalties imposed. *See* Joint Committee on Taxation, General Explanation of Public Law 115–97, at 194 (December 2018). Proposed § 1.162–21(c)(2) provides that proposed § 1.162–21(a) does not apply to amounts paid or incurred as otherwise deductible taxes or related interest. However, if penalties are imposed with respect to those otherwise deductible taxes, proposed § 1.162–21(a) disallows a deduction for the interest paid with respect to such penalties.

I. Failure To Pay Title 26 Tax

In accordance with section 162(f)(2)(A)(iii), proposed § 1.162–21(c)(3) provides that, in the case of any amount paid or incurred as restitution for failure to pay tax imposed under Title 26, section 162(f)(1) does not disallow a deduction otherwise allowed under chapter 1. For example, section 162(f)(1) and proposed § 1.162–21(a) do not disallow a deduction of an amount paid or incurred as restitution for failure to pay certain excise or employment taxes otherwise deductible under chapter 1. However, a deduction for amounts paid or incurred as restitution for failure to pay a Federal income tax is disallowed because section 275(a)(1) provides that no deduction is allowed for Federal income taxes.

J. Taxable Year of Deduction

Under proposed § 1.162–21(d)(1), deductions allowed under proposed §§ 1.162–21(b) or (c), are taken into account under the rules of section 461 and the related regulations, or the rules specifically applicable to the allowed deduction, such as the rules of § 1.468B–3(c).

K. Tax Benefit Income

If the deduction allowed under proposed § 1.162–21(b) or (c) results in a tax benefit to the taxpayer, proposed § 1.162–21(d)(2) requires the taxpayer to include in income, under sections 61 and 111, the recovery of any amount deducted in a prior taxable year to the extent the prior year's deduction reduced the taxpayer's tax liability.

2. Reporting Information With Respect to Certain Fines, Penalties, and Other Amounts

The purpose of the proposed regulations under section 6050X is to provide appropriate officials of governments or governmental entities the operational, administrative, and definitional rules for complying with the statutory information reporting requirements with respect to certain suits or agreements to which section 162(f) and proposed § 1.162–21(f)(4) apply.

In general, under proposed § 1.6050X–1(a), if the aggregate amount a payor is required to pay pursuant to an order or agreement with respect to a violation, investigation, or inquiry to which section 162(f) and proposed § 1.162–21 apply equals or exceeds the threshold amount under proposed § 1.6050X–1(g)(5), the appropriate official of a government or governmental

entity that is a party to the order or agreement must file an information return with the IRS with respect to the amounts or incurred paid and any additional information required by the information return and the related instructions, including the payor's taxpayer identification number. The appropriate official of a government or governmental entity that is a party to the order or agreement must also furnish a written statement with the same information to the payor.

Reporting of the amount by a government or governmental entity under section 6050X and proposed § 1.6050X–1(a) alone does not satisfy the identification requirement under section 162(f)(2)(A)(ii) and proposed § 1.162–21(b)(2)(ii) or the establishment requirement under section 162(f)(2)(A)(i) and proposed § 1.162–21(b)(3).

A. Definitions

Government, Governmental Entity, or Nongovernmental Entity Treated as a Governmental Entity

To lessen the administrative burden on certain entities, the proposed definition of ''government or governmental entity'' in § 1.6050X–1(g)(2) is narrower than the definition provided in proposed § 1.162–21(f)(1) because it requires reporting only from certain of the governments and governmental entities described in proposed § 1.162–21(f)(1). Specifically, the government of the United States, a State, or the District of Columbia, under proposed § 1.162–21(f)(1)(i), or a political subdivision, or a corporation or other entity serving as an agency or instrumentality, thereof, are each treated under the proposed regulations as a government or governmental entity that must comply with the information reporting requirements of section 6050X and proposed § 1.6050X–1. In addition, a nongovernmental entity, under proposed § 1.162–21(f)(2), that exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)) or exercises self-regulatory powers, including adopting, administering, or enforcing laws and imposing sanctions, as part of performing an essential governmental function, also must comply with the information reporting requirements of section 6050X and proposed § 1.6050X–1.

In contrast, as a result of government-to-government consultation with tribal leaders, the Treasury Department and the IRS have determined that imposing the reporting requirements of section 6050X and proposed § 1.6050X–1 on Indian tribal governments, as defined in section 7701(a)(40), subdivisions of Indian tribal governments, as determined in accordance with section 7871(d), or a corporation or other entity serving as an agency or instrumentality of any Indian tribal government would not contribute to the efficient administration of the internal revenue laws. Additionally, consistent with general principles of comity, the proposed definition of ''government or governmental entity'' in § 1.6050X–1(g)(2) excludes foreign governments, governments of U.S. territories, or any political subdivision, or corporation or other entity serving as an agency or instrumentality, thereof.

Although a particular entity is excluded from the information reporting requirements of section 6050X and proposed § 1.6050X–1, amounts paid or incurred to all categories of entities described in proposed § 1.162–21(f)(1) are subject to the limitations on deductibility set forth in proposed § 1.162–21.

Appropriate Official

Section 6050X(c) defines ''appropriate official'' of a government or governmental entity as the officer or employee having control of the suit, investigation, or inquiry, or an appropriately designated person. Proposed § 1.6050X–1(g)(1) adopts this statutory definition and further provides that the appropriate official may instead be the officer or employee of the government or governmental entity assigned to comply with the information reporting requirements of section 6050X.

One commenter observed that more than one government or governmental entity may be involved in the same order or agreement and suggested that the appropriate official be an official from only one government or governmental entity. The Treasury Department and the IRS agree with this comment generally. To minimize the burden on governments or governmental entities from having to report the same amount more than once, and to ensure the efficient administration of the internal revenue laws, proposed § 1.6050X–1(g)(1)(ii)(A) provides a general rule that, if more than one government or governmental entity is a party to an order or agreement, only the appropriate official of the government or governmental entity listed first, for example as the first signatory, on the most recently executed order or agreement is responsible for complying with all section 6050X information reporting and furnishing requirements. To provide governments or governmental entities with greater flexibility, proposed § 1.6050X–1(g)(1)(ii)(B) permits the governments or governmental entities to appoint one or more other appropriate officials to be responsible for complying with the information reporting and furnishing requirements. The Treasury Department and the IRS request comments about assigning an appropriate official to comply with the information reporting and furnishing requirements if more than one government or governmental entity are parties to the order or agreement.

Payor

Proposed § 1.6050X–1(g)(4) defines ''payor'' as the person, as defined in section 7701(a)(1), which, pursuant to an order or agreement, has paid or incurred, or is liable to pay or incur, an amount to, or at the direction of, the government or governmental entity in relation to the violation or potential violation of a law. In general, the payor will be the person to which section 162(f) and proposed § 1.162–21 apply.

Threshold Amount

Section 6050X(a)(2)(B) provides the Secretary with the authority to adjust the statutory reporting threshold of $600 as necessary to ensure the efficient administration of the internal revenue laws.

Based on comments received from governments and governmental entities concerned about the burden of information reporting and to ensure the efficient administration of the internal revenue laws, the Treasury Department and the IRS have determined that a threshold higher than $600 is appropriate to address these concerns. Proposed § 1.6050X–1(g)(5) provides that reporting is required for payment amounts equal to or in excess of $50,000 (threshold amount).

The Treasury Department and the IRS request comments concerning the proposed threshold amount in consideration of the anticipated compliance burden on filers. In particular, the Treasury Department and the IRS request data on the annual number of relevant orders issued, or agreements entered into, by governments or governmental entities as well as the financial, time, and administrative burdens associated with different threshold amounts.

B. Requirement To File Return

Under proposed § 1.6050X–1(b)(1), the information return filed by the government or governmental entity must provide the aggregate amount a

payor is required to pay as a result of the order or agreement, the separate amounts required to be paid as restitution, remediation, or to come into compliance with a law as a result of the order or agreement, and any additional information required by the information return and the related instructions.

Section 6050X(a)(3) requires the information return to be filed at the time the agreement is entered into, as determined by the Secretary. Commenters observed that it would be burdensome and inefficient to file information returns each time an agreement is entered into or an order is issued. In order to reduce the reporting burden, several commenters suggested that the regulations require annual filing of information returns to be made by a specific date in the year following the date the agreement is entered into or the order is issued. The Treasury Department and the IRS agree with this comment and have adopted it in the proposed regulations. Accordingly, the appropriate official of a government or governmental entity must comply with the information reporting requirement of proposed § 1.6050X–1(a) and (b) by filing Form 1098–F, *Fines, Penalties, and Other Amounts* (or any successor form), with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns,* on or before the annual due date as provided in proposed § 1.6050X–1(b)(2).

Several commenters expressed concerns about the information reporting requirements with respect to an order or agreement pursuant to which payments are made over the course of several years. To minimize the burden on governments or governmental entities and to ensure the efficient administration of the internal revenue laws, proposed § 1.6050X–1 does not require an appropriate official to file information returns for each taxable year in which a payor makes a payment pursuant to a single order or agreement. Instead, the appropriate official must file only one information return for the aggregate amount identified in the order or agreement.

C. Requirement To Furnish Written Statement

Proposed § 1.6050X–1(c) requires the appropriate official of a government or governmental entity who fulfills the requirement under section 6050X(a) and proposed § 1.6050X–1(a)(1) to furnish a written statement to each payor with respect to which it is required to file an information return under paragraphs (a)(1) and (b) of § 1.6050X–1. For purposes of tax administration, the requirement to ''furnish'' written statements requires that those with a reporting obligation must provide statements to certain recipients containing the information reported to the IRS and, in some cases, additional information. Under section 6050X, the payor is the recipient. The written statement must include the information that was reported on the information return and a legend that identifies the statement as important tax information that is being furnished to the IRS. To minimize the burden on governments or governmental entities, the proposed regulations permit the appropriate official to comply with the requirements under section 6050X(b) and proposed § 1.6050X–1(a)(2) by furnishing a copy of Form 1098–F to the payor. Regardless of when the appropriate official furnishes the statement to the payor, the timing of any deduction allowed under proposed § 1.162–21 is governed by the general principles of Federal income tax law, as set forth in proposed § 1.162–21(d).

D. Due Dates

Section 6050X(a)(3) provides that the information return shall be filed at a time the agreement is entered into, as determined by the Secretary. Further, section 6050X(b) requires the written statement to be furnished to the payor at the same time the information return is filed with the IRS. Under proposed § 1.6050X–1(b)(2), the information return must be filed on or before January 31 of the year following the calendar year in which the order or agreement becomes binding under applicable law, even if all appeals have not been exhausted with respect to the suit, agreement, or otherwise.

The return is due on or before January 31 whether it is filed on paper or electronically. Although the due date for filing electronic Forms 1098–F under proposed § 1.6050X–1(b)(2) differs from the general March 31 due date provided in section 6071(b), which applies with respect to electronically filed information returns under sections 6041 through 6050Y, the specific provisions of section 6050X take precedence over the general March 31 due date. To ensure that the payor has the information necessary to prepare the payor's income tax return, and as directed by section 6050X(b), proposed § 1.6050X–1(c)(3) requires the appropriate official to furnish the written statement, under proposed § 1.6050X–1(c)(1), on or before the date that the appropriate official files the Form 1098–F with the IRS (January 31).

E. Rules for Multiple Payors

Proposed § 1.6050X–1(d) describes the application of paragraphs (a), (b), and (c) of § 1.6050X–1 if, pursuant to the order or agreement, the aggregate amount multiple payors are required to pay, or the costs to provide the property or the service, equals or exceeds the threshold amount. If, pursuant to the order or agreement, more than one payor is individually liable for some or all of the payment amount, proposed § 1.6050X–1(d)(1) requires the appropriate official to file an information return for the separate amount that each individually liable payor is required to pay, even if a payor's payment liability is less than the threshold amount, and to furnish a written statement containing this information to each payor. If more than one person (as defined in section 7701(a)(1)) is a party to an order or agreement, there is no information reporting requirement, or requirement to furnish a written statement, with respect to any person who does not have a payment obligation or obligation for costs to provide services or to provide property.

Proposed § 1.6050X–1(d)(2) provides that, if an order or agreement identifies multiple jointly and severally liable payors, the appropriate official must file an information return for each payor reporting the aggregate amount to be paid by all jointly and severally liable payors. The appropriate official must furnish a written statement containing this information to each of those payors, regardless of which payor makes the payment.

F. Payment Amount Not Identified

Some orders or agreements may identify a payment, or an obligation to provide property or to provide services, as restitution, remediation, or an amount paid to come into compliance with a law, without identifying some or all of the aggregate amount the payor must pay, or some or all of the aggregate cost to provide property or services. Proposed § 1.6050X–1(e) provides that, if the government or governmental entity expects, under the facts and circumstances, that the amount the payor must pay, plus any other costs the payor will incur, pursuant to the order or agreement will equal or exceed the threshold amount, the appropriate official of such government or governmental entity must file an information return on Form 1098–F (or any successor form), as provided in the instructions to the Form 1098–F, and furnish a written statement to the payor with the information supplied to the IRS

on Form 1098–F. For example, if the United States Environmental Protection Agency (EPA) issues an order requiring a payor to come into compliance with the underlying legal requirements of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* by undertaking work, and the EPA expects, under the facts and circumstances, that the payor will incur $50,000 or more of costs to come into compliance with the law, the EPA must file Form 1098–F and furnish a written statement including this information, as directed by the form and form instructions, to the payor.

The Treasury Department and the IRS request comments about reporting of payment amounts that are not identified and the factors governments and governmental entities may consider to determine if the amounts are expected to equal or exceed the threshold amount.

G. Material Change

If there is a material change to the terms of an order or agreement, as defined in proposed § 1.162–21(e)(2) for which the appropriate official has filed an information return, proposed § 1.6050X–1(f) requires the appropriate official to update the IRS by filing a corrected information return, and to furnish an amended written statement to the payor, with respect to the entire order or agreement, and not just the terms modified. The proposed rules require the appropriate official to file the corrected Form 1098–F, on paper or electronically, as provided by the General Instructions for Certain Information Returns, on or before January 31 of the year following the calendar year in which the parties make a material change to the terms of the order or agreement. The proposed rules also require the appropriate official to furnish an amended written statement to the payor on or before the date that the corrected Form 1098–F is filed with the IRS.

Proposed Applicability Dates

The rules of proposed § 1.162–21 are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting the rules of proposed § 1.162–21 as final regulations in the **Federal Register**, except that such rules do not apply to amounts paid or incurred under any order or agreement which became binding under applicable law before such date. Until that date, taxpayers may rely on the rules of proposed § 1.162–21, for any order or agreement, but only if the taxpayers apply the rules in their entirety and in a consistent manner. See section 7805(b)(7). Additionally, the rules of proposed § 1.6050X–1 are proposed to apply only to orders and agreements that become binding under applicable law on or after January 1, 2022.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess 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. The preliminary E.O. 13771 designation is regulatory.

The proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and by the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the proposed rulemaking as significant under section 1(c) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background

Prior to the TCJA, section 162(f) of the Code disallowed a deduction for any fine or similar penalty paid to a government for the violation of a law. This provision, enacted in 1969, codified existing case law that denied business deductions for fines or similar penalties. The general rule of section 162(f)(1), as amended by section 13306(a) of the TCJA, disallows any deduction for amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity or certain nongovernmental entities treated as governmental entities, in relation to the violation of a law or the investigation or inquiry by such government or entity into the potential violation of a law. Section 13306(a) also provides certain exceptions to this disallowance. Section 162(f)(2) does not disallow deduction for amounts that (1) the taxpayer establishes were paid or incurred as restitution (including remediation of property) or to come into compliance with a law, and (2) are identified in the court order or settlement agreement as restitution, remediation, or to come into compliance with a law.

In addition, under prior law, the Treasury Department and the IRS did not receive information returns from governments or governmental entities that received fines or penalties. Section 6050X of the Code, enacted by section 13306(b) of the TCJA, requires appropriate officials to file an information return if the aggregate amount involved in all orders or agreements with respect to the violation, investigation, or inquiry is $600 or more. The information return must include (1) The amount required to be paid as a result of the order or agreement; (2) any amount that constitutes restitution or remediation of property; and (3) any amount required to be paid for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry. Section 6050X provides the Secretary with the authority to adjust the $600 reporting threshold in order to ensure efficient tax administration.

B. Need for the Proposed Regulations

The Treasury Department and the IRS have received several questions and comments from Federal, state, local, and tribal governments, as well as the public, regarding the meaning of various provisions in each section and issues not explicitly addressed in the statute. The Treasury Department and the IRS have determined that such comments warrant the issuance of further guidance.

In addition, the Treasury Department and the IRS have determined that increasing the reporting threshold to reduce the reporting burden and to enhance the efficiency of tax administration is appropriate.

C. Overview of the Proposed Regulations

The proposed regulations provide guidance regarding sections 162(f) and 6050X. The following analysis provides further detail regarding the anticipated impacts of the proposed regulations. Part I.D specifies the baseline for the economic analysis. Part I.E.1. summarizes the economic effects of the rulemaking, relative to this baseline. Part I.E.2. describes the economic effects of specific provisions covering (1) the reporting threshold, (2) the timing of information reporting, and (3) information reporting requirements when payment amounts are not identified.

D. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

E. Economic Analysis of the Proposed Regulation

I. Summary of Economic Effects

The proposed section 162(f) regulations provide definitions for restitution, remediation, and amounts paid to come into compliance with the law. These definitions clarify for taxpayers which amounts paid or incurred may be deductible under the statute. The proposed regulations also clarify (1) how the taxpayer meets the establishment requirement; and (2) how the order or agreement meets the identification requirement. The Treasury Department and the IRS have determined that the burden reduction associated with the proposed regulations for section 162(f) is modest. In addition, while the proposed regulations reduce uncertainty for taxpayers, they are unlikely to affect firms' economic decision-making because most of the amounts to be paid or incurred which are subject to section 162(f) are non-discretionary.

The proposed regulations under section 6050X provide certainty and consistency for affected governments and governmental entities by defining and clarifying the statute's terms and rules. Further, the proposed regulations use the authority provided by the statute to the Secretary to set information reporting requirements to minimize the burden on governments and governmental entities and to ensure the efficient administration of the internal revenue laws. Most importantly, the proposed regulations increase the reporting threshold from $600 to $50,000, thereby eliminating information reporting requirements for an estimated 1 to 5 million orders or agreements. Using the midpoint of this range (3 million), the estimated burden reduction from this exercise of regulatory discretion is $74 million (2018 dollars) per year. The Treasury Department and the IRS acknowledge that limited quantitative data makes estimates of the number of affected orders and agreements uncertain, and request comments or data that can help improve these estimates.

II. Economic Analysis of Specific Provisions

The effects of the information reporting requirements are discussed in more detail in sections II.A, B, and C. The Treasury Department and the IRS solicit comments on the economics of each of the items discussed subsequently and of any other items of the proposed regulations not discussed in this section. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the process by which provisions might be developed for the final regulations.

A. Reporting Threshold

Section 6050X requires governments and governmental entities which enter orders or agreements to which section 162(f) applies to file an information return if the aggregate amount paid or incurred in all orders or agreements with respect to the violation, investigation, or inquiry is equal to or exceeds a threshold of $600. Section 6050X also provides the Secretary with the authority to adjust the statutory reporting threshold as necessary to ensure efficient tax administration. In response to multiple comments received from governments and governmental entities concerned about the burden of information reporting for smaller payment amounts pursuant to orders or agreements, the proposed regulations raise the reporting threshold to $50,000. The Treasury Department and the IRS request comments on this proposed threshold amount. In particular, data on the annual number of orders or agreements by governments or governmental entities would be helpful.

The Treasury Department and the IRS considered a range of alternative thresholds including the statutory threshold of $600, along with much higher thresholds suggested by some commenters. Upon consideration of both the enforcement needs of the IRS and the reporting burden on governments and governmental entities, the Treasury Department and the IRS exercised the authority provided to the Secretary by the statute to set the reporting threshold amount at $50,000.

The Treasury Department and the IRS do not know of any data on the number of orders or agreements requiring taxpayers to pay amounts to, or at the direction of, governments or governmental entities, or the distribution of these amounts, such as the number that are above or below $600. Based on communications with stakeholders, the Treasury Department and the IRS estimate that the increase in reporting threshold from $600 to $50,000 will reduce the number of required information returns by 1 to 5 million. The Treasury Department and the IRS further estimate that the average time to complete the information return is between 0.387 and 0.687 hours. Using the midpoint of each of these ranges (3 million information returns and .537 hours) and labor cost of $46 per hour,[1] the Treasury Department and the IRS estimate that increasing the reporting threshold will reduce annual compliance burdens by $74 million dollars (2018 dollars) per year. It should be noted that many of the lower level fines and penalties are likely to be assessed to non-businesses that are not able to deduct business expenses so they would be unaffected by any reporting requirement.

Increasing the reporting threshold from $600 to $50,000 is unlikely to have a significant effect on revenues as fines over $50,000 likely account for the vast majority of fines and penalties in terms of dollar values. Based on financial reporting values disclosed on tax returns of C corporations, S corporations and Partnerships, firms with over $50,000 in total fines and penalties account for 99% of all fines and penalties. However, this data should be interpreted with caution. Financial reporting of fines and penalties includes both international and domestic fines, and all fines and penalties are aggregated into yearly totals. Furthermore, firms with less than $10 million in assets are not required to provide financial reporting values with their tax returns.

The Treasury Department and the IRS solicit comments on this threshold and cost estimates and particularly solicit comments that provide data that would enhance the rigor by which the threshold is decided for the final regulations.

B. Time of Reporting

Section 6050X provides that the government or governmental entity shall file the information return at the time the order or agreement is entered into, as determined by the Secretary. The Treasury Department and the IRS received comments from governments and governmental entities observing that it would be burdensome and inefficient to file information returns each time an order or agreement becomes binding under applicable law. Several commenters suggested that

[1] This data point is derived by the IRS as part of the burden analysis described in the Paperwork Reduction Act section below.

annual filing of information returns would meaningfully reduce this reporting burden. The Treasury Department and the IRS agree with this comment and have adopted it in the proposed regulations.

Several commenters also expressed uncertainty and concern about the information reporting requirements for an order or agreement pursuant to which payments are made over the course of several years. To reduce uncertainty, and to minimize the burden on governments and governmental entities, the proposed regulations clarify that information reporting is required only for the year in which the order or agreement becomes binding under applicable law, and not required for each taxable year in which a payor makes a payment.

The Treasury Department and the IRS considered requiring information reporting at the time the order is issued or the agreement is entered. The Treasury Department and the IRS also considered requiring information reporting in each year in which an amount is paid or incurred pursuant to the order or agreement. However, both alternative approaches were determined to impose unnecessary burden for governments and governmental entities without creating accompanying benefits for tax administration or for taxpayers.

The Treasury Department and the IRS solicit comments on the timing of reporting and particularly solicit comments that provide data regarding how timing of reporting affects compliance burdens.

C. Payment Amount Not Identified

When the expected amount paid or incurred pursuant to an order or agreement equals or exceeds the threshold amount, section 6050X requires governments or governmental entities to file an information return including (1) The amount required to be paid as a result of the order or agreement; (2) any amount that constitutes restitution or remediation of property; and (3) any amount required to be paid for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry. However, some orders or agreements may involve uncertain payments or costs to provide property or services without identifying some or all of the aggregate amount the payor must pay (or some or all of the aggregate cost to provide property or services). The Treasury Department and the IRS received comments expressing concern that amounts paid or incurred are often difficult to assess, and strict valuation requirements would impose undue burden on governments and governmental entities. For situations in which the amount is not identified, the proposed regulations direct governments and governmental entities to the instructions to Form 1098–F. To address commenters' concerns, these instructions will permit governments and governmental entities to report the threshold amount of $50,000 when the amount is unknown but expected to equal or exceed $50,000. This rule is necessary to improve taxpayer compliance.

The Treasury Department and the IRS considered requiring governments and governmental entities to provide an estimate of each amount to be paid or incurred; however this approach was rejected because it would impose significant burden for governments and governmental entities.

D. Summary

In summary, the proposed section 162(f) regulations and section 6050X regulations result in modest burden reduction, with the exception of the increase in the threshold amount, which is estimated to reduce burden by $74 million (2018 dollars) per year. The Treasury Department and the IRS projected that the proposed regulations, taken together, would have a non-revenue economic effect of less than $100 million (2018 dollars) per year. The Treasury Department and the IRS request comments on the economic effects of these proposed regulations.

Paperwork Reduction Act

Collection of Information—Form 1098–F

In general, the collection of information in the proposed regulations is required under section 6050X of the Internal Revenue Code (the Code). The collection of information in these proposed regulations is set forth in proposed § 1.6050X–1. The IRS intends that the collection of information pursuant to section 6050X will be conducted by way of Form 1098–F, Fines, Penalties, and Other Amounts. For purposes of the PRA, the reporting burden associated with the collection of information with respect to section 6050X will be reflected in the IRS Forms 14029 Paperwork Reduction Act Submission associated with Form 1098–F. Form 1098–F will be used by all governments, governmental entities, and nongovernmental entities treated as governmental entities with a reporting requirement. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations. In addition, when available, drafts of IRS forms are posted for comment at *www.irs.gov/draftforms.*

The current status of the PRA submissions related to section 6050X are provided in the following table.

Form	Type of filer	OMB No.	Status
1098–F	Governments, Governmental Entities, And Certain Non-governmental Entities.	1545–2284	Form 1098–F is approved through 1/31/2023.

Related New or Revised Tax Forms

	New	Revision of existing form	No. of respondents (2018, estimated)
Form 1098–F	Yes		90,100 (85,500 small governmental jurisdictions, 4,500 large governmental jurisdictions and 100 nongovernmental entities).

A reasonable burden estimate for the average time to complete Form 1098–F is between 0.387 and 0.687 hours (approximately 23 to 41 minutes). This estimate is based on survey data collected from similar information return issuers. In addition, the increase in the reporting threshold under section 6050X will lead to a decrease in the number of information returns filed by between 1 million to 5 million returns. Using the midpoint of these ranges, or 3 million and 0.537 hours, the estimated burden reduction is $74 million per year.

Estimated average time per form: .537 Hours.

Estimated number of respondents: 90,100.

Estimated total annual burden hours: 48,383.70.

Estimated change in number of information returns resulting from increased reporting threshold: (3,000,000).

Estimated change in burden (hours): (1,611,150).

Estimated change in burden (Dollars): ($74,161,235).

The Treasury Department and the IRS request comments on all aspects of these estimates.

Comments on the collection of information in proposed § 1.6050X–1(a) should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury at *oira_submission@omb.eop.gov* or Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by June 12, 2020.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility (including underlying assumptions and methodology);

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the RFA, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

The RFA generally applies to regulations that affect small businesses, small organizations, and small governmental jurisdictions. For purposes of the RFA, small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. This proposed rule would affect States, as well as local governments, some of which may meet the definition of small governmental jurisdiction. Approximately 90,100 governments, governmental entities, and nongovernmental entities treated as governmental entities may be subject to the reporting requirements of section 6050X. Of those governments and governmental entities, approximately 85,500 (or 95%) are small governmental jurisdictions.

Although the regulations may affect a substantial number of small governmental jurisdictions, the economic impact of the proposed regulations is not likely to be significant. The proposed regulations set a reporting threshold that is higher than the minimum required by statute and also provide for governments and governmental entities to file annual returns. Both of these provisions reduce the potential burden on small governmental jurisdictions. In particular, the increase in the reporting threshold will lead to a decrease in the number of information returns filed by between 1 million to 5 million returns. Using the midpoint of this range, or 3 million, the estimated burden reduction is $74 million per year (2018 dollars). It is estimated that after reading and learning about the requirements of the regulations, the burden associated with filing the annual form is approximately 23 to 41 minutes and the average cost per information return is approximately $24.72, which would not result in a significant economic impact on small entities. The Treasury Department and the IRS request comments on the burden associated with filing the annual form.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled *Federalism*) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed rules do not have Federalism implications, and do not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive Order. The compliance costs, if any, are imposed on state and local governments by section 6050X, as enacted by the TCJA. Notwithstanding, the Treasury Department and the IRS have engaged in efforts to consult and work cooperatively with affected State and local officials in the process of developing the proposed rules by participating in a teleconference with the National League of Cities on September 27, 2019, and the National Governors Association on October 2, 2019. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, the Treasury Department and the IRS certify that they have complied with

the requirements of Executive Order 13132.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (entitled Consultation and Coordination with Indian Tribal Governments) requires consultation and collaboration with tribal officials in the development of Federal policies that may have tribal implications. In order to obtain tribal input in accordance with Executive Order 13175 and consistent with Treasury's Tribal Consultation Policy (80 FR 57434, September 23, 2015), the Treasury Department and the IRS held a Tribal Consultation with tribal officials on September 12, 2019. The Treasury Department and the IRS will obtain additional input on the tribal implications of the proposed rules before publishing them as final rules.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal author of these regulations is Sharon Y. Horn of Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes; Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.6050X–1 also issued under 26 U.S.C. 6050X(a), (b).

* * * * *

■ **Par. 2.** Section 1.162–21 is revised to read as follows:

§ 1.162–21 Denial of deduction for certain fines, penalties, and other amounts.

(a) *Deduction Disallowed.* Except as otherwise provided in this section, no deduction is allowed under chapter 1 of the Internal Revenue Code (Code) for any amount that is paid or incurred—

(1) By suit, settlement agreement (agreement), or otherwise;

(2) To or at the direction of a government or governmental entity, as defined in paragraph (f)(1) of this section, or a nongovernmental entity, as defined in paragraph (f)(2) of this section; and

(3) In relation to the violation, or investigation or inquiry into the potential violation, of any civil or criminal law.

(b) *Exception for restitution, remediation, and amounts paid to come into compliance with a law*—(1) *In general.* Paragraph (a) of this section does not apply to amounts paid or incurred for restitution, remediation, or to come into compliance with a law, as defined in paragraph (f)(3) of this section, provided that both the identification and the establishment requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Identification requirement*—(i) *In general.* A court order (order) or an agreement identifies a payment by stating the nature of, or purpose for, each payment each taxpayer is obligated to pay and the amount of each payment identified.

(ii) *Meeting the identification requirement.* The identification requirement is presumed to be met if an order or agreement specifically states that the payment, and the amount of the payment, described in paragraph (b)(2)(i) of this section, constitutes restitution, remediation, or an amount paid to come into compliance with a law or if the order or agreement uses a different form of the required words, such as, ''remediate'' or ''comply with a law.'' Meeting the establishment requirement of paragraph (b)(3) of this section alone is not sufficient to meet the identification requirement of paragraph (b)(2) of this section.

(iii) *Payment amount not identified.* If the order or agreement identifies a payment as restitution, remediation, or to come into compliance with a law but does not identify some or all of the aggregate amount the taxpayer must pay, the identification requirement may be met, with respect to any payment amount not identified, if the order or agreement describes the damage done, harm suffered, or manner of noncompliance with a law, and describes the action required of the taxpayer, such as paying or incurring costs to provide services or to provide property.

(iv) *Challenge by the IRS.* The IRS may challenge the characterization of an amount identified under paragraph (b)(2) of this section. To rebut the presumption described in paragraph (b)(2)(ii) of this section, the IRS must develop sufficient contrary evidence that the amount paid or incurred was not for the purpose identified in the order or agreement.

(3) *Establishment requirement*—(i) *Meeting the establishment requirement.* The establishment requirement is met if the taxpayer substantiates, with documentary evidence, the taxpayer's legal obligation, pursuant to the order or agreement, to pay the amount identified as restitution, remediation, or to come into compliance with a law, the amount paid, and the date the amount was paid or incurred. Meeting the identification requirement of paragraph (b)(2) of this section alone is not sufficient to meet the establishment requirement of paragraph (b)(3) of this section.

(ii) *Substantiating the establishment requirement.* The documentary evidence described in paragraph (b)(3)(i) of this section includes, but is not limited to, receipts; the legal or regulatory provision related to the violation or potential violation of a law; documents issued by the government or governmental entity relating to the investigation or inquiry; documents describing how the amount to be paid

was determined; and correspondence exchanged between the taxpayer and the government or governmental entity before the order or agreement became binding under applicable law.

(c) *Other Exceptions*—(1) *Suits between private parties.* Paragraph (a) of this section does not apply to any amount paid or incurred by reason of any order or agreement in a suit in which no government or governmental entity is a party.

(2) *Taxes and related interest.* Paragraph (a) of this section does not apply to amounts paid or incurred as otherwise deductible taxes or related interest. However, if penalties are imposed with respect to these taxes, paragraph (a) of this section applies to disallow a deduction for any interest payments related to the penalties imposed.

(3) *Failure to pay Title 26 tax.* In the case of any amount paid or incurred as restitution for failure to pay tax imposed under Title 26 of the United States Code, paragraph (a) of this section does not disallow a deduction for Title 26 taxes which is otherwise allowed under chapter 1 of the Code.

(d) *Application of general principles of Federal income tax law*—(1) *Taxable year of deduction.* If, under paragraph (b) or (c) of this section, the taxpayer is allowed a deduction for the amount paid or incurred pursuant to an order or agreement, the deduction is taken into account under the rules of section 461 and the related regulations, or under a provision specifically applicable to the allowed deduction, such as § 1.468B–3(c).

(2) *Tax benefit rule applies.* If the deduction allowed under paragraphs (b) or (c) of this section results in a tax benefit to the taxpayer, the taxpayer must include in income, under sections 61 and 111, the recovery of any amount deducted in a prior taxable year to the extent the prior year's deduction reduced the taxpayer's tax liability.

(i) A tax benefit to the taxpayer includes a reduction in the taxpayer's tax liability for that year or the creation of a net operating loss carryback or carryover.

(ii) A taxpayer's recovery of any amount deducted in a prior taxable year includes, but is not limited to—

(A) Receiving a refund, recoupment, rebate, reimbursement, or otherwise recovering some or all of the amount the taxpayer paid or incurred, or

(B) Being relieved of some or all of the payment liability under the order or agreement.

(e) *Material change to order or agreement*—(1) *In general.* If the parties to an order or agreement, entered before December 22, 2017, make a material change to the terms of that order or agreement on or after the applicability date in paragraph (h) of this section, paragraph (a) of this section applies to any amounts paid or incurred, or any obligation to provide property or services, after the date of the material change.

(2) *Material change.* A material change to the terms of an order or agreement under paragraph (e)(1) of this section may include: Changing the nature or purpose of a payment obligation; or changing, adding to, or removing a payment obligation, an obligation to provide services, or an obligation to provide property. A material change does not include changing a payment date or changing the address of a party to the order or agreement.

(f) *Definitions.* For purposes of section 162(f) and § 1.162–21, the following definitions apply:

(1) *Government or governmental entity.* A government or governmental entity means—

(i) The government of the United States, a State, or the District of Columbia;

(ii) The government of a territory of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands;

(iii) The government of a foreign country;

(iv) An Indian tribal government, as defined in section 7701(a)(40), or a subdivision of an Indian tribal government, as determined in accordance with section 7871(d); or

(v) A political subdivision of (i), (ii), or (iii), or a corporation or other entity serving as an agency or instrumentality of any of paragraph (f)(1)(i)–(f)(iv) of this section.

(2) *Nongovernmental entity treated as a governmental entity.* (i) A nongovernmental entity described in paragraph (f)(2)(ii) of this section is treated as a governmental entity.

(ii) A nongovernmental entity treated as governmental entity is an entity that—

(A) Exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)); or

(B) Exercises self-regulatory powers, including adopting; administering; or enforcing laws and imposing sanctions, as part of performing an essential governmental function.

(3) *Restitution, remediation of property, and amounts paid to come into compliance with a law.* (i) An amount is paid or incurred for restitution or remediation pursuant to paragraph (b)(1) of this section if it restores, in whole or in part, the person, as defined in section 7701(a)(1); the government; the governmental entity; or property harmed by the violation or potential violation of a law described in paragraph (a)(3) of this section.

(ii) An amount is paid or incurred to come into compliance with a law that the taxpayer has violated, or is alleged to have violated, by performing services; taking action, such as modifying equipment; providing property; or doing any combination thereof.

(iii) Regardless of whether the order or agreement identifies them as such, restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred—

(A) To reimburse the government or governmental entity for investigation costs or litigation costs;

(B) At the payor's election, in lieu of a fine or penalty;

(C) As forfeiture or disgorgement; or

(D) To the extent the payment or contribution does not meet the requirements of paragraph (f)(3)(i) or (ii) of this section, to an entity; fund, including a restitution, remediation, or other fund; group; government or governmental entity.

(4) *Suit, agreement, or otherwise.* A suit, agreement, or otherwise includes, but is not limited to, settlement agreements, non-prosecution agreements, deferred prosecution agreements, judicial proceedings, administrative adjudications, decisions issued by officials, committees, commissions, boards of a government or governmental entity, and any legal actions or hearings which impose a liability on the taxpayer or pursuant to which the taxpayer assumes liability.

(g) *Examples.* The application of this section may be illustrated by the following examples.

(1) *Example 1. Identification and establishment requirements*—(i) *Facts.* Corp. A enters into an agreement with State Y's environmental enforcement agency (Agency) for violating state environmental laws. Under the terms of the agreement, Corp. A must pay $40,000 to the Agency in civil penalties, $80,000 in restitution for environmental harm, $50,000 for remediation of contaminated sites, and $60,000 to conduct comprehensive upgrades to Corp. A's operations to come into compliance with the state environmental laws.

(ii) *Analysis.* The identification requirement is satisfied for those amounts the agreement identifies as

restitution, remediation, or to come into compliance with a law. If Corp. A establishes, as provided in paragraph (b)(3) of this section, that the amounts it paid or incurred are for restitution, remediation, and to come into compliance with state environmental laws, paragraph (a) of this section does not preclude Corp. A from deducting $190,000. Under paragraph (a) of this section, Corp. A may not deduct the $40,000 in civil penalties. Section 162(f) and § 1.162–21(a) will not disallow Corp. A's deduction for the $60,000 paid to come into compliance with the state environmental laws. However, Corp. A may deduct the $60,000 paid only if, under the facts and circumstances, the payment would be otherwise deductible under chapter 1 of the Code. See section 161, concerning items allowed as deductions, and section 261, concerning items for which no deduction is allowed, and the regulations related to sections 161 and 261.

(2) *Example 2. Restitution*—(i) *Facts.* Corp. A enters into an agreement with State T's securities agency (Agency) for violating a securities law by inducing B to make a $100,000 investment in Corp. C stock, which B lost when the Corp. C stock became worthless. As part of the agreement, Corp. A agrees to pay $100,000 to B as restitution for B's investment loss, incurred as a result of Corp. A's actions. The agreement specifically states that the $100,000 payment by Corp. A to B is restitution. The agreement also requires Corp. A to pay a $40,000 fine to the Agency as a result of Corp. A's misconduct.

(ii) *Analysis.* Corp. A's $100,000 payment to B is identified in the agreement as restitution. If Corp. A establishes, as provided in paragraph (b)(3) of this section, that the amount paid was for that purpose, Corp. A may deduct the $100,000 payment. Paragraph (a) of this section precludes Corp. A from deducting its payment of $40,000 to the Agency because the payment of a fine is not treated as restitution, remediation, or as paid to come into compliance with a law.

(3) *Example 3. Amount paid to come into compliance with a law*—(i) *Facts.* Corp. B, an accrual method taxpayer, is under investigation by State X's environmental enforcement agency for a potential violation of State X's law governing emissions standards. Corp. B enters into an agreement with State X under which it agrees to upgrade the engines in a fleet of vehicles that Corp. B operates to come into compliance with State X's law. Although the agreement does not provide the specific amount Corp. B will incur to upgrade the engines to come into compliance with State X's law, it identifies that Corp. B must upgrade existing engines to lower certain emissions. Under the agreement, Corp. B also agrees to bring certain machinery, already in compliance with State X law, up to a standard higher than that which the law requires, and to construct a nature center in a local park for the benefit of the community. Corp. B presents evidence, as described in paragraph (b)(3)(ii) of this section, to substantiate that the expenses Corp. B will incur to upgrade the engines will be amounts paid to come into compliance with State X's law.

(ii) *Analysis.* Because the agreement describes the specific action Corp. B must take to come into compliance with State X's law, and Corp. B presents invoices to establish that the agreement obligates it to incur costs to come into compliance with a law, paragraph (a) of this section would not preclude a deduction for the amounts Corp. B incurs to come into compliance. However, Corp. B may not deduct the amounts paid to bring its machinery up to a higher standard than required by State X's law or to construct the nature center because no facts exist to establish that either amount was paid to come into compliance with a law or as restitution or remediation.

(4) *Example 4. At the direction of a government*—(i) *Facts.* Corp. D enters into an agreement with governmental entity, Consumer Board, for violating consumer protection laws by failing to provide debt-relief services it promised its customers. The agreement requires Corp. D to pay $60,000 as restitution to the customers harmed by Corp. D's violation of the law.

(ii) *Analysis.* At the direction of Consumer Board, Corp. D must pay $60,000 to its customers as a result of its violation of the law. The agreement identifies the $60,000 as restitution. Provided Corp. D establishes, under paragraph (b)(3) of this section, that the $60,000 constitutes restitution, paragraph (a) does not apply.

(h) *Applicability date.* The rules of this section are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations is published in the **Federal Register**, except that such rules do not apply to amounts paid or incurred under any order or agreement that became binding under applicable law before such date. Until that date, taxpayers may rely on these proposed rules for any order or agreement, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

■ **Par. 3.** Add § 1.6050X–1 to read as follows:

§ 1.6050X–1 Information reporting for fines, penalties, and other amounts by governments, governmental entities, and nongovernmental entities treated as governmental entities.

(a) *Information reporting requirement.* The appropriate official (as described in paragraph (g)(1) of this section) of a government or governmental entity (as described in paragraph (g)(2) of this section) or nongovernmental entity treated as a governmental entity (as described in paragraph (g)(3) of this section) that is a party to a suit, agreement, or otherwise to which section 162(f) and § 1.162–21(f)(4) apply, must—

(1) File an information return (as described in paragraph (b) of this section) if the aggregate amount the payor (as described in paragraph (g)(4) of this section) is required to pay pursuant to all court orders (orders) and settlement agreements (agreements), with respect to the violation of a law, or the investigation or inquiry into the potential violation of a law, equals or exceeds the threshold amount provided in paragraph (g)(5) of this section; and

(2) Furnish a written statement as described in paragraph (c) of this section to each payor.

(b) *Requirement to file return*—(1) *Content of information return.* The information return must provide the following:

(i) The aggregate amount required to be paid to, or at the direction of, a government or governmental entity as a result of the order or agreement;

(ii) The separate amounts required to be paid as restitution, remediation, or to come into compliance with a law, as defined in § 1.162–21(f)(3), as a result of the order or agreement; and

(iii) Any additional information required by the information return and the related instructions.

(2) *Form, manner, and time of reporting.* The appropriate official required, under paragraph (a)(1) of this section, to file an information return must file Form 1098–F, Fines, Penalties, and Other Amounts, (or any successor form), with Form 1096, Annual Summary and Transmittal of U.S. Information Returns. The information return must be filed with the Internal Revenue Service (IRS) on or before January 31 of the year following the calendar year in which the order or agreement becomes binding under applicable law. The January 31 due date applies to both paper and electronically filed information returns.

(c) *Requirement to furnish written statement*—(1) *In general.* The appropriate official must furnish a written statement to each payor with respect to which it is required to file an information return under paragraphs (a)(1) and (b) of this section. The written statement must include:

(i) The information that was reported to the IRS with respect to such payor; and

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS.

(2) *Copy of the Form 1098–F.* The appropriate official may satisfy the requirement of this paragraph (c) by furnishing a copy of the Form 1098–F (or any successor form) filed with respect to the payor, or another document that contains the information required by paragraph (c)(1) of this section if the document conforms to applicable revenue procedures (see § 601.601) or other guidance relating to substitute statements.

(3) *Time for furnishing written statement.* The appropriate official must furnish the written statement to the payor on or before the date that the appropriate official files the Form 1098–F with the IRS, as provided in paragraph (b)(2) of this section.

(d) *Rules for multiple payors*—(1) *Multiple payors—individual liability.* If, pursuant to an order or agreement, the sum of the aggregate amount that multiple individually liable payors must pay with respect to a violation, investigation, or inquiry equals, or exceeds, the threshold amount under paragraph (g)(5) of this section, the appropriate official must file an information return under paragraphs (a)(1) and (b) of this section to report the amount required to be paid by each payor, even if a payor's payment liability is less than the threshold amount. The appropriate official must furnish a written statement, under paragraph (c) of this section, to each payor. If more than one person (as defined in section 7701(a)(1)) is a party to an order or agreement, there is no information reporting requirement, or requirement to furnish a written statement, with respect to any person who does not have a payment obligation or obligation for costs to provide services or to provide property.

(2) *Multiple payors—joint and several liability.* If, pursuant to an order or agreement, multiple payors are jointly and severally liable to pay an amount that, in the aggregate, equals or exceeds the threshold amount under paragraph (g)(5) of this section, the appropriate official must file an information return, under paragraphs (a)(1) and (b) of this section for each of the jointly and severally liable payors. Each information return must report the aggregate amount required to be paid by all of the payors. The appropriate official must furnish a written statement, under paragraph (c) of this section, to each of the jointly and severally liable payors.

(e) *Payment amount not identified.* If, as provided by § 1.162–21(b)(2)(iii), the order or agreement identifies a payment (or the cost to provide property or to provide services) as restitution, remediation, or an amount paid to come into compliance with a law (as defined in § 1.162–21(f)(3)), but does not identify some or all of the aggregate amount the payor must pay (or some or all of the aggregate cost to provide property or to provide services) and, under the facts and circumstances, the government or governmental entity expects the amount to equal or exceed the threshold amount under paragraph (g)(5) of this section, for purposes of paragraphs (a), (b), and (c) of this section, the appropriate official must file an information return, and furnish the written statement to the payor, as provided by the instructions to Form 1098–F (or any successor form), including instructions as to the amounts (if any) to include on Form 1098–F.

(f) *Material change.* If the parties make a material change, as described in § 1.162–21(e)(2), to the terms of an order or agreement for which an appropriate official has filed Form 1098–F (or any successor form), the appropriate official must update the IRS by filing a corrected Form 1098–F (or any successor form), as provided by the form instructions, with respect to the entire amended order or agreement, not just the terms modified. The appropriate official must file the corrected Form 1098–F with the IRS on or before January 31 of the year following the calendar year in which the parties make a material change to the terms of the order or agreement. The appropriate official must furnish an amended written statement to the payor on or before the date that the appropriate official files the corrected Form 1098–F with the IRS.

(g) *Definitions.* For purposes of this section, the following definitions apply—

(1) *Appropriate official*—(i) *One government or governmental entity.* If the government or governmental entity has not assigned one of its officers or employees to comply with the reporting requirements of paragraphs (a), (b), and (c) of this section, the term ''appropriate official'' means the officer or employee of a government or governmental entity having control of the suit, investigation, or inquiry. If the government or governmental entity has assigned one of its officers or employees to comply with the reporting requirements of paragraphs (a), (b), and (c) of this section, such officer or employee is the appropriate official.

(ii) *More than one government or governmental entity*—(A) *In general.* If more than one government or governmental entity is a party to an order or agreement, only the appropriate official of the government or governmental entity listed first on the most recently executed order or agreement is responsible for complying with all reporting requirements under paragraphs (a), (b), and (c) of this section, unless another appropriate official is appointed by agreement under paragraph (g)(1)(ii)(B) of this section.

(B) *By agreement.* The governments or governmental entities that are parties to an order or agreement may agree to appoint one or more other appropriate officials to be responsible for complying with the information reporting requirements of paragraphs (a), (b), and (c) of this section.

(2) *Government or governmental entity.* For purposes of this section, government or governmental entity means—

(i) The government of the United States, a State, or the District of Columbia; or

(ii) A political subdivision of, or a corporation or other entity serving as an agency or instrumentality of any of paragraph (g)(2)(i) of this section.

(3) *Nongovernmental entity treated as governmental entity.* For purposes of this section, the definition of nongovernmental entity set forth in § 1.162–21(f)(2) applies.

(4) *Payor.* The payor is the person (as defined in section 7701(a)(1)) who, pursuant to an order or agreement has paid or incurred, or is liable to pay or incur, an amount to, or at the direction of, a government or governmental entity in relation to the violation or potential violation of a law. In general, the payor will be the person to which section 162(f) and § 1.162–21 of the regulations apply.

(5) *Threshold amount.* The *threshold amount* is $50,000.

(h) *Applicability date.* The rules of this section are proposed to apply only to orders and agreements that become

binding under applicable law on or after January 1, 2022.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–08649 Filed 5–12–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100956–19]

RIN 1545–BP16

Source of Income From Certain Sales of Personal Property; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations modifying the rules for determining the source of income from sales of inventory produced within the United States and sold without the United States or vice versa.

DATES: The public hearing is being held on Wednesday, June 3, 2020, at 10:00 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Wednesday, May 20, 2020. If no outlines are received by May 20, 2020, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–100956–19] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–100956–19. The email should also include a copy of the speaker's public comments and outline of topics. The email must be received by May 20, 2020.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–100956–19] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–100956–19. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–100956–19).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brad McCormack, (202) 317–6911; concerning submissions of comments, the hearing and/access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov,* If emailing please put Attend, Testify, or Agenda Request and [REG–100956–19] in the email subject line.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking REG–100956–19 that was published in the **Federal Register** on Monday, December 30, 2019, 84 FR 71836.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that submitted written comments by February 28, 2020, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by May 20, 2020.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, on *Regulations.gov*, search IRS and REG–100956–19, or by emailing your request to *publichearings@irs.gov.* Please put ''REG–100956–19 Agenda Request'' in the subject line of the email.

Martin V. Franks,

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

[FR Doc. 2020–09966 Filed 5–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2020–0066]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District; Withdrawal

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning amendments to the regattas and marine parades regulations. The rulemaking was initiated to establish a special local regulations during the ''Cambridge Classic Power Boat Regatta,'' a marine event to be held on certain navigable waters of the Choptank River at Cambridge, MD on May 16, 2020, and May 17, 2020. The proposed rule is being withdrawn because it is no longer necessary. The event sponsor has cancelled the power boat races.

DATES: The Coast Guard is withdrawing the proposed rule published March 16, 2020 (85 FR 14837) as of May 13, 2020.

ADDRESSES: To view the docket for this withdrawn rulemaking, go to *https://www.regulations.gov,* type USCG–2020–0066 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576– 2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2020, we published a notice of proposed rulemaking entitled ''Special Local Regulations; Marine Events within the Fifth Coast Guard District'' in the **Federal Register** (85 FR 14837). The rulemaking concerned the Coast Guard's proposal to establish temporary special local regulations for certain navigable waters of the Choptank River at Cambridge, MD, effective from 9 a.m. on May 16, 2020, through 6:30 p.m. on May 17, 2020. This action was necessary to provide for the safety of life on these waters during a high-speed power boat racing event. This rulemaking would have prohibited persons and vessels from entering the

regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

Withdrawal

The proposed rule is being withdrawn due to a regulated area no longer being necessary following a cancellation of the power boat races by the event sponsor.

Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70034.

Dated: April 23, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–09221 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0987]

RIN 1625–AA09

Drawbridge Operation Regulations; Back Bay of Biloxi, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the I–110 bascule bridge across the Back Bay of Biloxi, mile 3.0, Biloxi, Harrison County, Mississippi. This proposed action would require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. The bridge has not opened for vessels on these holidays over a four year period. This proposed action is intended to allow the bridge owner to effectively manage bridge tender resources during these federal holidays.

DATES: Comments and related material must be received by the Coast Guard on or before July 13, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0981 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
MDOT Mississippi Department of Transportation
OMB Office of Management and Budget
Pub. L. Public Law
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

MDOT has requested to change the operating requirements for the I–110 bascule bridge across the Back Bay of Biloxi, mile 3.0, Biloxi, Harrison County, Mississippi. This bridge currently opens according to 33 CFR part 117.675(a) and opens on signal if at least six hour notice is given. MDOT has requested that on Thanksgiving Day, Christmas Day and New Year's Day the bridge will open on signal if at least 12 hour notice is given.

At this bridge location the waterway is used by small commercial, recreational and fishing vessels. From 2014 through 2017 this bridge did not open for vessels on Thanksgiving Day, Christmas Day and New Year's Day. The bridge has a vertical clearance of 60' above mean high water in the closed to vessel position. Requiring a 12 hour notice to open provides a reasonable ability to use the waterway.

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

III. Discussion of Proposed Rule

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian, and recreational traffic in the overall public interest.

Since this bridge has not opened for vessel traffic over a four year period on these federal holidays the Coast Guard proposes that it is reasonable for vessels to provide a 12 hour notice to open the drawbridge. We have not identified any impacts on marine navigation with this proposed rule. Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still open the draw and transit given advance notice. Those vessels with a vertical clearance requirement of less than 60 feet above mean high water may transit the bridge at any time. Additionally according to 33 CFR 117.31 (b) the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations at 33 CFR 117.675(a) will meet the reasonable needs of navigation.

B. Impact on Small Entities

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

The bridge provides a 60 foot vertical clearance at mean high water that should accommodate most present

vessel traffic and the bridge will continue to open on signal for any vessel provided at least 12 hour notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

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

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.675 paragraph (a) to read as follows:

§ 117.675 Back Bay of Biloxi

(a) The draw of the I–110 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hour notice is given; except that on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given. The draw shall open anytime at the direction of the District Commander.

(b) The draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

* * * * *

Dated: May 4, 2020.

John P. Nadeau,

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

[FR Doc. 2020–09856 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0955]

RIN 1625–AA09

Drawbridge Operation Regulations; Belle River, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the State Route 70 (SR 70), pontoon bridge across the Belle River mile 23.8, near Pierre Part, Assumption Parish, Louisiana. The bridge owner, the Louisiana Department of Transportation and Development (LA DOTD) provided the Coast Guard with information that demonstrated that significant vehicle queues were created during daylight hours in the months June, July and August and that these queues could be significantly decreased by changing the drawbridge operating schedule to open the bridge during the day on the hour instead of on signal as currently prescribed by regulations. This proposed action is intended to enhance vehicle safety and allow the bridge owner to effectively manage bridge operations during federal holidays.

DATES: Comments and related material must be received by the Coast Guard on or before June 12, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0955 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
LA DOTD Louisiana Department of Transportation and Development
OMB Office of Management and Budget
Pub. L. Public Law
NPRM Notice of proposed rulemaking
§ Section
SR State Road
U.S.C. United States Code

II. Background, Purpose and Legal Basis

LA DOTD has requested to change the operating requirements for the SR 70 pontoon bridge across the Belle River mile 23.8, near Pierre Part, Assumption Parish, LA. This bridge currently opens on signal, except that from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hour notice is given according to 33 CFR part 117.424. LA DOTD requested this change because vehicle traffic has become heavily congested during June, July, and August. This waterway is heavily used by recreational vessels during the summer months. This bridge has a vertical clearance of zero feet in the closed to vessel traffic position and unlimited vertical clearance in the open to vessel traffic position.

The Coast Guard allowed LA DOTD to temporarily change the bridge operating schedule to collect additional vehicle traffic data to measure the impact of bridge closures on traffic congestion. From 6 a.m. on June 1, 2019 through 6 p.m. on August 31, 2019 the draw was allowed to open on signal on the hour from 6 a.m. to 10 p.m., and from 10 p.m. to 6 a.m. the draw opened on signal if at least four hour notice is given. The bridge opened on signal for emergencies.

The Coast Guard published a Notice of Temporary Deviation from the regulations and a request for comments concerning these changes on April 16, 2019 **Federal Register** Number 2019–07515. The comment period closed on September 23, 2019. Four comments were received. All commenters favored changing the regulation.

After this temporary deviation the bridge returned to its normal operating schedule. Over this 105 day period LA DOTD measured the vehicle and vessel queues created when the bridge opened on the hour. LA DOTDs analysis of this data demonstrated that the average number of vehicles that were held in queue because of the bridge opening for vessels was reduced from 105 vehicles to 25 vehicles on average. During this period there were no vessel queues created by this temporary operating schedule.

The Coast Guard is issuing this NPRM under the authority of 33 U.S.C. 499.

III. Discussion of Proposed Rule

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the rule on the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian and recreational traffic in the overall public interest.

Opening the bridge to vessel traffic on the hour instead of on signal appears to reduce vehicle queues while not creating vessel queues. The reduction in vehicle queues enhances safety by preventing vehicles from backing up on SR 70.

Since vessel queues were not created during this test the Coast Guard has determined that this operating schedule continues to provide vessels with the reasonability to use the waterway.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still open the draw and transit given advance notice. Additionally according to 33 CFR 117.31 (b) the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations at 33 CFR 117.424 will meet the reasonable needs of navigation.

B. Impact on Small Entities

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

The bridge will continue to open on signal on the hour during most daylight hours. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.424 to read as follows:

§ 117.424 Belle River

The draw of the SR70 bridge, mile 23.8 near Belle River, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given, and from June 1 through August 31 the draw shall open on signal on the hour from 6 a.m. to 10 p.m. The bridge shall open anytime at the direction of the District Commander.

Dated: May 4, 2020.

John P. Nadeau,

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

[FR Doc. 2020–09855 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0952]

RIN 1625–AA09

Drawbridge Operation Regulations; Industrial Seaway Canal, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the State Route 605 highway, Wilkes Road bascule bridge across the Industrial Seaway Canal mile 11.3, Hansboro, Harrison County, Mississippi. The Mississippi Department of Transportation (MDOT) submitted this request for a change in schedule, which would allow the bridge to close to vessel traffic. This change is expected to better serve the needs of the community while continuing to meet the reasonable needs of vessel navigation.

DATES: Comments and related material must be received by the Coast Guard on or before July 13, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0952 using Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
MDOT Mississippi Department of Transportation
OMB Office of Management and Budget
Pub. L. Public Law
NPRM Notice of proposed rulemaking
§ Section
SR State Road
U.S.C. United States Code

II. Background, Purpose and Legal Basis

MDOT has requested to change the operating requirements for the SR 605 highway bascule bridge across the Industrial Seaway Canal mile 11.3, Hansboro, Harrison County, MS. This bridge currently operates according to 33 CFR part 117.5 and opens on signal. At this bridge location the waterway is used by small commercial, recreational and fishing vessels. The bridge has a vertical clearance of 37′ above mean high water in the closed to vessel position.

MDOT has requested two changes to the regulations. They asked to close the bridge to vessel traffic from 6:00 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. The first change is needed to prevent unsafe driving conditions created when the bridge opens to vessels during morning and evening commuting hours. The second change would allow MDOT to remove the bridge tender during three federal holidays when there has been almost no bridge openings.

The Coast Guard allowed MDOT to temporarily change the bridge operating schedule to measure the impacts to vehicle traffic that were created when the bridge opened to vessels. For a 120 day period the bridge did not open to vessel traffic from 6:00 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays. The Coast Guard published a Notice of Temporary Deviation from the regulations and a request for comments concerning these changes on February 8, 2019, **Federal Register** Number 2019–01549. No comments were received during this temporary deviation. During this period there were no vehicle or vessel queues created by this temporary operating schedule.

After this temporary deviation the bridge returned to its normal operating schedule. Over 88 days MDOT measured the vehicle and vessel queues created when the bridge opened for vessels during the above commute hours. MDOTs analysis of this data demonstrated that during the above commuting periods vehicle queues were created when the bridge opened for vessels and that the queues backed up traffic on SR 605 and at times on the I–10 highway on ramps located about 1½ miles north of the bridge. These vehicle queues presented an increased potential for rear end vehicle collisions on the I–10 highway. There were no vessel queues during this period.

From 2014 through 2017 this bridge opened once for vessels on Thanksgiving Day, Christmas Day and New Year's Day.

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

III. Discussion of Proposed Rule

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the rule on the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian, and recreational traffic in the overall public interest.

Closing the bridge to vessel traffic in the morning and evening commuting hours appears to reduce vehicle queues while not creating vessel queues. The reduction in vehicle queues enhances safety by preventing vehicles from backing up on I–10 highway.

Since vessel queues were not created during this test the Coast Guard has determined that closing the bridge to vessel traffic in the morning and evening commute hours continues to provide vessels with the reasonability to use the waterway.

MDOT requested to close this bridge to vessels for 2½ hours during the morning commute; from 6:00 a.m. to 8:30 a.m. The Coast Guard however proposed to close the bridge to vessel traffic from 6:30 a.m. to 8:00 a.m. to provide additional time for vessels to transit through this bridge.

Since this bridge opened once to vessels from 2014 through 2017 on Thanksgiving Day, Christmas Day and New Year's Day, requiring a 12 hour notice to open would not impact navigation.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still open the draw and transit given advance notice. Those vessels with a vertical clearance requirement of less than 37 feet above mean high water may transit the bridge at any time. Additionally according to 33 CFR 117.31(b) the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations will meet the reasonable needs of navigation.

B. Impact on Small Entities

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

The bridge provides a 37 foot vertical clearance at mean high water that should accommodate most present vessel traffic and the bridge will continue to open on signal during most daylight hours for any vessel during the above federal holidays provided at least 12 hour notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

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

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material

cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Add § 117.679 to read as follows:

§ 117.679 Industrial Seaway Canal

The draw of the bridge, mile 11.3 at Hansboro, shall open on signal; except that the draw need not open to vessels from 6:30 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays; and on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given. The draw shall open anytime at the direction of the District Commander.

Dated: May 4, 2020.

John P. Nadeau,

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

[FR Doc. 2020–09854 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG 2020–0027]

RIN 1625–AA09

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the U.S. 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina. This proposed modification will allow the drawbridge to be maintained in the closed position during peak traffic hours and provide daily scheduled openings to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before June 12, 2020.

ADDRESSES: You may submit comments identified by docket number USCG 2020–0027 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Proposed Management and Budget
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The North Carolina Department of Transportation, who owns and operates the U.S. 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to address traffic congestion created during peak traffic hours and to provide scheduled daily openings to effectively balance the needs of land transportation with the reasonable needs of navigation.

The U.S. 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina has a vertical clearance of 14 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operation schedule for the drawbridge is published in 33 CFR 117.843(a)

This proposed final rule is necessary to help alleviate traffic congestion during morning and evening commutes, Monday through Friday, except holidays; and balance the needs of land transportation with the reasonable needs of navigation. Vessels that can safely transit through the bridge in the closed position may do so at any time.

The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

III. Discussion of Proposed Rule

Under this proposed final rule, the draw shall open on the hour and the half hour from 6 a.m. to 10 p.m.; except from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except holidays, when the draw shall remain closed. The draw shall open on signal from 10 p.m. to 6 a.m. to all vessels and shall open upon request at all times for vessels as defined in 33 CFR 117.31.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that vessels can still transit the bridge on signal from 10 p.m.

to 6 a.m., and on the hour and the half hour from 6 a.m. to 10 p.m., except from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except holidays, when the draw shall remain closed. The draw shall open upon request at all times for vessels as defined in 33 CFR 117.31.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Revise § 117.843(a) to read as follows:

§ 117.843 Trent River

(a) The draw of the U.S. 70 Bridge, mile 0.0, at New Bern:

(1) Shall open on the hour and the half hour from 6 a.m. to 10 p.m., except during the times authorized in accordance with (a) (2) of this section.

(2) Shall remain closed from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday; except holidays.

(3) Shall open on signal from 10 p.m. to 6 a.m.

(4) Shall open upon request at all times for vessels as defined in § 117.31.

* * * * *

Dated: April 28, 2020.

K.M. Smith,

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

[FR Doc. 2020–09462 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0241; FRL–10009–38–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Lithographic and Letterpress Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by Missouri on January 14, 2019. Missouri requests that EPA approve into Missouri's SIP revisions to its rule related to control of emissions from lithographic and letterpress printing operations. The revisions remove the unnecessary use of restrictive words; add, replace and revise terms and definitions to match SIP-approved terms and definitions in Missouri's rule *Definitions and Common Reference Tables;* add a new printing category to the rule that provides consistency with the St. Louis area counterpart rule; and make other changes that are administrative in nature. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before June 12, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0241 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: Bob Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7251; email address *webber.robert@epa.gov.*

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

Table of Contents

I. Written Comments
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
IV. What action is the EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0241, 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 is being addressed in this document?

The EPA is proposing to approve revisions to 10 Code of State Regulation (CSR) 10 CSR 10–2.340 *Control of Emissions from Lithographic Printing Facilities,* in the Missouri SIP. Missouri made several revisions to the rule. These revisions are described in detail in the technical support document (TSD) included in the docket for this document.

Missouri received ten comments from EPA during the comment period. Missouri responded to all ten comments, as noted in the State submission included in the docket for this action. Missouri responded to EPA's comments and, as described in the TSD for this action, amended the rule in response to some of EPA's comments.

Therefore, the EPA is proposing to approve the revisions to this rule because it will not have a negative impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 25, 2018 to August 2, 2018 and received ten comments on this rulemaking. As explained in the TSD for this rule, Missouri adequately responded to the comments. As explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to revise 10 CSR 10–2.340. The EPA is soliciting comment on the substantive and administrative revisions detailed in this proposal and the TSD. The EPA is not soliciting comment on existing rule text that has been previously approved by the EPA into the SIP. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In

accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulation described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: May 5, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 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 § 52.1320, the table in paragraph (c) is amended by revising the title and the entry for ''10–2.340'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10–2.340	Control of Emissions From Lithographic and Letterpress Printing Operations.	1/30/19	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–09915 Filed 5–12–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2020–0097; EPA–R05–OAR–2020–0199; EPA–R05–OAR–2020–0200; FRL–10009–09–Region 5]

Air Plan Approval; Wisconsin; Redesignation of the Shoreline Sheboygan, WI Area to Attainment of the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Shoreline Sheboygan County, Wisconsin area is attaining the 2008 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and to act in accordance with a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2032 in the Shoreline Sheboygan area. EPA finds adequate and is proposing to approve Wisconsin's 2025 and 2032 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Shoreline Sheboygan area. EPA is also proposing to approve Wisconsin's VOC reasonably available control technology (RACT) SIP revisions. Finally, EPA is proposing to approve the Wisconsin SIP as meeting the applicable base year inventory requirement, emission statement requirements, VOC RACT requirements, motor vehicle inspection and maintenance (I/M) program requirements, and NO_X RACT requirements.

DATES: Comments must be received on or before June 12, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0097, EPA–R05–OAR–2020–0199, or EPA–R05–OAR–2020 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is EPA proposing?
II. What is the background for these actions?
III. What are the criteria for redesignation?
IV. What is EPA's analysis of Wisconsin's redesignation request for the 2008 ozone NAAQS?
V. Has the State adopted approvable motor vehicle emission budgets?
VI. Base Year Emissions Inventory
VII. Emissions Statement
VIII. Motor Vehicle I/M
IX. VOC RACT
X. NO_X RACT
XI. What is EPA's analysis of Wisconsin's redesignation request for the 1997 ozone NAAQS?
XII. What action is EPA taking?
XIII. Incorporation by Reference
XIV. Statutory and Executive Order Reviews

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Shoreline Sheboygan nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2017–2019, and that the Shoreline Sheboygan area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Shoreline Sheboygan area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Shoreline Sheboygan area in attainment of the 2008 ozone NAAQS through 2032. EPA is also proposing to approve, as revisions to the Wisconsin SIP, the State's 2011 base year emissions inventory, emission statement certification, VOC RACT requirements, motor vehicle I/M certification, and NO_X RACT certification. EPA also finds adequate and is proposing to approve the newly established 2025 and 2032 MVEBs for the Shoreline Sheboygan area. Finally, EPA is proposing to approve the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals, because they satisfy the moderate VOC RACT requirements of the CAA for the Shoreline Sheboygan area.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA revised the former 1-hour ozone primary and secondary standards and replaced them with 8-hour standards at a level of 0.08 parts per million (ppm) (40 CFR 50.10). On March 27, 2008, EPA further revised the 8-hour ozone NAAQS by lowering the level of the primary and secondary standards from 0.08 ppm to 0.075 ppm (40 CFR 50.15).

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. On April 30, 2004 (69 FR 23858) and May 21, 2012 (77 FR 30088), EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS, respectively.

On March 1, 2011, EPA determined that the Sheboygan nonattainment area had attained the 1997 ozone NAAQS (76 FR 11080). Since that determination, the area has continued to attain the 1997 ozone NAAQS, and the area retains its Moderate classification. On December 19, 2016, EPA reclassified the Sheboygan nonattainment area for the

2008 ozone NAAQS as Moderate with an attainment date of July 20, 2018 (81 FR 91841).

On July 15, 2019, EPA revised the designation for the Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS, by splitting the original area into two distinct nonattainment areas that together cover the identical geographic area of the original nonattainment area (84 FR 33699).[1] One of the separate areas, called the Shoreline Sheboygan County, WI nonattainment area, consists of the eastern portion of the original area, including the Sheboygan Kohler-Andrae monitor. The other separate area, called the Inland Sheboygan County, WI nonattainment area, consists of the western portion of the original area, including the Sheboygan Haven monitor. On August 23, 2019, EPA determined that the Inland Sheboygan area and Shoreline Sheboygan area qualified for one-year attainment date extensions for the 2008 ozone NAAQS to July 20, 2019 (84 FR 44238).

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Wisconsin's redesignation request for the 2008 ozone NAAQS?

A. Has the Shoreline Sheboygan area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,[2] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from the Sheboygan Kohler-Andrae monitor, which is the only monitoring site in the Shoreline Sheboygan area. These data are from the 3-year period from 2017–2019, which is the most recent 3-year period available. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Shoreline Sheboygan area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design value) for the monitoring site are summarized in Table 1.

[1] In this proposed rule, EPA is not reopening for public comment our final July 15, 2019, action to split the original Sheboygan nonattainment area into two distinct nonattainment areas.

[2] The ozone season is defined by state in 40 CFR 58, appendix D. The ozone season for Wisconsin is March-October 15. *See* 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE SHORELINE SHEBOYGAN AREA

Area	Monitor	Year	Percent observed	Fourth-highest (ppm)	2017–2019 average (ppm)
Shoreline Sheboygan County, WI	Sheboygan Kohler-Andrae (55–117–0006).	2017 2018 2019	100 100 99	0.075 0.083 0.068	0.075

The Shoreline Sheboygan area's 3-year ozone design value for 2017–2019 is 0.075 ppm, which meets the 2008 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Shoreline Sheboygan area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Shoreline Sheboygan area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation. Preliminary 2020 data to date indicate that this area continues to attain the 2008 ozone NAAQS. As discussed in section IV.D.3. below, WDNR has committed to continue monitoring ozone in this area to verify maintenance of the 2008 ozone NAAQS.

B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the Shoreline Sheboygan area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). We are proposing to determine that Wisconsin has met all currently applicable SIP requirements for purposes of redesignation of the Shoreline Sheboygan area to attainment of the 2008 ozone standard under section 110 and part D of the CAA, in accordance with section 107(d)(3)(E)(v). Additionally, with the exception of the base year emissions inventory requirement of section 182(a)(1) of the CAA, the emissions statement requirement of section 182(a)(3)(B) of the CAA, the VOC RACT requirements of section 182(b)(2) of the CAA, the I/M requirements of section 182(b)(4) of the CAA, and the NO_X RACT requirements of section 182(f) of the CAA, EPA finds that all applicable requirements of the Wisconsin SIP for the area, for purposes of redesignation, have been fully approved under section 110(k) of the CAA. As discussed in sections VI. through X. below, EPA is proposing to approve Wisconsin's base year emissions inventory, emissions statement, motor vehicle I/M, VOC RACT, and NO_X RACT SIP submissions as meeting the Moderate RACT requirements of section 182(b)(2) of the CAA for the Shoreline Sheboygan area under the 2008 ozone NAAQS. Upon final approval of these SIP elements, all applicable requirements of the Wisconsin SIP for the area will have been fully approved under section 110(k) of the CAA.

In making these determinations, EPA ascertained which CAA requirements are applicable to the Shoreline Sheboygan area and the Wisconsin SIP and, if applicable, whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (*see* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing to determine that the Shoreline Sheboygan area has attained the 2008 ozone standard, under 40 CFR 51.1118, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the Reasonably Available Control Measures (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

1. Wisconsin Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Shoreline Sheboygan Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* the NO_X SIP call, the Clean Air Interstate Rule (CAIR), and the Cross State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.[3]

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Shoreline Sheboygan area was initially classified as Marginal and then reclassified as Moderate under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in sections 182(a) and (b) (Marginal and Moderate nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation.

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. Under this requirement, a state must consider all available control measures, including reductions that are available from adopting RACT on existing sources. Because attainment has been reached in the Shoreline Sheboygan area, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.1118.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Wisconsin's NSR program on October 6, 2014 (79 FR 160064) and February 7, 2017 (82 FR 9515). However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.''

[3] EPA has previously approved provisions of the Wisconsin SIP addressing section 110 elements under the 2008 ozone NAAQS at 80 FR 54725 (September 11, 2015), 81 FR 3334 (January 21, 2016), 81 FR 53309 (August 12, 2016), and 82 FR 9515 (February 7, 2017).

Wisconsin has demonstrated that the Shoreline Sheboygan area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Wisconsin's PSD program will become effective in the Shoreline Sheboygan area upon redesignation to attainment. EPA approved Wisconsin's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Wisconsin SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Section 172(c)(9) requires the SIP to provide for the implementation of contingency measures if the area fails to make reasonably further progress or to attain the NAAQS by the attainment deadline. With respect to contingency measures for failure to attain the NAAQS by the attainment deadline, this requirement is not relevant for purposes of redesignation because the Shoreline Sheboygan area has demonstrated monitored attainment of the 2008 ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.1118.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity), as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved.[4] *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Wisconsin has an approved conformity SIP for the Shoreline Sheboygan area. *See* 79 FR 10995 (February 27, 2014).

iii. Subpart 2 Section 182(a) and (b) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. EPA approved Wisconsin's base year emissions inventory for the entirety of Sheboygan County on March 7, 2016 (81 FR 11673). In its February 11, 2020 submittal, WDNR requested that EPA replace the previously approved 2011 inventory for all of Sheboygan County with a 2011 base year emissions inventory for the Shoreline Sheboygan area. This inventory is discussed below in section IV.C.2. and VI. of this proposed rule. EPA is proposing to approve the inventory for the Shoreline Sheboygan area for the 2011 nonattainment year as meeting the section 182(a)(1) base year inventory requirement.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Shoreline Sheboygan area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Wisconsin complied with this requirement for the Shoreline Sheboygan area under the prior 1-hour ozone NAAQS. *See* 59 FR 41709 (August 15, 1994) and 60 FR 20643 (April 27, 1995).

Section 182(a)(2)(B) requires each state with a Marginal ozone nonattainment area that implemented or was required to implement a vehicle I/M program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Wisconsin's redesignation request for this standard, the Shoreline Sheboygan area is not subject to the section 182(a)(2)(B) requirement because the area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA amendments and because Wisconsin complied with this requirement for the Shoreline Sheboygan area under the prior 1-hour ozone NAAQS.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule, Wisconsin will continue to update its emissions inventory at least once every three years. With regard to stationary source emission statements, EPA approved Wisconsin's emission reporting program as satisfying the CAA emission statement requirement on December 6, 1993 (58 FR 64155). In a September 25, 2017 SIP submittal, WDNR certified that this approved SIP regulation remains in place and remain enforceable for the 2008 ozone standard. As discussed in section VII., below, EPA is proposing to approve Wisconsin's emission statement certification SIP as meeting the section 182(a)(3)(B) requirements of the CAA for the Shoreline Sheboygan area for the 2008 ozone NAAQS.

Section 182(b)(1) requires the submission of an attainment demonstration and RFP plan. Because attainment has been reached, section 182(b)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard.

Section 182(b)(2) requires states with Moderate nonattainment areas to implement VOC RACT with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. Wisconsin submitted VOC RACT SIP revisions on February 11, 2020 and April 1, 2020. For the reasons discussed in section IX., below, EPA is proposing to approve the SIP revisions submitted by Wisconsin as meeting the section 182(b)(2) Moderate RACT requirements for the Shoreline Sheboygan area under the 2008 ozone NAAQS.

Section 182(b)(3) requires states to adopt Stage II gasoline vapor recovery regulations. On May 16, 2012 (77 FR 28772), EPA determined that the use of onboard vapor recovery technology for capturing gasoline vapor when gasoline-powered vehicles are refueled is in widespread use throughout the highway motor vehicle fleet and waived the requirement that current and former ozone nonattainment areas implement Stage II vapor recovery systems on gasoline pumps. EPA approved a revision to Wisconsin's Stage II program on November 4, 2013 (78 FR 65875).

Section 182(b)(4) requires an I/M program in each state with a Moderate ozone nonattainment area. EPA approved Wisconsin's I/M program on August 16, 2001 (66 FR 42949) and approved revisions to the program on September 19, 2013 (78 FR 57501). On September 25, 2017, WDNR submitted a SIP certifying that Wisconsin's SIP-approved I/M program meets the I/M requirements of the CAA for the Shoreline Sheboygan area for the 2008 ozone NAAQS. As discussed in section VIII., below, EPA is proposing to approve Wisconsin's I/M certification SIP as meeting the I/M requirements of the CAA for the Shoreline Sheboygan area for the 2008 ozone NAAQS.

Regarding the source permitting and offset requirements of sections 182(a)(2)(C), 182(a)(4), and 182(b)(5), Wisconsin currently has a fully-approved part D NSR program in place. EPA approved Wisconsin's NSR SIP on January 18, 1995 (60 FR 3538) and February 7, 2017 (82 FR 9515). Further, EPA approved Wisconsin's SIP revision addressing the NSR requirements for the 2008 ozone NAAQS, on May 3, 2019 (84 FR 18989). In addition, EPA approved Wisconsin's PSD program on October 6, 2014 (79 FR 60064). The State's PSD program will become effective in the Shoreline Sheboygan area upon redesignation of the area to attainment.

Section 182(f) requires states with Moderate nonattainment areas to implement NO_X RACT. EPA approved Wisconsin's NO_X RACT SIP on October 19, 2010 (75 FR 64155). On September 25, 2017, WDNR submitted a SIP certifying that Wisconsin's SIP-approved NO_X RACT rules meet the NO_X RACT requirements of CAA section 182(f) for the Shoreline Sheboygan area for the 2008 ozone NAAQS. As discussed in section X., below, EPA is proposing to approve Wisconsin's NO_X RACT certification SIP as meeting the NO_X RACT requirements of the CAA for the Shoreline Sheboygan area for the 2008 ozone NAAQS.

Thus, as discussed above, with approval of Wisconsin's section 182(1)(1) base year inventory requirement, section 182(a)(3)(B) emission statement requirements, section 182(b)(2) VOC RACT requirements, section 182(b)(4) I/M program requirements, and section 182(f) NO_X RACT requirements, EPA finds that the Shoreline Sheboygan area will satisfy all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Shoreline Sheboygan Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, Wisconsin has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Wisconsin's section 182(a)(1) base year inventory requirements, section 182(a)(3)(B) emission statement requirements, section 182(b)(2) VOC RACT requirements, section 182(b)(4) I/M program requirements, and section 182(f) NO_X RACT requirements, EPA will have fully approved the Wisconsin SIP for the Shoreline Sheboygan area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426). Additional measures may also be approved in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Shoreline Sheboygan area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that Wisconsin has demonstrated that that the observed ozone air quality improvement in the Shoreline Sheboygan area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2011 and 2017. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to several regulatory control measures that the Shoreline Sheboygan area and upwind areas have implemented in recent years. In addition, Wisconsin provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

CAIR/CSAPR. Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Wisconsin, to prohibit emissions consistent with annual and ozone season NO_X budgets and annual sulfur dioxide (SO_2) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions, a precursor of both ozone and $PM_{2.5}$, as well as transported SO_2 emissions, another precursor of $PM_{2.5}$. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina* v. *EPA,* 531

F.3d 896, *modified,* 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS.[5] Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Wisconsin, to meet annual and ozone season NO_X budgets and annual SO_2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_X trading program for EGUs in eastern states, including Wisconsin, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is estimated to result in a 20% reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. The reduction in NO_X emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Wisconsin Point Source NO_X Reductions

Alliant Energy—Edgewater Generating Station with Facility Identification (FID) #460033090, the only EGU in the Shoreline Sheboygan area, has been subject to NO_X emissions limitations under a consent decree (E.D. Wis., Case No. 13–CV–266) since 2013. Under the consent decree, boiler B23 became subject to a NO_X cap of 250 tons per year and was required to retire, refuel or repower by December 31, 2015. Boiler B23 was retired in 2015. Boiler B24 became subject to a limitation of 0.170 pounds per million British thermal units (MMBTU) on a 30-day rolling average and 0.150 lbs/MMBTU on a 12-month rolling average, and was required to retire, refuel or repower by December 31, 2018. Boiler B24 was retired in 2018. Boiler B25 became subject to a limitation of 0.080 lbs/MMBTU on a 30-day rolling average and 0.070 lbs/MMBTU on a 12-month rolling average. Boiler B25 operated selective non-catalytic reduction from 2011 to 2013, and selective catalytic reduction since 2014. The consent decree control requirements are permanent and federally enforceable under minor source construction permit 13–POY–154–R1, issued on May 26, 2016 pursuant to the State's SIP-approved program pursuant to title I of the CAA.

c. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur, which were phased in between 2004 and 2006. By 2006, refiners and importers were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the on-road emission modeling for the Shoreline Sheboygan area, the majority of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as remaining older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule is being phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for non-methane organic gases (NMOG) and NO_X, presented as NMOG + NO_X, and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from previous standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Shoreline Sheboygan area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. EPA estimated that by 2015 NO_X and VOC emissions would decrease nationally by 1,260,000 tons and 54,000 tons, respectively, and that by 2030 NO_X and VOC emissions will decrease nationally by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Shoreline Sheboygan area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as

[5] In a December 27, 2011 rulemaking, EPA included Wisconsin in the ozone season NO_X program, addressing the 1997 ozone NAAQS (76 FR 80760).

older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for the 2008 through 2015 model years based on engine size. The sulfur limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these non-road diesel engines by approximately 90%. As projected by these estimates and demonstrated in the non-road emission modeling for the Shoreline Sheboygan area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model years 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in national VOC emissions from these engines and an 80% reduction in national NO_X emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Shoreline Sheboygan area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011 and are expected to result in a 15 to 25% reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in NO_X from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Shoreline Sheboygan area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Wisconsin is using a 2011 emissions inventory as the nonattainment year, which is appropriate because it was one of the years used to designate the area as nonattainment due to an exceedance of the NAAQS at the Sheboygan Kohler-Andrae monitor. Wisconsin is using 2017 as the attainment year, which is appropriate because it is one of the years in the 2017–2019 period used to demonstrate attainment.

Point source inventory. Wisconsin created the point source emission inventory using annually reported point source emissions, EPA's Clean Air Markets Division database, and approved EPA techniques for emissions calculation (*e.g.,* emission factors) for 2011 and 2017 point source emissions from state inventory databases.

Alliant Energy—Edgewater Generating Station is the only EGU point source facility located in the Shoreline Sheboygan County area. For this facility, heat input and NO_X emission rate were derived from data reported by the utility to EPA's Clean Air Markets Division (CAMD) database. WDNR used the ozone season day with the 99th percentile highest heat input for each unit to represent summer day emissions. The summer day NO_X emissions were then calculated by multiplying the summer day heat input by the average NO_X emission rate. The VOC emission rate was derived by dividing the annual VOC emissions reported to the WDNR Air Emissions Inventory by the annual heat input reported to the CAMD database. The summer day VOC emissions were derived by multiplying the facility's ozone season heat input by the average VOC emission rate.

Wisconsin tabulated the 2011 and 2017 emissions inventories for non-EGU point sources using the emissions data reported annually by each facility operator to the Wisconsin air emissions inventory (AEI). The AEI calculates emissions for each individual emissions unit or process line by multiplying fuel or process throughput by the appropriate emission factor that is derived from mass balance analysis, stack testing, continuous emissions monitoring, engineering analysis, or EPA's Factor Information Retrieval database. The emission calculations in the AEI also account for any operating control equipment.

Nonpoint (area) source inventory. For the 2011 nonattainment year, nonpoint source emissions inventory estimates were based on the 2011 National Emissions Inventory (NEI) version 2, except for the fuel combustion, residential wood combustion, agricultural pesticides, surface coating and degreasing, dairy cattle, stage I bulk terminals and pipelines, and stage II refueling categories.[6] Emission calculation methodologies used in developing 2011 nonpoint emissions inventory are available in EPA's 2011 NEI, version 2 TSD.[7]

For the 2017 attainment year, nonpoint source emissions inventory estimates were based on the data interpolation between the 2016 base year and the 2023 projection year of EPA's 2016 version 1 emissions modeling platform, except for the stage II refueling category. Methodologies used to develop 2016 and 2023 emissions modeling data are available in the EPA's National Emissions Inventory Collaborative Wiki v1 release page.[8]

In order to obtain the area source emissions for the Shoreline Sheboygan County area, the whole county emission estimates were allocated to the partial county based on population data. The Sheboygan County population for 2017 was estimated by interpolating the population between 2013 and 2020 population data from the Wisconsin Department of Administration. The partial county population was identified based on the relative population of the Minor Civil Divisions in the Shoreline Sheboygan County area compared with the entire county. For 2011 and 2017, 52% of the county's population was estimated to live in the Shoreline Sheboygan County area.

On-road mobile source inventory. On-road mobile sources are motorized mobile equipment that are primarily used on public roadways. Examples of on-road mobile sources include cars, trucks, buses and road motorcycles. Wisconsin used the Motor Vehicle Emission Simulator (MOVES), EPA's recommended mobile source model, to develop on-road emissions rates. The version used was MOVES2014b.

The modeling inputs to MOVES include detailed transportation data (*e.g.,* vehicle-miles of travel by vehicle class, road class and hour of day, and

[6] For the 2011 nonattainment year, WDNR back-calculated VOC emissions for fuel combustion, residential wood combustion, agricultural pesticides, surface coating and degreasing, dairy cattle, and stage I bulk terminals and pipelines from EPA's 2016 and 2023 emission estimates. For the 2011 nonattainment year and 2017 attainment year, WDNR estimated emissions from vehicle refueling at gasoline stations (stage II refueling) using EPA's MOVES2014b model with the same activity inputs used for the on-road modeling.

[7] *https://www.epa.gov/sites/production/files/2015-10/documents/nei2011v2_tsd_14aug2015.pdf.*

[8] *http://views.cira.colostate.edu/wiki/wiki/10202.*

average speed distributions), which were provided by the Wisconsin Department of Transportation.

Non-road mobile source inventory. The methodology for the 2011 and 2017 non-road emissions categories were developed using EPA's MOVES2014b model, using the same summer day temperatures used for the on-road modeling. The model was run for Sheboygan County for the months of June, July and August. Summer day emissions were calculated by dividing the total emissions over these three months by 92 (the number of days in the three months). Emissions were then allocated from the full county to the Shoreline Sheboygan area based on surrogates such as population, land area and water area, depending on the category.

For commercial marine, aircraft and rail locomotive (MAR) categories, for the 2011 nonattainment year, the annual emissions estimates used for Sheboygan County are those in EPA's 2011 NEI version 2. For the 2017 attainment year, annual emissions estimates for Sheboygan County were obtained by linearly interpolating between the 2016 and 2023 values in the EPA's 2016 emissions modeling platform, version 1.

Summer day emissions for these MAR categories were estimated by dividing the annual emissions by 365. This same value was used in EPA's 2011 version 6.3 emissions modeling platform. The allocation of the full county emissions to the Shoreline Sheboygan area is based on surrogates such as population, land area and water area, depending on the MAR category.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO_X emissions from 2011 to 2017 for the Shoreline Sheboygan area. Emissions data are shown in Table 2. Data are expressed in terms of tons per summer day (TPSD). Due to rounding, some totals may not correspond with the sum of the separate categories, and some net change amounts may not correspond with the difference of the separate years.

TABLE 2—NO_X AND VOC EMISSIONS IN THE SHORELINE SHEBOYGAN AREA FOR THE 2011 NONATTAINMENT YEAR AND 2017 ATTAINMENT YEAR (TPSD)

	NO_X			VOC		
	2011	2017	Net change (2011–2017)	2011	2017	Net change (2011–2017)
Point—EGU	13.16	5.97	−7.19	0.43	0.35	−0.07
Point—non-EGU	0.36	0.29	−0.07	0.29	0.61	+0.33
Area	0.86	0.85	−0.01	2.41	2.19	−0.22
On-road	3.10	1.76	−1.34	1.24	0.74	−0.51
Non-road	1.37	0.95	−0.42	0.89	0.57	−0.32
Total	18.85	9.82	−9.03	5.26	4.47	−0.79

As shown in Table 2, NO_X and VOC emissions in the Shoreline Sheboygan area declined by 9.03 TPSD and 0.79 TPSD, respectively, between 2011 and 2017.

3. Meteorology

To further support Wisconsin's demonstration that the improvement in air quality is due to permanent and enforceable emission reductions and not unusually favorable meteorology, an analysis was performed by WDNR. In its February 11, 2020 request for EPA to redesignate the Shoreline Sheboygan area, WDNR submitted a meteorological analysis based on 19 years of data collected at the Sheboygan Kohler-Andrae monitor.

Wisconsin analyzed the maximum fourth-highest 8-hour ozone values for May, June, July, August, and September, for years 2001 to 2019. First, the maximum 8-hour ozone concentration at the Sheboygan Kohler-Andrae monitor was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. Second, WDNR examined the relationship between the average summer temperature for each year of the 2001–2019 period and the fourth-highest 8-hour ozone concentration. These analyses show that over the last 19 years, ozone concentrations at the Kohler-Andrae monitor have decreased substantially. In contrast, temperatures have remained relatively constant, with an increase in the number of hot days and a slight decrease in the average season temperature. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the area, and not unusually favorable summer temperatures.

As discussed above, Wisconsin identified numerous Federal rules that resulted in the reduction of VOC and NO_X emissions from 2011 to 2017. In addition, Wisconsin's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that Wisconsin has shown that the air quality improvements in the Shoreline Sheboygan area are due to permanent and enforceable emissions reductions.

D. Does Wisconsin have a fully approvable ozone maintenance plan for the Shoreline Sheboygan area?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five

elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Shoreline Sheboygan area to attainment for the 2008 ozone NAAQS, Wisconsin submitted a SIP revision to provide for maintenance of the 2008 ozone NAAQS through 2032, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Wisconsin's ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment Inventory

EPA is proposing to determine that the Shoreline Sheboygan area has attained the 2008 ozone NAAQS based on monitoring data for the period of 2017–2019. Wisconsin selected 2017 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Shoreline Sheboygan area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions is discussed above in section IV.C.2. of this proposed rule. The emissions for the 2017 attainment year, by source category, are summarized in Table 2 above.

2. Has the state documented maintenance of the ozone standard in the Shoreline Sheboygan area?

Wisconsin has demonstrated maintenance of the 2008 ozone NAAQS through 2032 by ensuring that current and future emissions of VOC and NO_X for the Shoreline Sheboygan area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using emissions inventories for the years 2025 and 2032 to demonstrate maintenance. 2032 was selected because it is more than 10 years after the expected effective date of the redesignation to attainment, and 2025 was selected to demonstrate that emissions are not expected to spike in the interim between the 2017 attainment year and the 2032 final maintenance year. The emissions inventories were developed as described below.

Wisconsin estimated the future year point source emissions by applying growth factors to the 2017 attainment year emissions inventory, as well as considering new and modified sources. Wisconsin's 2025 area source emissions were estimated primarily by interpolating between EPA's 2017 and 2028 modeling inventories, while 2032 area source emissions were estimated primarily by extrapolating EPA's 2023 and 2028 modeling inventories.

The 2025 and 2032 projected on-road and non-road emissions, except for MAR categories, were developed using the MOVES2014a model, as was the case for the 2011 and 2017 emissions. However, for the two MAR categories of aircraft and rail locomotive, the 2025 and 2032 emissions were calculated by linearly interpolating or extrapolating from the 2023 and 2028 values from EPA's 2016 Emissions Modeling Platform, Version 1.

Emissions data for the 2011 nonattainment year, 2017 attainment year, 2025 interim year, and 2032 maintenance year are shown in Tables 3 and 4 below. Data are expressed in terms of TPSD. Due to rounding, some totals may not correspond with the sum of the separate categories, and some net change amounts may not correspond with the difference of the separate years.

TABLE 3—NO_X EMISSIONS IN THE SHORELINE SHEBOYGAN AREA FOR THE 2011 NONATTAINMENT YEAR, 2017 ATTAINMENT YEAR, 2025 INTERIM YEAR, AND 2032 MAINTENANCE YEAR (TPSD)

	2011	2017	2025	2032	Net change (2017–2032)
Point—EGU	13.16	5.97	1.93	1.93	−4.04
Point—non-EGU	0.36	0.29	0.46	0.48	+0.19
Area	0.86	0.85	0.81	0.78	−0.07
On-road	3.10	1.76	1.00	0.77	−0.99
Non-road	1.37	0.95	0.69	0.65	−0.30
Total	18.85	9.82	4.90	4.62	−5.21

TABLE 4—VOC EMISSIONS IN THE SHORELINE SHEBOYGAN AREA FOR THE 2011 NONATTAINMENT YEAR, 2017 ATTAINMENT YEAR, 2025 INTERIM YEAR, AND 2032 MAINTENANCE YEAR (TPSD)

	2011	2017	2025	2032	Net change (2017–2032)
Point—EGU	0.43	0.35	0.19	0.19	−0.16
Point—non-EGU	0.29	0.61	0.83	0.85	+0.24
Area	2.41	2.19	2.13	2.09	−0.10
On-road	1.24	0.74	0.50	0.36	−0.38
Non-road	0.89	0.57	0.47	0.45	−0.12
Total	5.26	4.47	4.12	3.95	−0.52

As shown in Tables 3 and 4, NO_X and VOC emissions in the Shoreline Sheboygan area are projected to decrease by 5.21 TPSD and 0.52 TPSD, respectively, between the 2017 attainment year and 2032 maintenance year. Wisconsin's maintenance demonstration for the Shoreline Sheboygan area shows maintenance of the 2008 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2017 emission levels when considering

both future source growth and implementation of future controls.

3. Continued Air Quality Monitoring

Wisconsin has committed to continue to operate the Sheboygan Kohler-Andrae monitor in the Shoreline Sheboygan area. Wisconsin has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Wisconsin remains obligated to meet monitoring requirements, to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Shoreline Sheboygan area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Wisconsin will continue to operate the current ozone monitor located in the Shoreline Sheboygan area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by EPA.

In addition, to track future levels of emissions, Wisconsin will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2014. Point source facilities covered by Wisconsin's emission statement rule, Wisconsin Administrative Code NR 438, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Shoreline Sheboygan area?

Section 175A of the CAA requires that the state adopt a maintenance plan as a SIP revision that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a contingency plan for the Shoreline Sheboygan area to address possible future ozone air quality problems. The contingency plan adopted by Wisconsin has two levels of response, a warning level response and an action level response.

In Wisconsin's plan, a warning level response will be triggered when an annual fourth-highest monitored value of 0.075 ppm or higher is monitored within the maintenance area. A warning level response will require Wisconsin to conduct a study. The study would include the two elements. The first element would assess whether actual emissions have deviated significantly from the emissions projections contained in this maintenance plan for the area, along with an evaluation of which sectors and states are responsible for any emissions increases. Second, Wisconsin would investigate whether unusual meteorological conditions during the high-ozone year led to the high monitored ozone concentrations. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation, as well as economic and social impacts, and will be completed no later than May 1st of the next season. Implementation of necessary controls in response to a warning level response trigger will occur within 18 months.

In Wisconsin's plan, an action level response would be triggered if a three-year design value exceeds the level of the 2008 ozone NAAQS (0.075 ppm). When an action level response is triggered, Wisconsin will determine what additional control measures are needed to assure future attainment of the 2008 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Wisconsin may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Wisconsin included the following list of potential contingency measures in its maintenance plan. However, Wisconsin is not limited to the measures on this list:

1. Anti-idling control program for mobile sources, targeting diesel vehicles
2. Diesel exhaust retrofits
3. Traffic flow improvements
4. Park and ride facilities
5. Rideshare/carpool program
6. Expansion of the vehicle emissions testing program

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan. Wisconsin notes that because it is not possible to determine what control measures will be appropriate in the future, the list is not comprehensive.

EPA has concluded that Wisconsin's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Wisconsin has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Shoreline Sheboygan area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Wisconsin for the Shoreline Sheboygan area meets the requirements of section 175A of the CAA, and EPA proposes to approve it as a revision to the Wisconsin SIP.

V. Has the State adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to

the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone NAAQS in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

As discussed earlier, Wisconsin's maintenance plan includes NO_X and VOC MVEBs for the Shoreline Sheboygan area for 2025, which is an interim year, as well as 2032, which is the last year of the maintenance period. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone NAAQS.

TABLE 5—MVEBS FOR THE SHORELINE SHEBOYGAN AREA FOR THE 2025 INTERIM YEAR AND 2032 MAINTENANCE YEAR

[Tons per hot summer day]

Year	NO_X	VOC
2025	1.00	0.50
2032	0.77	0.36

EPA is proposing to approve the MVEBs for use to determine transportation conformity in the Shoreline Sheboygan area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

B. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 3 and 4, the emissions in the Shoreline Sheboygan area are projected to have safety margins of 5.21 TPSD for NO_X and 0.52 TPSD for VOC in 2032 (the difference between emissions in the 2017 attainment year, and projected emissions in the 2032 maintenance year, for all sources in the Shoreline Sheboygan area). Similarly, there is a safety margin of 4.92 TPSD for NO_X and 0.34 TPSD for VOC in 2025. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

Wisconsin is not allocating any of the safety margin to the mobile source sector. Wisconsin can request an allocation to the MVEBs of the available safety margins reflected in the demonstration of maintenance in a future SIP revision.

VI. Base Year Emissions Inventory

As discussed above, section 182(a)(1) of the CAA requires areas to submit a base year emissions inventory. As part of Wisconsin's redesignation request for the Shoreline Sheboygan area, the State submitted a 2011 base year emissions inventory. This inventory is discussed above in section IV.C.2. and summarized in Table 2. EPA is proposing to approve this 2011 base year inventory as meeting the section 182(a)(1) emissions inventory requirement for the Shoreline Sheboygan area.

VII. Emissions Statement

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit revisions to their SIP to require the owner or operator of each major stationary source of NO_X or VOC to provide the state with an annual statement documenting the actual emissions of NO_X and VOC from their source. Under section 182(a)(3)(B)(ii), a state may waive the emissions statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NO_X if the state, in its base year emissions inventory, provides an inventory of emissions from such class or category of sources. States and EPA have generally interpreted this waiver provision to apply to sources (without specification of a specific source class or source category) emitting less than 25 tons per year of VOC or NO_X.

Many states, including Wisconsin, adopted these emissions statement rules for the 1-hour ozone NAAQS. For these states, EPA is accepting certifications that their previously adopted emissions statement rules remain in place and are adequate to meet the emissions statement rule requirement under the 2008 ozone standard.

Under NR 438 of the Wisconsin Administrative Code, Wisconsin requires annual NO_X and VOC emission reporting from any facility in the State that emits NO_X above 10,000 pounds (5 tons) per year and VOC above 6,000 pounds (3 tons) per year. This includes facilities in nonattainment areas such as the Shoreline Sheboygan area for the 2008 ozone NAAQS. EPA previously approved NR 438 into the Wisconsin SIP on December 6, 1993 (58 FR 64155).

In a September 25, 2017, SIP submission, WDNR certified that this approved SIP regulation remains in place and remains enforceable for the 2008 ozone NAAQS.

Because Wisconsin has an EPA approved SIP provision requiring stationary sources to report annually their NO_X emissions over 5 tons and VOC emissions over 3 tons, EPA is proposing to approve Wisconsin's emissions statement certification SIP as meeting the requirement of section 182(a)(3)(B) of the CAA for the 2008 ozone for the Shoreline Sheboygan area.

VIII. Motor Vehicle I/M

The requirement to adopt a motor vehicle I/M program for Moderate ozone nonattainment areas is described in CAA section 182(b)(4) and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative

requirements, states with areas classified as Moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast ozone transport region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. Wisconsin's I/M program has been in operation since 1984. It was originally implemented in accordance with the 1977 CAA Amendments and operated in the six counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha. Sheboygan County was added to the program in July 1993, resulting in a seven-county program area that has remained to the present. In 1995, Wisconsin transitioned to an enhanced I/M program. EPA approved Wisconsin's I/M program on August 16, 2001 (66 FR 42949) and approved revisions to the program on September 19, 2013 (78 FR 57501). Wisconsin's approved I/M program in the SIP is consistent with the requirements of 40 CFR part 51, subpart S, for the alternate low enhanced performance standards. In its September 25, 2017, submission, Wisconsin certified that it still meets the Federal I/M performance requirement. Therefore, EPA is proposing to find that Wisconsin has met the I/M requirement for the Shoreline Sheboygan area for the 2008 ozone NAAQS.

IX. VOC RACT

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as Moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC and NO_X emissions sources and for all sources covered by a CTG. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's SIP Requirements Rule for the 2008 ozone NAAQS provides several pathways by which states may meet RACT requirements. States can meet the RACT requirements associated with the 2008 ozone NAAQS either through: (1) A certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 ozone NAAQS; (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels; and/or (3) a negative declaration if there are no source categories subject to certain CTGs within the nonattainment area.

Wisconsin previously addressed RACT requirements in the Shoreline Sheboygan area in developing attainment plans for the 1979 and 1997 ozone standards. Wisconsin has previously adopted RACT rules for VOC emission sources in its nonattainment areas under Wisconsin Administrative Code NR 420. Wisconsin has evaluated the previously adopted regulations and determined that these rules still satisfy RACT. Wisconsin's submittal describes the VOC RACT program for the Shoreline Sheboygan area. The submittal provided a list of the CTGs for which RACT requirements have been codified in Wisconsin Administrative Code.

Wisconsin has not adopted VOC RACT regulations for four CTGs: shipbuilding and ship repair, aerospace manufacturing, fiberglass boat manufacturing, and the oil and natural gas industry. In addition, while Wisconsin has adopted rules to cover industrial adhesive use, metal and plastic parts coatings, and automobile and light-duty truck manufacturing, Wisconsin's Administrative Code does not reflect the most recently published CTG for these three categories.

Wisconsin preformed an applicability analysis for these seven categories in the Shoreline Sheboygan nonattainment area. Wisconsin's analysis took the following steps: First, Wisconsin relied on the Wisconsin Air Emissions Inventory to create a list of all the VOC emitting facilities in the Shoreline Sheboygan area. Wisconsin searched the list for facilities having the applicable CTG Standard Industrial Classification (SIC) codes. Second, Wisconsin searched the Wisconsin Air Resource Program database, which contains facility and emissions information about all Wisconsin companies that have obtained an air pollution control permit, for sources located within the partial county nonattainment area with the applicable SIC codes. Third, Wisconsin searched the membership directories found on the applicable SIC code organizations' websites. Finally, Wisconsin searched the ReferenceUSA database for facilities located within the Shoreline Sheboygan area with the SIC codes listed above.

Wisconsin's analysis determined that there are no facilities in the Shoreline Sheboygan area for six of the seven categories: Shipbuilding and ship repair, aerospace manufacturing, fiberglass boat manufacturing, oil and natural gas industry, miscellaneous industrial adhesives, and automobile and light-duty truck assembly coatings categories. Wisconsin provided Negative Declarations for these CTG categories.

For the remaining category, metal and plastic parts coatings, Wisconsin's analysis identified two facilities in the Shoreline Sheboygan area: Kieffer & Co. Inc. (''Kieffer'') and Kohler Power Systems (''Kohler''). The Kieffer facility, with FID #460027480, was found to have CTG-applicable emissions of 7.86 tons per year in 2018. The Kohler facility, with FID #460038700, was found to have CTG-applicable emissions of 3.14 tons per year in 2018. These emissions are above the CTG applicability threshold of 15 lb VOC per day, or equivalently, 3 tons per year. WDNR did not identify any other facilities in the Shoreline Sheboygan area whose operations are covered by the metal and plastic parts coatings CTG.

The Kieffer facility entered into an Administrative Order (AM–20–02) with Wisconsin that establishes permanent and enforceable emission limits, among other requirements, on this facility, which are consistent with the control requirements and limits set forth in the metal and plastic parts coatings CTG. AM–20–02 was submitted to EPA for incorporation into the SIP on April 1, 2020. The Kohler facility also entered into an Administrative Order (AM–20–03) with Wisconsin which establishes permanent and enforceable emission limits, among other requirements, on this facility, which are consistent with the control requirements and limits set forth in the metal and plastic parts coatings CTG. AM–20–03 was also submitted to EPA for incorporation into the SIP on April 1, 2020.

In summary, Wisconsin has certified that the VOC RACT rules previously adopted by the state and approved into Wisconsin's SIP continue to meet VOC RACT requirements for the area under the 2008 ozone NAAQS. Wisconsin has adequately documented its analysis of sources in the area to support its negative declarations for the shipbuilding and ship repair, aerospace manufacturing, fiberglass boat manufacturing, oil and natural gas industry, miscellaneous industrial adhesives, and automobile and light-duty truck assembly coatings categories. Wisconsin's analysis of sources in the area and subsequent documentation of potential applicability under the metal and plastic parts coatings CTG properly identified the Kieffer facility and the Kohler facility as the only facilities which would be subject to the requirements of this CTG. Finally, Wisconsin has submitted for

incorporation into the SIP Administrative Orders AM–20–02 and AM–20–03, which contains limits and associated requirements for the two facilities that are consistent with those set forth in the CTG. EPA finds Wisconsin's VOC RACT SIP submittal to be approvable as meeting the Moderate VOC RACT requirements of section 182(b)(2) of the CAA.

X. NO_X RACT

Section 182(f) of the CAA requires RACT level controls for major stationary sources of NO_X located in Moderate ozone nonattainment areas. Section 302 of the CAA defines a major stationary source as any facility which has the potential to emit 100 tons per year of any air pollutant. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. On October 19, 2010, EPA approved Wisconsin's NO_X RACT program into the SIP for purposes of the 1997 ozone NAAQS (75 FR 64155). Wisconsin's NO_X RACT requirements are codified at NR 428.20 to 428.26 of the Wisconsin Administrative Code. Wisconsin's NO_X RACT rules are applicable to major stationary sources of NO_X located in Wisconsin's Moderate ozone nonattainment areas, including the Shoreline Sheboygan area. On September 25, 2017, WDNR submitted a SIP certifying that Wisconsin's SIP-approved NO_X RACT rules meet the NO_X RACT requirements of CAA section 182(f) for the Shoreline Sheboygan area for the 2008 ozone NAAQS. Because Wisconsin has EPA-approved NO_X RACT rules applicable to Shoreline Sheboygan area sources in its SIP, EPA is proposing to find that Wisconsin has satisfied the NO_X RACT requirements for the Shoreline Sheboygan area for the 2008 ozone NAAQS.

XI. What is EPA's analysis of Wisconsin's redesignation request for the 1997 ozone NAAQS?

On March 6, 2015, EPA revoked the 1997 ozone NAAQS along with associated designations and classifications (80 FR 12264). Thus, the Shoreline Sheboygan area has no designation under the 1997 ozone NAAQS that can be changed through redesignation as governed by CAA section 107(d)(3)(E). Therefore, EPA is not proposing a redesignation of the Shoreline Sheboygan area for the 1997 ozone NAAQS under CAA section 107(d)(3)(E).

However, in evaluating Wisconsin's request to redesignate the Shoreline Sheboygan area under the 2008 ozone standard, EPA determined that the area has met the five criteria in section 107(d)(3)(E) for redesignation, including the requirement that Wisconsin meet all applicable requirements of section 110 and part D of the CAA for the Shoreline Sheboygan area, and have a fully approved SIP for the area under section 110(k) of the CAA. As part of that evaluation, EPA has determined that Wisconsin has a fully approved SIP and meets the anti-backsliding requirements under the 1997 ozone standard as codified at 40 CFR 51.1105(a)(1) and 40 CFR 51.1100(o).

XII. What action is EPA taking?

EPA is proposing to determine that the Shoreline Sheboygan nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2017–2019. EPA is proposing to approve Wisconsin's February 11, 2020 and April 1, 2020 VOC RACT submittals as meeting the moderate SIP requirements of section 182(b)(2) of the CAA. EPA is proposing to determine that upon final approval of Wisconsin's 2011 base year emissions inventory, emission statement certification SIP, VOC RACT SIP, I/M certification SIP, and NO_X RACT certification SIP, the area will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Shoreline Sheboygan area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Shoreline Sheboygan area in attainment of the 2008 ozone NAAQS through 2032. EPA finds adequate and is proposing to approve the newly-established 2025 and 2032 MVEBs for the Shoreline Sheboygan area.

XIII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Wisconsin Administrative Order AM–20–02, effective February 4, 2020, as well as Wisconsin Administrative Order AM–20–03, effective February 28, 2020. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

XIV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 4, 2020.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

[FR Doc. 2020–09829 Filed 5–12–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[EPA–HQ–OAR–2016–0604; FRL–10007–47–OAR]

RIN 2060–AT21

Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make adjustments to certain laboratory tailpipe emission testing procedures for automobiles, light trucks, and heavy-duty pickup trucks and vans as the result of a test fuel change that was finalized as a part of EPA's 2014 Tier 3 vehicle emissions rule. In that rule, EPA changed its laboratory test fuel to be more similar to typical gasoline currently in use. In the Tier 3 Final Rulemaking, EPA required vehicle manufacturers to perform greenhouse gas (GHG) and CAFE fuel economy testing on the new Tier 3 test fuel, beginning for model year 2020 and later vehicles. Changes to the fuel used for emissions testing can result in a change in emission results on the tests. When we adopted the Tier 3 test fuel, we indicated that we intended to undertake rulemaking to re-align test results from GHG and CAFE fuel economy testing on the new Tier 3 test fuel so they are consistent with test results from testing on the original Tier 2 test fuel, in order to avoid an effective change in the stringency of the GHG and CAFE standards. Specifically, EPA is now proposing adjustment factors to apply to both vehicle GHG and fuel economy test results for the GHG and CAFE programs and the Fuel Economy and Environment Label. In addition, we propose that the shift to required use of the new fuel for all vehicle testing be phased in through Model Year 2024, but required in Model Year 2025. Because the purpose of the rule is simply to realign testing results in response to the test fuel change, there would be no significant costs associated with the proposed action.

DATES:

Comments: Comments must be received on or before August 11, 2020.

Public Hearing: If anyone contacts us requesting a public hearing on or before May 20, 2020, we will hold a hearing and will publish additional information about the hearing in a subsequent **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0604, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4332; email address: *wysor.tad@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
  A. Does this action apply to me?
  B. What action is the Agency taking?
  C. What is the Agency's authority for taking this action?
  D. What are the incremental costs and benefits of this action?
II. Background and Purpose of the Proposed Test Procedure Adjustments
III. Summary of EPA Vehicle Testing Program and Summary of Test Results
  A. Summary of the EPA Test Program and Technical Report
  B. Summary of EPA Test Results
IV. Proposed Test Procedure Adjustment Factors
  A. CO_2 Adjustment Factor and Approach to Other GHG Exhaust Standards
  1. Methane and Nitrous Oxide Emissions Compliance
  B. Fuel Economy (CAFE) Adjustment Factor
  1. Analysis of Data and Development of the Proposed Fuel Economy Equation
  2. Proposed Fuel Economy Adjustment Factor
V. Proposed Implementation Schedule
VI. Projected Impacts
VII. Implications of Proposed Adjustments on the Fuel Economy and Environment Label
  A. Background
  B. City and Highway Fuel Economy Estimates Displayed on the Label
  C. CO_2 Performance Estimates Displayed on the Label
  D. Litmus Test
VIII. Statutory Authority and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
  C. Paperwork Reduction Act (PRA)

D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
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

I. General Information

A. Does this action apply to me?

This proposed action would affect companies that manufacture or sell new gasoline fueled light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, or heavy-duty vehicles up to 14,000 pounds GVWR, as defined under EPA's CAA regulations,[1] and passenger automobiles (passenger cars), non-passenger automobiles (light trucks), and heavy-duty pickup trucks and vans as defined under National Highway Traffic Safety Administration's (NHTSA's) Corporate Average Fuel Economy (CAFE) regulations.[2] Regulated categories and entities include the following:

Category	NAICS codes [A]	Examples of potentially regulated entities
Industry	336111, 336112	Motor Vehicle Manufacturers.
	811111, 811112, 811198, 423110	Commercial Importers of Vehicles and Vehicle Components.
	335312, 811198	Alternative Fuel Vehicle Converters.

[A] North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. 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?

EPA is proposing adjustments to certain laboratory emission testing procedures for gasoline fueled light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles, and some gasoline fueled heavy-duty vehicles,[3] and provisions for the implementation of these proposed adjustments. As a part of EPA's 2014 Tier 3 vehicle emissions rule, which applies to non-GHG emissions, EPA changed the laboratory gasoline test fuel to be more similar to typical fuels currently in use (79 FR 23414, 23531, April 28, 2014). In the absence of the action proposed in this notice, this change in test fuel would apply to vehicles tested for compliance with the GHG and CAFE standards for Model Year (MY) 2020 and later. Because testing on the new test fuel results in slightly different CO_2 emissions measurements and fuel economy results than does testing on the current test fuel, rulemaking action is necessary to re-align test results from GHG and CAFE fuel economy testing on the new Tier 3 test fuel so they are consistent with test results from testing on the original Tier 2 test fuel, in order to avoid a change in the stringency of the GHG and CAFE standards.[4] In addition, as described in detail in Section VII below, EPA is proposing to re-align test results from fuel economy testing on the new Tier 3 test fuel such that the values on the Fuel Economy and Environment Label (*i.e.,* the window sticker on new cars and light trucks) remain consistent with those generated under the current labeling program. The proposed action would also avoid unnecessary vehicle testing burdens as auto manufacturers transition to the Tier 3 E10 test fuel for GHG and fuel economy testing.

The regulatory changes that EPA is proposing in this notice would accomplish these objectives. Specifically, the proposed adjustments to vehicle testing results would avoid changes in the stringency of the GHG and CAFE standards as a result of the test fuel transition. Also, EPA is proposing to reduce the transitional testing burden on manufacturers in three steps, as follows: (1) By delaying the requirements to test with Tier 3 fuel for an additional model year, from MY 2020 until MY 2021); (2) by allowing optional certification on either fuel for model years 2021 and 2022, and allowing manufacturers that previously tested certification vehicles for compliance with the GHG and CAFE standards to ''carry over'' their existing data; and (3) by allowing carryover data for model years 2023 and 2024, but requiring new certification testing (for new models not eligible to use carryover data) to be done on Tier 3 fuel. Thus, testing of all vehicles on Tier 3 certification test fuel would not be required until model year 2025. See Section V below for more discussion of this proposed phasing-in of the new testing requirements. Note that this proposed phase-in schedule for the use of Tier 3 fuel is for certification testing to GHG and CAFE standards only. All certification testing for non-GHG pollutants must continue to be done as required by the Tier 3 rule, using Tier 3 fuel as of MY 2020 for LDVs, LDTs, and MDPVs and as of MY 2022 for heavy-duty pickup trucks and vans.

C. What is the Agency's authority for taking this action?

Statutory authority for promulgating test procedures relating to fuel economy is found in 49 U.S.C. 32901 *et seq.* That authority originated in Title V of the Energy Policy and Conservation Act (Pub. L. 94–163, December 22, 1975), section 504(d)(1), and has been partially amended a few times, including in Title VII of the Energy Policy Act (Pub. L. 109–58, August 8, 2005) and Title I of the Energy Independence and Security Act (Pub. L. 110–140, December 19, 2007).

Statutory authority for promulgating test procedures related to EPA's greenhouse gas standards is found in section 206 of the Clean Air Act (CAA), which governs EPA's issuances of certificates of conformity. Under section 203 of the CAA, sales of vehicles are prohibited unless the vehicle is covered by a certificate of conformity.

[1] ''Light-duty vehicle,'' ''light-duty truck,'' ''medium-duty passenger vehicle,'' and ''heavy-duty vehicle'' are defined in 40 CFR 86.1803–01.

[2] ''Passenger automobile'' and ''non-passenger automobile'' are defined in 49 CFR parts 523.4 and 523.5, respectively. ''Heavy-duty pickup trucks and vans'' are defined in 49 CFR part 523.7.

[3] Specifically, vehicles subject to standards under 40 CFR part 86, subpart S.

[4] In Section IV below, we describe how in the absence of the proposed adjustments, the certification test fuel change would result in slightly lower CO_2 emissions (due to the reduced fuel carbon content) and slightly lower fuel economy results (due to the overall reduction in fuel energy content due to differences in several fuel properties).

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

As discussed in Section II below, this proposed action is designed to ensure that the changes in vehicle test fuel characteristics occurring under existing regulations do not affect the stringency of the current GHG and fuel economy standards or unnecessarily add to manufacturer testing burdens. As a result, under our understanding of GHG and CAFE stringency, this proposed action by design should not on average result in any significant changes in the emissions or fuel consumption benefits originally projected for the GHG or CAFE programs, nor any changes in the projected technology costs of the standards to manufacturers.

As we discuss in Section IV below, we derived the proposed test procedure adjustments on a fleetwide average basis. It is possible that vehicle manufacturers may find that for some individual vehicle models the proposed adjustments result in slightly different certification CO_2 emissions or fuel economy calculations in one direction or the other. Overall, however, especially in light of the fleetwide averaging of the standards, we believe that the proposed adjustment factors would result in no significant net changes in certification results for manufacturers. We request comment on this conclusion, including any data or information indicating that the proposed fleet-wide average approach would be problematic for any individual manufacturer's fleet.

Regarding the additional certification vehicle testing that the transition from Tier 2 to Tier 3 test fuel now underway will temporarily require, we discuss in Section V below a proposed implementation schedule for the transition to required use of Tier 3 test fuel (with the associated test procedure adjustments proposed here). We believe that the proposed phased implementation schedule will minimize any potential disruption of any manufacturer's current testing plans.[5] Because the purpose of this rule is to align certification results before and after the transition in test fuels, the proposed gradual implementation, including the proposed delay until MY 2021 for the required use of Tier 3 fuel, should have no impact on the projected benefits and costs of the GHG and CAFE programs.[6]

II. Background and Purpose of the Proposed Test Procedure Adjustments

The joint light-duty (LD) greenhouse gas (GHG) and fuel economy (FE) rules adopted by EPA and NHTSA (77 FR 62624, October 15, 2012) required that fuel economy and GHG emissions performance be measured in laboratory testing of vehicles using the long-standing regulatory gasoline and diesel test fuels.[7] The Tier 2 gasoline test fuel that has long been used for fuel economy and GHG testing is significantly different from today's market gasoline used by consumers. Over time, refiners have changed the composition and characteristics of market gasoline. Since the last time EPA changed our gasoline test fuel in the 1980s, market gasoline has become more distinct from Tier 2 test fuel, most notably in that Tier 2 fuel contains no ethanol (''E0 fuel'') and it has higher levels of aromatic compounds (or ''aromatics''). However, EPA did not pursue any changes to test fuel properties in the 2012 rule.

In 2014, EPA's Tier 3 final rule focused on reductions in non-GHG emissions (79 FR 23414, April 28, 2014).[8] As a part of the Tier 3 rule, and in order to ensure the Tier 3 rule's reductions in non-GHG emissions were achieved, EPA acted to reduce the key differences in the properties between today's in-use fuel and the regulatory test fuel. In that rule, EPA introduced new test fuel specifications that are much more similar to the properties of typical fuels commercially available today, which on average contain about 10 percent ethanol (called ''E10 fuel'') and lower levels of aromatics than did the earlier E0 test fuel. Both of these changes in fuel composition affect the amount of carbon and energy per unit of volume of the fuel. These differences result in small, but not insignificant, changes in the tailpipe emissions of CO_2 and in the fuel economy values that are calculated based on those CO_2 emissions,[9] as the EPA vehicle test program (Section III below) clearly demonstrates.

As discussed in Section III, EPA estimates that the impact on CO_2 emissions is a 1.6% difference, and thus without the test procedure adjustment proposed in this notice, a change from the Tier 2 gasoline certification fuel to the Tier 3 gasoline certification fuel would reduce the stringency of the EPA CO_2 standards by 1.6%. Thus, this action is predicated on a view of GHG and CAFE stringency as relating to vehicle efficiency rather than tailpipe emissions in a market representative fuel mix. EPA requests comment on whether the Agency should consider a regulatory approach where we require the use of Tier 3 gasoline certification fuel without any test procedure adjustment for CO_2. If the Agency were to consider such an approach, EPA also requests comment as to whether EPA would need to complete additional analysis, likely in the form of a Supplemental Notice of Proposed Rulemaking (SNPRM), or whether EPA could finalize a change in the gasoline certification fuel without any CO_2 adjustment factor and without issuing a SNPRM.

Instead of addressing the changes in test results caused by the change in test fuel by using the Administrator's authority to change the stringency of the standards under CAA 202(a), this rule proposes to maintain the existing stringency and use the Administrator's separate authority to modify the emission testing procedures under CAA 206(d). Under this authority, we have developed and are proposing to establish the numerical factors that will adjust emission test results and fuel economy calculations such that the test fuel changes do not on average increase or reduce the stringency of the existing CO_2 and fuel economy standards.

Beyond the CO_2 and fuel economy adjustment factors that we are proposing in order to maintain the stringency of the current standards, an additional requirement comes into play with respect to fuel economy compliance testing. When EPA makes changes to the test procedures, including changes to test fuel, that apply to testing for fuel economy compliance, the statutory provisions governing the CAFE program

[5] See EPA Memorandum to Docket EPA–HQ–OAR–2016–0604: ''Listing of Technical Consultation Meetings between EPA Staff and Automobile Industry Technical Representatives Supporting the Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel, NPRM.'' Among other topics, these meetings included discussions of manufacturer fuel economy test scheduling.

[6] See EPA Memorandum to Docket EPA–HQ–OAR–2016–0604: ''EPA/OTAQ—Estimated Cost Savings from Required Certification Test Fuel Related Adjustments,'' estimating that the industry-wide savings once EPA finalizes these proposed certification fuel adjustments will likely be well under $2 million per year.

[7] Similarly, the 2016 heavy-duty (HD) ''Phase 2'' GHG and fuel consumption rules, as they apply to large pickup trucks and vans, did not take action to change the gasoline test fuel, deferring to the test fuel change specified for these vehicles in the earlier Tier 3 rule discussed below. (The HD Phase 2 final rule is at 81 FR 73740, October 25, 2016). Note that the HD Phase 2 rule separately addressed test fuels for certifying heavy-duty gasoline engines.

[8] The Tier 3 rule applied to LDVs, LDTs, and MDPVs, as well as to large pickup trucks and vans (*i.e.,* heavy-duty Class 2b and 3 vehicles), including establishing implementation schedules for implementing the change in test fuel for the light-duty and heavy-duty vehicle categories.

[9] The change in test fuel that EPA established in the 2014 Tier 3 rule phased in the required use of Tier 3 E10 test fuel for testing for the new Tier 3 ''criteria emissions'' standards over several years, through MY 2019 (LDVs) and MY 2021 (HDVs).

(see Section I.C above) require EPA to use ''procedures that give comparable results'' to earlier procedures (see 49 U.S.C. 32904(c)):

It is important to distinguish that for testing for CO_2 emissions compliance under the Clean Air Act, the statute allows, but does not require, similar adjustments back to 1975 test procedures, including for changes in test fuel properties. Based upon our view of stringency means, we do not see any value to making such an additional adjustment for CO_2 and instead are proposing a simple adjustment to CO_2 certification emission test results.

In the Tier 3 rule (at 79 FR 23531), EPA required refiners to make changes to market gasoline that were necessary to enable the stringent new standards for vehicle emissions of criteria pollutants and their precursors. In that same rule, EPA adopted changes to certification test fuel that would better represent in-use gasoline, including the new in-use gasoline changes.[10] EPA recognized that these changes to the test fuel would likely have some effect on certification testing results for the GHG and CAFE standards that had been adopted a few years before. However, EPA lacked sufficient data at that time to determine the magnitude of any such effect. Accordingly, EPA committed to undertaking a study of the effect of the change in test fuel, and, if appropriate, to propose test procedure adjustments. Our intent was to ensure that the stringency of the GHG and CAFE programs would not be affected by the change in test fuel.

These anticipated test procedure adjustments were to center around adjustments to the measured CO_2 results and the fuel economy calculations used to quantify vehicle GHG emissions and fuel economy performance. During the Tier 3 rulemaking, EPA and manufacturers recognized that insufficient GHG emission and fuel economy data existed at the time to appropriately quantify the impact of the new test fuel, especially on more advanced vehicle technologies that have recently been introduced in the light-duty fleet. Thus, as mentioned above, we committed to conducting a vehicle and fuel testing program to develop emissions data on both fuels to support such test procedure adjustments. As discussed in Section III below, EPA has now completed such a test program.

Also in the Tier 3 rule we recognized that prior to the implementation of any such adjustments and during any phase-in of new test fuel requirements, manufacturers might choose to perform parallel compliance testing on both fuels (*i.e.,* to perform Tier 3 compliance testing on E10 fuel but also continuing to perform GHG and CAFE fuel economy testing on E0 fuel during the transition). To reduce this potential temporary regulatory burden, EPA put in place several interim provisions to provide testing flexibility and reduce the number of additional required tests during the transition from the previous Tier 2 E0 test fuel to the new Tier 3 E10 test fuel.

In the Tier 3 preamble (79 FR 23533), EPA stated our intention to complete a rulemaking establishing a cutoff date after which manufacturers would need to perform all compliance testing on Tier 3 fuel, as well as establishing the related test procedure adjustments, in time for MY 2020 certification. EPA also noted in the Tier 3 preamble that manufacturers suggested various approaches to when and how such a requirement might be implemented, including phased provisions and revised provisions for carryover of earlier test data. Manufacturers also requested that the implementation of the new fuel requirement and corresponding test procedure adjustments take into account the necessary lead time and the temporary added testing burden generally required by the industry during a transition between certification test fuels.

In the sections below, EPA describes the steps we propose to take, as we anticipated in the 2014 Tier 3 rule. In Section III, we summarize the vehicle testing program that we have now conducted, designed to compare measured CO_2 emissions and calculated fuel economy on both the Tier 2 and Tier 3 test fuels, on vehicles incorporating advanced fuel efficiency technologies. We then describe our analyses of those data, concluding with our proposed CO_2 and fuel economy adjustment factors.[11]

As we discuss in detail in Section IV below, we needed to take two separate approaches to arriving at the proposed CO_2 and fuel economy adjustment factors. The effect of the change in test fuel on CO_2 is measured directly from the tailpipe emissions. For this reason, and as discussed below, we directly used the observed change in CO_2 emissions between the two fuels from our test program as the proposed CO_2 adjustment factor, in order to baseline stringency more clearly in line with vehicle efficiency.

In contrast, fuel economy is derived indirectly using a formula that converts the measured mass of CO_2 (and other carbon emissions), in grams per mile, into a volume of gasoline used (miles per gallon), incorporating assumed or measured properties for the gasoline such as its energy and carbon content, as discussed below.

Because it relates the carbon content of the liquid fuel with the total carbon content of the gaseous emissions, fuel economy calculated in this way is often called the ''carbon-balance'' fuel economy. This method was devised in the 1970s to be a more practical and more accurate representation of the actual fuel economy than could be measured directly by attempting to precisely compare volumes of gasoline before and after the test.

An additional analytical step is necessary to convert the calculated carbon-balance fuel economy result into ''CAFE'' results, as required for CAFE compliance by the EPCA statute (and subsequent amendments) referenced in Section I.C above. This additional step is needed because test fuel properties have changed over the years. The EPCA (and subsequent) statutes require that test results that are to be used for CAFE compliance be consistent with results that would have been calculated in 1975, when the law was passed.[12] Because of this, in 1986 EPA adopted a modified carbon-balance fuel economy equation that was intended to align the calculated fuel economy values on average with 1975 test fuel and test conditions.[13] EPA made this change to account for the change in test fuel properties related to the phase out of lead from market gasoline. The CAFE equation revised at that time remains in effect today. We present that equation and discuss it further in Section IV.B.1 below.

The CAFE equation combines a term that represents carbon-balance fuel economy and a term that compensates for changes in the test fuel's volumetric energy density (VED) relative to the baseline fuel. This additional factor recognizes that a difference in VED

[10] For example, market gasoline has gradually evolved over the past two decades from largely zero ethanol and higher aromatics (around 31%) to nearly universal 10% ethanol fuel and lower aromatics (about 23%), qualities that are represented in the current Tier 3 certification fuel. The Tier 3 rule (2014) also reduced fuel sulfur content, which is important for catalytic converter operation and criteria emissions control, but which does not affect CO_2 or fuel economy and is not relevant to this proposed action.

[11] Note that because EPA set the Tier 3 ''criteria emissions'' standards based on testing on Tier 3 E10 certification test fuel, there is no misalignment between those standards as the auto industry has transitioned to testing on Tier 3 fuel for Tier 3 certification, and thus no test procedure adjustments are needed for criteria emissions testing.

[12] 49 U.S.C. 32904(c).

[13] FR volume 51, page 37844, October 24, 1986.

between test fuels is the primary driver of differences in fuel economy test results. This term in the equation also includes the empirical ''R'' factor, which EPA introduced in 1986 to reflect the sensitivity of fuel economy to a change in fuel energy content and set its value at 0.6, as discussed further in Section IV.B.1 below.[14]

We are proposing an updated CAFE equation for use with Tier 3 test fuel. In this proposed new equation, the original R-factor would be replaced by a new factor (R_a). In addition to accounting for the change in fuel energy content (the role of the original R-factor), the new empirically-derived R_a in effect incorporates that factor, but also other impacts that may result from the change in test fuel (*e.g.,* from the change in aromatics content between Tier 2 and Tier 3 fuel). R_a also incorporates any effects due to the updated methodologies that we now use to measure fuel properties, as discussed in Section IV.B. below. For the purpose of this rule, there is no need to separately evaluate these different factors or their interactions (including determining a new value for the original fuel energy content related ''R-factor''), and we have not done so.

We have determined R_a empirically such that the CAFE calculation from testing using Tier 3 test fuel would on average be numerically equivalent to the calculation that would have occurred using Tier 2 test fuel and the long-standing value of 0.6 assigned to the original R-factor. We are also proposing minor updates to the CAFE equation, as discussed in detail in Section IV.B.1 below. This proposed factor R_a would serve as the CAFE fuel economy adjustment factor for testing on Tier 3 test fuel. Section IV.B below describes how we developed the proposed value for R_a, which results in adjusted CAFE compliance values that account for all test procedure, test condition, and test fuel changes since 1975, including the current transition to Tier 3 test fuel. We invite comment on this adjustment, and on our approach generally to harmonizing the baseline between GHG and CAFE standards.

Finally, as discussed in Section V below, we are proposing a delay in the existing requirement from the Tier 3 program for manufacturers to complete their transitions to performing all of their testing on Tier 3 E10 test fuel, which we believe would avoid excessive testing burden on the automotive industry.

[14] FR volume 51, page 37844, October 24, 1986.

III. Summary of EPA Vehicle Testing Program and Summary of Test Results

A. Summary of the EPA Test Program and Technical Report

In order to respond to the need for test procedure adjustments due to the change to Tier 3 certification fuel, EPA conducted a test program at EPA's National Vehicle and Fuel Emissions Laboratory to quantify the differences in GHG emissions and fuel economy between Tier 2 and Tier 3 certification test fuels. This effort required additional steps beyond conventional testing methodologies, with a focus on reducing test-to-test variability in order to discern relatively small emissions effects on the order of 1.5–2 percent. The peer-reviewed Technical Report titled ''Tier 3 Certification Fuel Impacts Program''[15] contains the details of the study design, how we conducted the testing, and our analysis of the results. EPA released this report to the public in January of 2018.

EPA designed the study to test vehicles that incorporated a variety of advanced powertrain technologies that already have a significant and increasing presence in the market today and are expected to be among the primary technologies applied by manufacturers to meet future GHG and fuel economy standards. Our selection of vehicles for the test program was designed to address the narrow purpose of this rule: Quantifying appropriate CO_2 and CAFE adjustments that on average would prevent the change in the stringency of those standards that would otherwise occur as the certification test fuel changed. We note that because it was necessary in this case for EPA to estimate test fuel effects into future years, we were not able to base our vehicle selection solely on the vehicle fleet as it currently exists. In other words, it was critical that the agency select vehicles equipped with technologies that represent how the fleet will look in the future (rather than how the fleet looks today). We invite comment upon this approach.

To capture the emission and fuel economy effects with the technologies that are becoming widespread in the fleet, we concluded that it was important to cover a wide range of engine configurations and cylinder displacements, and related technologies. We intentionally focused on specific technologies that we expect manufacturers to widely use in future vehicles, instead of on specific vehicles, for two reasons: (1) Fuel effects on GHG emissions and fuel economy relate primarily to combustion characteristics of the engine, rather than to vehicle characteristics (*e.g.,* mass and aerodynamics); (2) While we are reasonably certain that the technologies we selected and tested will dominate the light-duty fleet in coming years, the distribution of specific vehicles in which they will be used over the 2025 and later time period is much more difficult to anticipate. EPA believes that the appropriateness of focusing our test vehicle selection on key engine and powertrain technologies is further reinforced by the long-standing practice by most manufacturers of using a single engine type in several different models of passenger cars, cross-overs, SUVs, minivans, and/or pick-up trucks.

Table III–2 below lists the powertrain technologies that EPA selected, after a series of technical consultation meetings with the Alliance and Global Automakers.[16] The selected vehicles cover 4-, 6-, and 8-cylinder engines, and a wide range of displacements per cylinder (ranging from 0.375 to 0.75 liters of displacement per cylinder). In addition, EPA's selected engines included both naturally aspirated and turbocharged engines and both direct-injection and port-injection fuel delivery systems.[17] Because these engine characteristics largely determine the dynamics of fuel combustion, they are closely related to emissions and efficiency when test fuel changes. We also included newer transmission technologies to reveal any potential effects beyond the engine. Several of these engine and transmission technologies are in widespread use today, and we expect the others to become more prevalent as future GHG, CAFE, and Tier 3 standards take effect.

As illustrated in the 2018 EPA Automotive Trends Report, the use of the key technologies incorporated in the EPA test program is growing in a wide range of vehicle applications across the industry, at the same time that earlier

[15] EPA Technical Report ''Tier 3 Certification Fuel Impacts Test Program'' January 2018, EPA–420–R–18–004 (*https://www.epa.gov/moves/tier-3-certification-fuel-impacts-test-program*). Docket EPA–HQ–OAR–2016–0604.

[16] See EPA Memorandum to Docket EPA–HQ–OAR–2016–0604: ''Listing of Technical Consultation Meetings between EPA Staff and Automobile Industry Technical Representatives Supporting the Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel, NPRM. Among other topics, these meetings included detailed discussions of vehicle selection and test methodology issues for the EPA vehicle test program underway at the time.

[17] EPA did not include electric hybrid powertrains in the test program because the additional test variability caused by differences in battery state of charge and engine on/off operation would likely confound the small fuel effects.

competing technologies are generally declining.[18]

We chose eleven vehicles that incorporated one or more of these relevant advanced technologies, including the following: Gasoline direct injection (GDI) (which enables higher compression ratios for improved fuel efficiency and emissions reductions); engine turbocharging, (generally in conjunction with smaller, more efficient engines, another growing approach to improved fuel efficiency and reduced emissions); naturally aspirated high compression engines (featuring a high degree of valve timing authority to allow operation as Atkinson-Cycle engines when required; cylinder deactivation technology (to allow one or more cylinders to be deactivate while the vehicle is cruising, reducing fuel consumption and emissions); automatic transmissions with higher numbers of gears, as well as Continuously Variable Transmissions (CVTs), to allow engines to stay in the most efficient engine speed range as much as possible, improving fuel use and emissions. The test program also included a large pickup truck, a ''Class 2b'' heavy-duty vehicle, to assess whether larger gasoline trucks with engine technology that is common today and is likely to continue into the future show similar effects to LDVs and LDTs.[19]

The use of these technologies has been growing, and we expect them to continue to grow. For example, between 2008 and 2018, in the new model year fleet:

- Gasoline direct injection (GDI) penetration has grown from 2% to 51%.
- Gasoline engine turbocharging has grown from 3% to 31%.
- Cylinder deactivation has grown from 7% to 12%.
- 8-speed transmissions have grown from 0.2% to 19%.
- Continuously Variable Transmissions (CVTs) have grown from 6% to 20%.

The vehicles we selected for the test program were production vehicles that had emission levels that were compliant or nearly compliant with the Tier 3 emission standards. All of the vehicles we tested for this program were certified by the manufacturers to operate appropriately on regular grade fuel, to avoid any potential octane effects from the test fuel change (*i.e.,* from higher-octane Tier 2 test fuel to lower-octane Tier 3 test fuel).

Some stakeholders have asked EPA to consider using the manufacturer-generated test data that they submit to the EPA vehicle certification database as an alternative data source for estimating the impact of the change in CO_2 and fuel economy performance due to the test fuel change, rather than the data from the separate EPA vehicle test program.[20] In fact, early in the development of this proposed action, EPA considered the potential value of using available manufacturer certification data for this purpose of quantifying the impact of the test fuel change. However, EPA concluded that the manufacturer certification data submitted to EPA could not be used for the purpose of the technical analysis needed for this rule. As shown in Table III–1 below, EPA recognizes that there are many sources of vehicle test-to-test variability, and we have developed methodologies to control for these sources of variability for this test program. EPA's testing methodologies were informed by our experience with the challenges of measuring fuel effects on vehicle emission performance. EPA concluded that it is not possible to use manufacturer certification data, as submitted to EPA, to quantify the effects of the Tier 3 fuel change on CO_2 and fuel economy. This is why EPA instead designed a targeted, controlled test program for the particular purposes of this rule.

In performing the testing of the selected vehicles, we took additional steps beyond those specified in the existing compliance testing regulations in order to reduce test-to-test variability to very low levels. This was necessary because we were working to discern very small changes in emissions and fuel economy between tests on the two fuels, requiring lower test-to-test variability than has been historically accepted for such testing, including compliance testing.[21] We accomplished this goal in several ways, in general by reducing or eliminating potential sources of variability. These steps included completing testing of one vehicle on one fuel in a single work week; maintaining the same test site and vehicle driver throughout the program across all fuels and vehicles; thorough removal of the previous test fuel from the fuel system, with enough driving to allow for the engine to adapt to the new fuel properties; maintaining the same number and type of test, and the same sequence, during each day of testing; and ensuring a fully-charged battery by using a trickle-charger overnight, over weekends, and over extended periods between tests. By taking these actions like these, we were able to reduce test-to-test variability significantly as compared to most routine testing on these test cycles.

Table III–1 lists several of the key features of vehicle testing that affect the variability of test results and that we specifically incorporated into the EPA vehicle test program. As shown, these methodological features are typically not present during manufacturer certification testing (nor are necessary for the accuracy required for that purpose).

TABLE III–1—TEST VARIABLES REQUIRING CONTROL FOR ACCURATE FUEL EFFECTS MEASUREMENT

Methodological features	EPA test program	Available manufacturer certification data
Identical test fuels across all test vehicles	Yes	No
Appropriate methods for measuring Tier 3 (oxygenated) test fuel properties	Yes	Rarely
Multiple measurements of test fuel properties across several labs/samples	Yes	No
Comparative testing done in same test cell (to minimize impacts from vehicle loading and coast-down simulation, etc.)	Yes	Rarely
Testing using same driver	Yes	No
Testing using exact same test vehicle for all testing of a vehicle model	Yes	Rarely

[18] The 2018 EPA Automotive Trends Report describes in detail the most recent trends among powertrain technologies, beginning at P. 37: *https://www.epa.gov/automotive-trends/download-automotive-trends-report#Full%20Report.*

[19] As discussed above, EPA regulates Class 2b (and Class 3) heavy-duty vehicles, which have gross vehicle weight ratings greater than 14,000 pounds, separately from light-duty vehicles, but the 2014 Tier 3 certification test fuel changes applied to testing for both of these vehicle categories.

[20] See briefing document provided by the Alliance of Automobile Manufacturers for E.O. 12866 meeting May 28, 2019, EPA Docket EPA–HQ–OAR–2016–0604.

[21] For example, EPA historically allows up to a three percent difference in fuel economy from test to test when performing engineering evaluations. Guidance document VPCD–97–01 for testing vehicles with knock sensors highlights this existing variability allowance.

TABLE III–1—TEST VARIABLES REQUIRING CONTROL FOR ACCURATE FUEL EFFECTS MEASUREMENT—Continued

Methodological features	EPA test program	Available manufacturer certification data
Careful control of vehicle preparation to reduce variability (beyond CFR requirements)	Yes	No
Statistical assessment of number of test replicates needed	Yes	No
Monitoring driver performance metrics for consistency with comparative tests	Yes	No
Highly controlled sequencing of test types (FTP, HFET, US06)	Yes	No
Fuel sequence order switched to avoid vehicle "learning bias"	Yes	No
Repeat of test sequences when necessary for statistical confidence	Yes	No

EPA requests comments on ways that manufacturer certification data submitted to EPA, or any other data, might be used as an appropriate supplemental or alternative source of data for the purpose of quantifying the small average impacts on CO_2 and fuel economy due to the Tier 3 test fuel change. We request that commenters include any data or analysis that could mitigate the concerns we express above about the use of such data for the purpose of this proposed rule

Table III–2 lists the test vehicles EPA used in this test program and the key technologies they incorporated. EPA requests comment on our decision to focus our test vehicle selection for this program on vehicles with certain engine and powertrain technologies, and on the specific technologies we selected (Table III–2). EPA also requests any data that would indicate that the fuel economy and/or CO_2 performance of vehicles with other technologies that are currently widespread or are likely to be in the near future would vary from the consistent patterns seen in the EPA vehicle test program.

TABLE III–2—SUMMARY OF EPA VEHICLE TESTING PROGRAM & SUMMARY OF TEST RESULTS: EPA TEST PROGRAM VEHICLES

Model year	Vehicle Make/Model	Engine	Technologies
2014	Ram 1500	3.6L V6 PFI	8 speed automatic transmission, start-stop disabled.
2016	Acura ILX	2.4L I4 GDI	8 speed DCT with a torque converter.
2013	Nissan Altima	2.5L I4 PFI	CVT.
2016	Honda Civic	1.5L I4 GDI	CVT, downsized turbocharged engine.
2015	Ford F150 Eco-Boost	2.7L V6 GDI	Downsized turbocharged engine, start-stop disabled.
2013	Chevrolet Malibu ("Malibu 1")	2.4L I4 GDI	Gasoline direct injection engine.
2016	Chevrolet Malibu ("Malibu 2")	1.5L I4 GDI	Downsized turbocharged engine.
2014	Mazda 3	2.0L I4 GDI	High compression ratio engine.
2014	Chevrolet Silverado 1500	4.3L V6 GDI	Cylinder deactivation.
2015	Volvo S60 T5	2.0L I4 GDI	Downsized turbocharged engine.
2016	Chevrolet Silverado 2500	6.0L V8 PFI	Class 2b truck.

We note that the EPA test program and the associated Technical Report only evaluated the change in carbon-balance fuel economy between the two test fuels, not changes in CAFE calculations. However, these data serve as a basis for developing the proposed CAFE fuel economy adjustment factor described in Section IV below.

B. Summary of EPA Test Results

The EPA test program described above generated a set of high-quality vehicle emissions data, which then also served as inputs to the carbon-balance fuel-economy equation, on each of the two fuels of interest. The associated Technical Report referenced above includes a comprehensive summary and comparison of these data. We refer stakeholders interested in a fuller presentation of the entire program to the Technical Report.

The Technical Report, as a comprehensive presentation of EPA test program and its results, is independent of this rule and will likely be valuable in other contexts. Much of the data collected in the test program and presented in the Technical Report is relevant to the development of the adjustment factors proposed in this rulemaking, as described in Section IV below. However, the report does not present the proposed adjustment factors or the analyses leading to them.

In summary, Figure III–1 shows the average percent change in CO_2 emissions by vehicle, calculated with respect to the Tier 2 fuel (or mathematically: % Difference = $(T3 - T2)/T2 \times 100$). The results indicate that for the Federal Test Procedure (FTP) and the Highway Fuel Economy Test (HFET) cycles, going from Tier 2 fuel to Tier 3 fuel results in a reduction in CO_2 per mile of 1.78 and 1.02 percent, respectively, corresponding to absolute CO_2 emissions decreases of 6.37 and 2.16 g/mi, respectively.[22] Vehicles which emitted comparatively large amounts of CO_2 on Tier 2 fuel generally showed larger reductions in absolute CO_2 emissions when moving from Tier 2 fuel to Tier 3 fuel. However, these vehicles produced similar reductions to the other vehicles in the test program when expressed as a percent reduction, indicating a consistent effect proportional to the base vehicle performance of the test vehicle. In our view, stringency under GHG and CAFE standards relates to this base performance, rather than absolute CO_2 emissions levels. As market representative test fuel mixes become more efficient, it becomes comparatively easier for comparatively inefficient vehicles to comply with these standards. Under this view of stringency, then, it is necessary to realign test results to maintain efficiency controls at the vehicle manufacturer level. EPA invites comment on this approach.

Similarly, Figure III–2 shows the average percent change in actual in carbon-balance fuel economy when moving from Tier 2 to Tier 3 fuels, calculated in the same way as the CO_2 differences. We used the fuel-economy

[22] The FTP and HFET are EPA's standard dynamometer driving cycles, simulating city and highway driving, respectively.

values on each fuel calculated from measured CO_2 and other carbon-containing emissions to generate the actual carbon-balance fuel economy, before the final conversion to CAFE compliance values. The results indicate that for the FTP and the HFET cycles, the average reduction in fuel economy when moving from Tier 2 fuel to Tier 3 fuel are 2.29 percent and 2.98 percent, respectively, corresponding to average reductions in fuel economy of 0.66 and 1.34 miles per gallon.

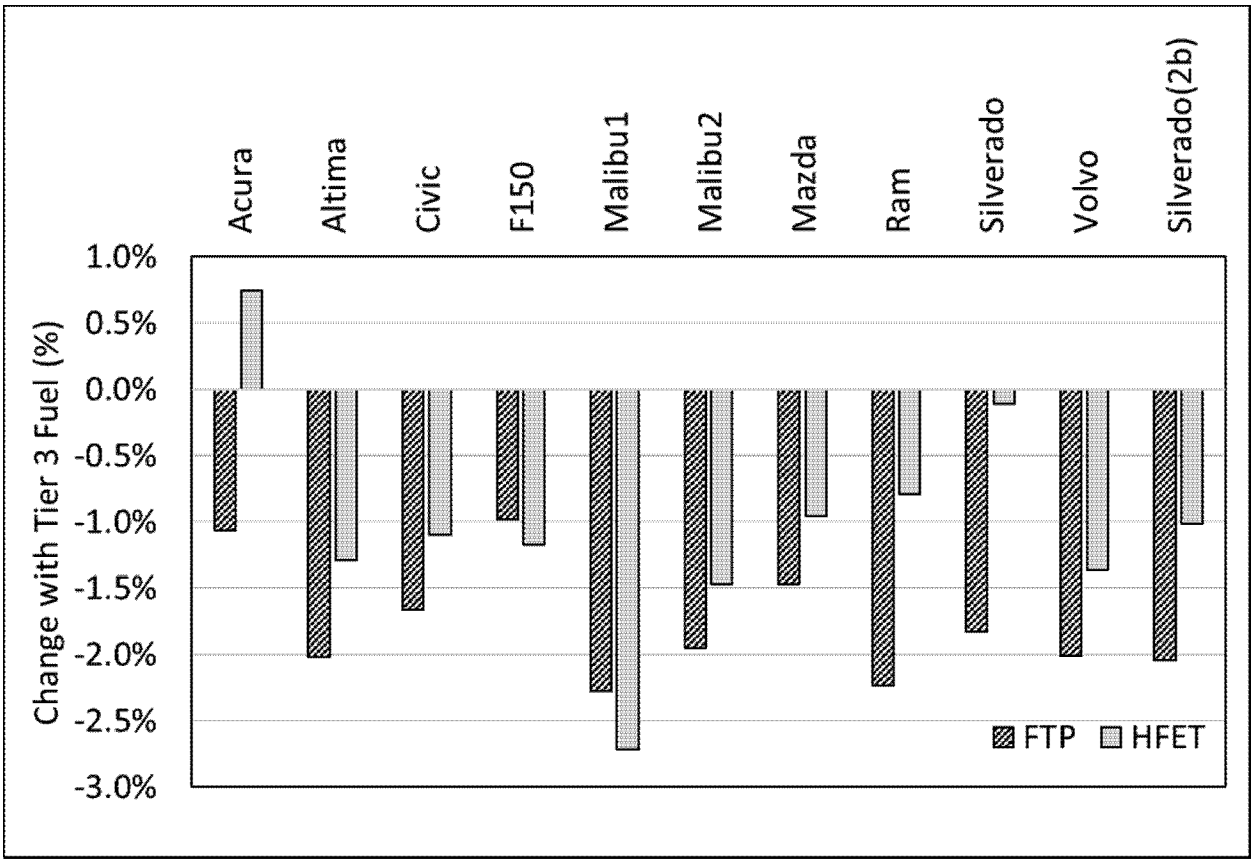

Figure III-1 Percent Change in CO_2 Emissions from Tier 2 to Tier 3 Test Fuel (%)

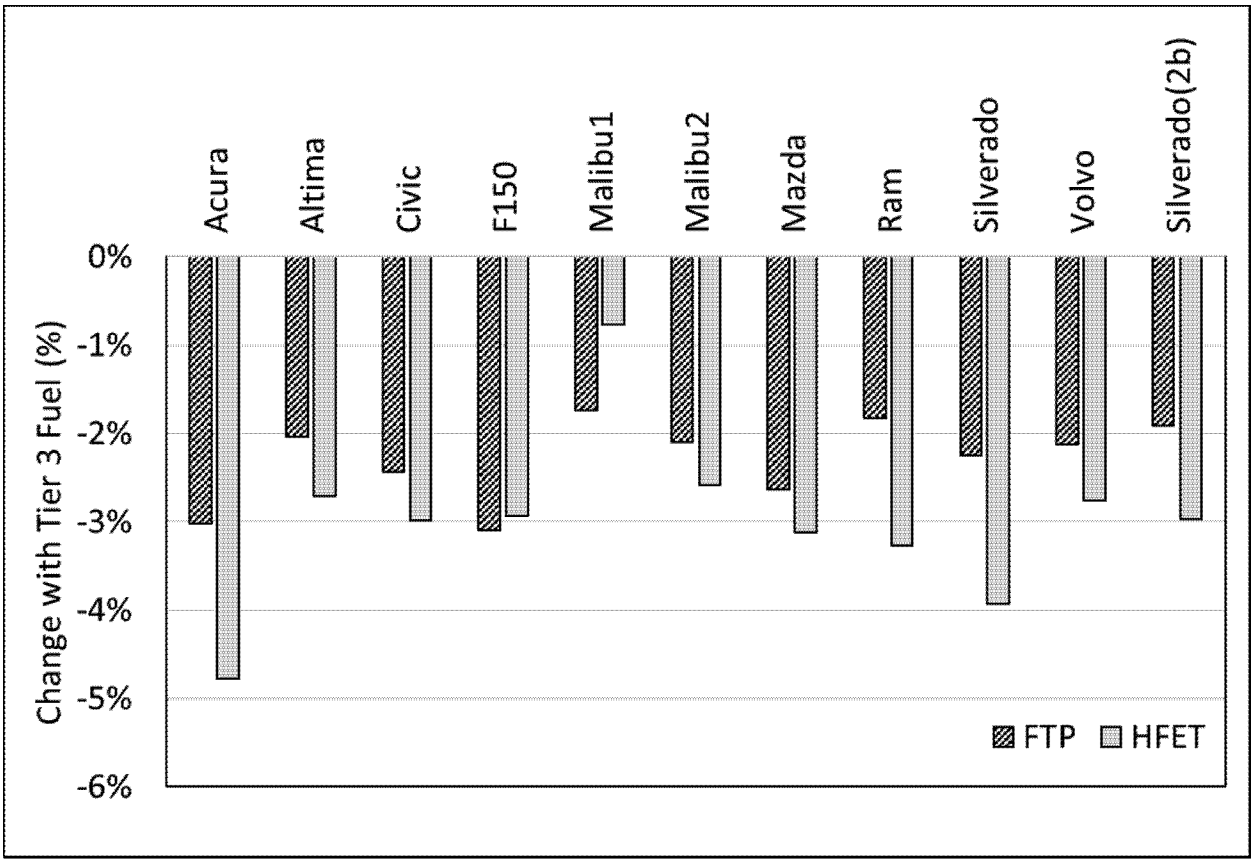

Figure III-2 Percent Change in Carbon-Balance Fuel Economy from Tier 2 to Tier 3 Test Fuel (%)

The Acura showed a noticeably larger fuel economy difference than other vehicles on the highway cycle (HFET). To investigate this behavior, we performed a limited number of additional tests of this vehicle on both regular grade Tier 3 fuel and premium grade (higher octane) Tier 3 fuel. The results showed an unexpected level of fuel economy sensitivity to the test fuel's octane rating.[23] So although we present the results for this vehicle here and in the Technical Report, we have excluded it from the analysis we used to determine the proposed test procedure adjustments in Section IV. Because this vehicle is not labeled by the manufacturer as requiring premium fuel, this behavior was unexpected on the recommended (lower octane) fuel. We thus did not want these results to inappropriately affect the proposed adjustments to CO_2 and fuel economy.

IV. Proposed Test Procedure Adjustment Factors

In this section, we describe how we used relevant data from the EPA test program summarized in the previous section to develop the proposed test fuel related adjustment factors. We present below the separate analyses we conducted to determine these adjustment factors for CO_2 and for CAFE fuel economy.

We note that the EPA test program results described in the Technical Report and summarized above differ in perspective from our development of the proposed adjustment factors discussed in this section. The Technical Report described the change in emissions and fuel economy with the transition from the current Tier 2 fuel to Tier 3 fuel, so those comparisons were formed as Tier 3 relative to Tier 2 fuel. In contrast, this section describes how we used the test program results to determine adjustment factors that would maintain the stringency of the existing standards when testing is performed on Tier 3 test fuel. Thus, the comparison in this section is formed as Tier 2 relative to Tier 3 fuel. Another difference is the ASTM method[24] used to determine the carbon mass fraction of the test fuel for calculation of fuel economy. In the Technical Report we used the average D5291 result from five laboratories, whereas here we use the D3343 method modified for ethanol as appropriate, consistent with the proposed regulatory CAFE equation.[25]

Most individual vehicle and powertrain combinations will react slightly differently to a change in test fuel. As a result, an approach to test fuel

[23] Emission certification fuel, including Tier 2 test fuel, has historically been high-octane grade as a matter of convenience to avoid having to maintain separate octane levels of test fuels for different vehicle requirements. Later, with the implementation of electronic ignition and knock sensors in the 1990s, it became possible for the engine controls to optimize combustion for a number of factors including the fuel octane level, with varying effects on emissions and fuel economy. Thus, EPA issued guidance to manufacturers in 1997 (VPCD–97–01) clarifying that, in order to ensure representativeness of FE test results to real-world driving, any difference in emissions or FE between high octane and regular octane market fuel must be declared if it exceeds a 3% allowance for normal test-to-test variability. This requirement did not apply if the vehicle was marketed as requiring higher octane fuel. Note that under the Tier 3 program, the default test fuel is now regular octane, which obviates the situation of undeclared octane impacts between certification tests ad in-use driving on market gasoline.

[24] ASTM International (previously known as American Society for Testing and Materials).

[25] See proposed regulations at 40 CFR 600.113 and memo ''Distillation adjustment for ethanol blending in Tier 3 and LEVIII test fuels'' submitted by Aron Butler to docket EPA–HQ–OAR–2016–0604.

related adjustment that attempted to recognize the unique responses of every vehicle would be very complicated and, we believe, difficult to implement in a practical manner for manufacturer testing. Therefore, we are proposing to derive the adjustments based on average values. Such an averaging approach is not new. Historically, when EPA has corrected new test results back to the results on a previous test fuel EPA required that differing vehicle responses be accounted for on average, as discussed in Section II above. We believe this approach continues to be sufficient and appropriate for compliance with fleet-average requirements for fuel economy and CO_2.

We developed the proposed CO_2 and CAFE adjustment factors based on the Federal Test Procedure (FTP) and Highway Fuel Economy Test (HFET) results from the EPA test program, as described below for each of the two proposed adjustment factors. For consistency with the historical FTP/HFET weighting of 55 percent and 45 percent, respectively, which is used in the current regulations for compliance and other testing, we believe that this same 55 percent/45 percent weighting for FTP and HFET test results is appropriate for the adjustment factors proposed in this action.[26]

A. CO_2 Adjustment Factor and Approach to Other GHG Exhaust Standards

For purposes of this proposed action, we analyzed the data from the EPA test program (excluding the data from the Acura because of the octane sensitivity issue discussed above). Table IV–1 presents our calculation process. The data show that the impact of the fuel change varies slightly among the vehicles, but it is consistently in the same direction and in the range of 1–2.5 percent, with a mean value of 1.66 percent.

TABLE IV–1—CO_2 RESULTS OF THE EPA TEST PROGRAM FOR THE FTP AND HFET CYCLES, WITH WEIGHTED VALUES FOR THE TWO CYCLES, AND CORRESPONDING PERCENT DIFFERENCES

Vehicle	FTP		HFET		Weighted [1]		Difference [2]	
	Tier 3 (g/mi)	Tier 2 (g/mi)	Tier 3 (g/mi)	Tier 2 (g/mi)	Tier 3 (g/mi)	Tier 2 (g/mi)	(g/mi)	%
Altima	270.60	276.19	163.37	165.49	222.35	226.38	4.03	1.81
Civic	213.37	216.98	143.16	144.75	181.77	184.47	2.70	1.49
F150	376.87	380.61	241.92	244.79	316.14	319.49	3.35	1.06
Malibu 1	307.37	314.53	184.01	189.15	251.86	258.11	6.25	2.48
Malibu 2	268.64	274.00	163.58	166.02	221.36	225.41	4.05	1.83
Mazda	238.57	242.12	160.32	161.87	203.36	206.01	2.65	1.30
Ram	414.49	423.94	260.67	262.76	345.27	351.41	6.14	1.78
Silverado	419.88	427.69	281.05	281.37	357.41	361.84	4.44	1.24
Volvo	299.83	305.98	173.22	175.61	242.86	247.31	4.46	1.84
Silverado (2b)	706.83	721.57	443.11	447.66	588.16	598.31	10.15	1.73
Mean								1.66

[1] As 0.55FTP + 0.45HFET.
[2] As T2 − T3, and as 100 (T2 − T3)/T3.

The formula for combining and weighting CO_2 test results is straightforward:

$$CO_2 = 0.55 \times CO_{2city} + 0.45 > CO_{2highway}$$

Where:

CO_2 = weighted CO_2 in grams per mile
CO_{2city} = CO_2 as measured on the FTP test cycle
$CO_{2highway}$ = CO_2 as measured on the HFET test cycle

Based on the results of the analysis of test data in Table IV–1, EPA proposes that measured CO_2 from FTP and HFET testing on Tier 3 test fuel, weighted as discussed above (55/45 percent), be adjusted by multiplying by a factor of 1.0166 to produce the expected CO_2 performance had the vehicle been tested over the same test cycles while operating on Tier 2 fuel. In other words, the CO_2 emissions test results from a vehicle being tested for GHG compliance using Tier 3 test fuel would be multiplied by this factor to arrive at the CO_2 value used for compliance.[27] For example, the compliance CO_2 value would be computed as $1.0166 \times (0.55 \times CO_{2,FTP} + 0.45 \times CO_{2,HFET})$. We welcome comment on the proposed value for this factor and on the approach we used to determine it.

1. Methane and Nitrous Oxide Emissions Compliance

We also propose that, with the transition to Tier 3 test fuel for CAFE and CO_2 requirements, compliance with the separate GHG standards for methane (CH_4) and nitrous oxide (N_2O) (or the related alternative standards optional program[28]) also be determined using only the results from testing with the Tier 3 test fuel, on the same proposed implementation schedule discussed in Section V below and synchronized with the parallel CO_2 testing. Manufacturers test for these additional GHG emissions in conjunction with the primary CO_2 testing, and this proposed parallel provision eliminates the need for redundant testing on both fuels for CH_4 and N_2O certification.

Unlike CO_2, these emission components are overwhelmingly affected by catalytic converter performance. If there is a change in engine-out emissions (*i.e.,* ahead of the catalyst), due to the change in certification fuel, that change will be small, and we likewise expect any change in post-catalyst tailpipe emissions from the change in certification fuel to also be small, if there is one at all. If there were any small changes in tailpipe emissions from the change in fuel, we do not

[26] The proposed test procedure adjustments would apply to testing on all federal Tier 3 gasoline certification fuels, including premium certification fuel and LEVIII fuels.

[27] Compliance for the LD GHG standards is based on all carbon-related exhaust emissions (CREE). The adjustment factor applies only to the CO_2 emission aspect of the CREE equation. For discussion of CREE impacts in the EPA test program, see memo ''Carbon-related Exhaust Emissions (CREE) Measured on Current and Proposed Certification Gasolines,'' submitted by Jim Warila to docket EPA–HQ–OAR–2016–0604.

[28] 40 CFR 86.1818–12(f)(1) through (3).

expect they would affect a vehicle's compliance with the standards for these pollutants, since these are ''cap'' standards set at specific levels to prevent future backsliding (rather than fleet-average standards intended to achieve reductions in the emission levels of the current and future vehicle fleet). For these reasons, we are not proposing any changes to these cap standards nor any other adjustments to the CH_4 and N_2O test results when using the Tier 3 test fuel. We welcome any comment and data relative to the CH_4 and N_2O cap standards.

B. Fuel Economy (CAFE) Adjustment Factor

1. Analysis of Data and Development of the Proposed Fuel Economy Equation

As we did with the CO_2 test data above, we used the EPA test program results (again, excluding the Acura) to determine an adjustment factor that would be applied to the FTP and HFET results for test vehicles operating on Tier 3 test fuel to produce CAFE fuel economy results equivalent to those from testing on Tier 2 test fuel. Tier 2 test fuel is the result of EPA's 1986 test fuel changes and the associated adjustment, designed to produce results that represent the CAFE fuel economy that would have been observed under 1975 test conditions (as required by the statutes governing the CAFE program and discussed in Section I.C above). The CAFE fuel economy adjustment proposed here would align Tier 3 test fuel testing with Tier 2 test fuel results, and, by extension, with results that would have been observed using 1975 test fuel.

Note that the proposed adjustment factor would also be used for all other test cycles required for fuel economy labeling, as further discussed in Section VII below. This current section summarizes EPA's analysis and the resulting value we are proposing for the CAFE fuel economy adjustment factor. As discussed above in Section II, a vehicle's CAFE fuel economy is based primarily on the same measured CO_2 emissions that determine its compliance with the GHG standards. For the reasons discussed in that section, the CAFE calculation is necessarily more complex than the direct CO_2 emissions measurement, and adjusting the calculation carries these complexities.

To provide NHTSA with the fuel economy data it uses for CAFE compliance, EPA uses calculations that account for the difference in volumetric energy density (VED, *e.g.,* Btu/gal) of the test fuel relative to the baseline test fuel on which NHTSA based the original CAFE standards in 1975. In the mid-1980s, when EPA last made such a test-fuel related adjustment, empirical data available to the Agency suggested that there was not a direct, 1–to–1 response of fuel economy to changes in test fuel VED. Because of this, EPA proposed and took final action to insert an additional factor, called the ''R-factor,'' into the equation. EPA defined this R-factor, established in the regulations with a value of 0.6, as the percent change in fuel economy per percent change in test fuel VED. For example, for R = 0.6, a 10 percent decrease in test fuel VED would only produce a 6 percent decrease in fuel economy.

Table IV–2 shows this R=0.6 adjusted fuel economy value alongside the carbon-balance fuel economy for both test fuels. The VED of the Tier 2 fuel was higher than the 1975 CAFE reference fuel, so the R-factor adjustment reduces the fuel economy result slightly relative to the carbon-balance value. For Tier 3 test fuel, which has lower VED, the R-factor adjustment increases the fuel economy result slightly. If the adjustment were functioning optimally (*i.e.,* if R=0.6 were exactly the right adjustment for both fuels), we'd expect the corrected value in the R=0.6 columns in Table IV–2 to be the same value for both test fuels. However, there is still 55a directionally consistent offset, with the Tier 3 test fuel values slightly lower than the Tier 2 values for all but one vehicle, suggesting that an R-factor of 0.6 is not optimal and should be higher for this test fleet operating on Tier 3 fuel. A higher value is also supported by analyses of other recent datasets.[29]

TABLE IV–2—CARBON-BALANCE AND R-ADJUSTED FUEL ECONOMY RESULTS BY VEHICLE AND FUEL

[City/highway-weighted values, mpg]

	Tier 2 test fuel [a]		Tier 3 test fuel [b]	
	C-balance equation	R=0.6 equation	C-balance equation	R=0.6 equation
Altima	39.40	39.26	38.51	39.10
Civic	48.43	48.26	47.16	47.88
F150	27.97	27.87	27.12	27.53
Malibu 1	34.49	34.37	34.00	34.52
Malibu 2	39.61	39.48	38.72	39.31
Mazda	43.38	43.23	42.16	42.81
Ram	25.42	25.34	24.83	25.22
Silverado	24.66	24.58	23.96	24.32
Volvo	36.08	35.95	35.24	35.78
Silverado (2b)	14.90	14.85	14.56	14.79

[a] For the Tier 2 fuel, we calculated the adjusted fuel economy using ASTM methods D3343 and D3338, and lumped THC emission term, consistent with how fuel economy is calculated and reported under the current requirements.

[b] For the Tier 3 fuel, we used modified methods D3343 and D3338, and separate NMOG and CH_4 emission terms as specified in this proposal. The reason for the change in emission terms is explain in more detail below.

Because of the remaining offset seen in Table IV–2, we are proposing an updated fuel economy equation for use with Tier 3 test fuel where the R-factor is replaced by a new factor (R_a), determined empirically so as to make the fleet-average fuel economy result using Tier 3 test fuel numerically equivalent to the fleet-average result using Tier 2 test fuel and R=0.6. The goal is to have no change in stringency for compliance with fuel economy standards with the new test fuel. Note that this new factor not only updates the sensitivity of fuel economy to VED (the

[29] Sluder, C., West, B., Butler, A., Mitcham, A. et al., ''Determination of the R Factor for Fuel Economy Calculations Using Ethanol-Blended Fuels over Two Test Cycles,'' SAE Int. J. Fuels Lubr. 7(2):551–562, 2014.

main purpose of the original R-factor) but also accommodates other changes to the calculation discussed in more detail below. For reference, we show the current equation for Tier 2 test fuel (which we described in Section II above) here: [30]

$$FE_{CAFE} = \left[\frac{CMF_{T.fuel} \cdot SG_{T.fuel} \cdot \rho_{water}}{CMF_{exh} \cdot THC + 0.429 \cdot CO + 0.273 \cdot CO_2}\right] \cdot \left[\frac{NHC_{B.fuel} \cdot SG_{B.fuel}}{\left(R \cdot NHC_{T.fuel} \cdot SG_{T.fuel}\right) + \left(\left(1 - R\right) \cdot NHC_{B.fuel} \cdot SG_{B.fuel}\right)}\right]$$

One of these proposed changes to the equation is an update from using THC emissions in the Tier 2 carbon-balance denominator to using NMOG and CH_4 with Tier 3 test fuel, where NMOG is determined as specified in 40 CFR 1066.635. The inclusion of NMOG better accounts for the oxygenated emission products resulting from ethanol in the test fuel, and is consistent with the use of NMOG in the Tier 3 emission standards. With the very low emission levels of Tier 3 vehicles, we expect the difference between THC and the sum of NMOG + CH_4 to be negligible. We request comment and any data regarding this proposed change to the equation.

$$FE_{CAFE} = \left[\frac{CMF_{T.fuel} \cdot SG_{T.fuel} \cdot \rho_{water}}{CMF_{exh} \cdot NMOG + 0.749 \cdot CH_4 + 0.429 \cdot CO + 0.273 \cdot CO_2}\right] \cdot \left[\frac{NHC_{B.fuel} \cdot SG_{B.fuel}}{\left(R_a \cdot NHC_{T.fuel} \cdot SG_{T.fuel}\right) + \left(\left(1 - R_a\right) \cdot NHC_{B.fuel} \cdot SG_{B.fuel}\right)}\right]$$

A second change we are proposing to the fuel economy calculation is to update the test methods used in determining specific gravity (SG), carbon mass fraction (CMF), and net heat of combustion (NHC). As indicated earlier, EPA designed the existing CAFE equation around the use of E0 test fuel, and specified that these fuel parameters be determined using ASTM methods D1298, D3343, and D3338, respectively. The latter two methods determine the unknown fuel property by mathematical correlation to other known properties, and these correlations are not suitable for ethanol blends as published. Therefore, we are proposing additional calculations to be used with D3343 and D3338 to determine CMF and NHC of E10 test fuel. These modified methods have been previously described in EPA guidance and other technical literature, and are specified in detail in the proposed regulations included as part of this notice.[31] As a simplification, we request comment on omitting water and sulfur adjustments in these calculations because their impact is negligible (less than 0.05% of FE, combined) over the allowable ranges in test fuel. We are also proposing that method D4052 be adopted as equivalent to D1298 for determining SG. We request comment on the potential use of other methods for fuel property determination for fuel economy calculation, including the analytical methods D5291 for CMF and D4809 for NHC.

In deriving the appropriate value to propose for R_a, *i.e.,* the value that produces the equivalent fuel economy with Tier 3 E10 test fuel, we used the current Tier 2 methods and R=0.6 when calculating the fuel economy using Tier 2 test fuel, and the proposed updated methods when using Tier 3 test fuel. Because of the proposed changes to the measurement methods discussed in the previous paragraph and the new R_a factor being specific to Tier 3 test fuel, this proposed new equation would not be valid for reporting fuel economy when testing using Tier 2 fuel. We are proposing to incorporate the small impacts of these calculation formula changes within the single new R_a factor. We request comment on the appropriateness of this approach, versus another approach such as requiring correction(s) for the fuel property test method(s) separate from a factor serving the purpose of the existing R-factor.

As with the proposed CO_2 adjustment factor, for the CAFE adjustment factor we weighted the results from city (FTP) and highway (HFET) testing in the EPA test program as follows:

$$MPG = \frac{1}{\frac{0.55}{MPG_{city}} + \frac{0.45}{MPG_{highway}}}$$

Our analysis of the study data as described shows that a value of R_a=0.81 produces a fleet average fuel economy difference very close to zero between the two test fuels. Table IV–3 compares the adjusted city/highway weighted fuel economy for each study vehicle as it is currently calculated with Tier 2 fuel to the adjusted fuel economy on Tier 3 fuel using the updated calculations and an R_a value of 0.81. At the right-hand side of the table is the percent difference by vehicle, with the fleet average difference of near zero shown at the bottom.

TABLE IV–3—ADJUSTED FUEL ECONOMY RESULTS BY VEHICLE AND FUEL SHOWING IMPACT OF PROPOSED R_a FACTOR

[City/highway-weighted values]

	Tier 2 test fuel (R=0.6)	Tier 3 test fuel (R_a=0.81)	Tier 3 vs. Tier 2 (%)
Altima	39.26	39.32	0.16
Civic	48.26	48.15	−0.23
F150	27.87	27.69	−0.65
Malibu 1	34.37	34.72	1.02
Malibu 2	39.48	39.54	0.15

[30] We present the equations below in a form that highlights the changes between the existing and proposed CAFE equations. These equations are functionally equivalent to those in the proposed regulatory language associated with this notice (§ 600.113–12), with the latter equations structured in form conventionally used for CAFE compliance purposes. This proposed regulatory language also defines each of the terms in these CAFE equations.

[31] EPA Guidance Letter CD–95–09 and SAE technical paper 930138 describe adjustment of ASTM D3338 and D3343 results for oxygenates. More detail on accommodation of ethanol's volatility impact in the ASTM methods can be found in the memo ''Distillation adjustment for ethanol blending in Tier 3 and LEVIII test fuels,'' May 2, 2018, submitted by Aron Butler to docket EPA–HQ–OAR–2016–0604.

TABLE IV–3—ADJUSTED FUEL ECONOMY RESULTS BY VEHICLE AND FUEL SHOWING IMPACT OF PROPOSED R_a FACTOR—Continued

[City/highway-weighted values]

	Tier 2 test fuel (R=0.6)	Tier 3 test fuel (R_a=0.81)	Tier 3 vs. Tier 2 (%)
Mazda	43.23	43.05	−0.41
Ram	25.34	25.36	0.09
Silverado	24.58	24.46	−0.46
Volvo	35.95	35.98	0.08
Silverado (2b)	14.85	14.87	0.14
Average difference			−0.01

Figure IV–1 shows the percent change in city/highway weighted fuel economy when moving from Tier 2 to Tier 3 test fuel using three computation methods. The bottom series (with square markers) shows the difference using the carbon-balance calculation, which makes no adjustment for VED and therefore is the best estimate of the actual, real-world effect. The middle series (with round markers) shows the difference calculated using the appropriate CAFE formula and fuel property measurements for each test fuel and R=0.6 for both (the values shown in Table IV–2). Finally, the top series (dashed with triangular markers) shows the effect of adjusting the R-factor in the Tier 3 equation to a value of 0.81. The difference of approximately 0.6 percent between the top and middle lines is the fuel economy reduction due to the test fuel change that would be mitigated by the proposed R-factor update. The top line in this figure corresponds to the right-hand column in Table IV–3.

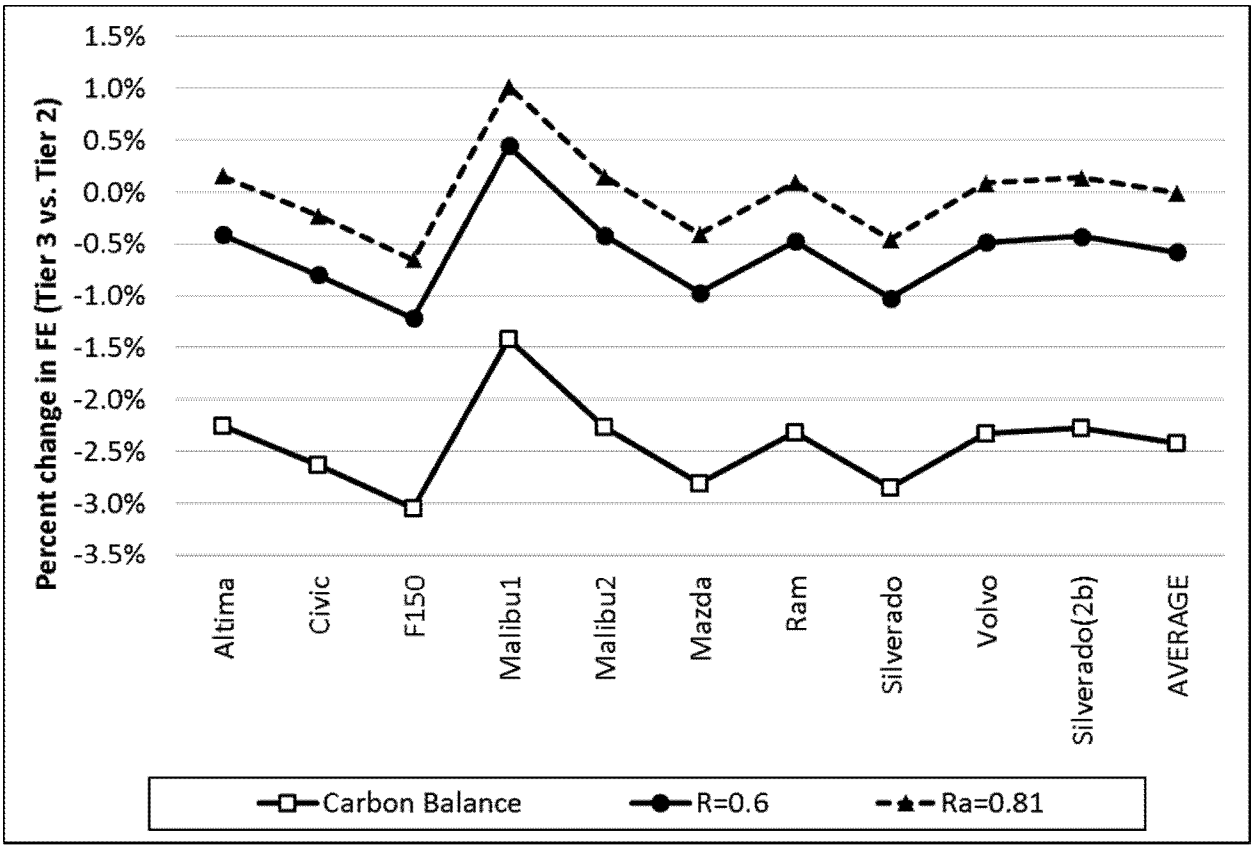

Figure IV-1 City/Highway Weighted Fuel Economy Difference Between Test Fuels for Different Calculation Methods, Shown by Vehicle (Fleet Average at Right)

2. Proposed Fuel Economy Adjustment Factor

As described above, the fuel economy difference between the fuels, as shown in the analysis presented in Figure IV–1is very near zero with an R_a factor of 0.81. Thus, we propose to adopt this value for adjustment of fuel economy values from testing on Tier 3 fuel to equivalent values under 1975 test conditions and test fuel. We also propose to use the same fuel economy equation form and R_a factor for any tests performed on LEVIII fuel (which

manufacturers sometimes choose to and are allowed to use), given that its carbon content and VED closely match those of Tier 3 test fuel. EPA requests comment on the methodology we used to determine the proposed value for R_a, and on the proposed value itself.

V. Proposed Implementation Schedule

Testing required for compliance with light-duty vehicle GHG emission and CAFE standards, as well as for fuel economy labeling, is substantial, and comprises the majority of all necessary yearly vehicle emissions testing performed by manufacturers.[32] This is also generally the case with compliance with standards for large pickup trucks and vans (*i.e.,* the heavy-duty Class 2b and 3 vehicle GHG and fuel consumption standards. Because of the quantity of testing required, manufacturers typically plan testing with sufficient lead time to stagger the necessary testing among their limited testing facilities, often over several years. Key to this approach to managing testing is the ability of manufacturers to ''carry over'' the test results for some specific vehicle models, often for several years, thus avoiding the need to re-test the same vehicle model in sequential model years when little or no change to the vehicle model has occurred (see 40 CFR 86.1839).

At the time of the Tier 3 final rule in 2014 (discussed in Section I.B above), we anticipated that it would be possible for EPA to organize and complete the vehicle testing program undergirding this proposal (discussed in Section III above), and propose and finalize the necessary test procedure adjustments soon thereafter. In that final rule, at 79 FR 23532, EPA said that ''. . . [A]t the present time, EPA expects to have the needed data in early to mid 2015 and will then be in a position to conduct a thorough assessment of the impacts of different emission test fuels on Tier 3/LEV III vehicles and develop any appropriate adjustments and changes, in consultation and coordination with NHTSA.'' At the same time, we also recognized in that final rule, at page 23533, that timing projections leading to setting the mandatory use of Tier 3 fuel for MY 2020, along with the needed adjustments, ''are subject to revision based on timing of the completion of the future action and the data and record developed in that future rulemaking.''

Thus, the expectation of EPA and the industry at the time was that if EPA took the necessary actions expeditiously, sufficient transitional time would be available to avoid disruption of manufacturer testing plans. Since the EPA actions are now well underway but final action on the adjustments is still some months away, the timing situation is now different. Today, necessary testing for MY 2020 production has begun. For this reason, EPA now believes that additional time is warranted before manufacturers are required to do all of their necessary GHG and fuel economy testing on Tier 3 fuel and with the test procedure adjustments proposed in this notice. This would avoid the need for manufacturers to immediately test all of their vehicle models on Tier 3 fuel, instead of being able to continue to use carryover data developed using Tier 2 fuel and the existing factors for some of their vehicle models.

Therefore, we are proposing a limited phased implementation of this requirement that we believe will avoid such disruption for manufacturers of light-duty vehicles, light-duty trucks, and MDPVs, allowing them to continue into the near future the widespread practice of using ''carry-over'' Tier 2 E0 test data for certification of later model year vehicles. Specifically, we propose to implement the required use of Tier 3 fuel and the proposed test procedure adjustment factors for GHG and fuel economy reporting in four phases. First, because EPA will likely now be issuing a final rule for this proposal later in 2019, we propose to delay the start of Tier 3 test fuel testing for GHGs and fuel economy for one model year, until MY 2021. This proposed provision would have the simple effect of extending without change the current test-fuel related requirements for one model year, such that all GHG and fuel economy testing would continue to be performed on Tier 2 E0 fuel. Second, for MYs 2021 through 2022, we propose that manufacturers have the option of testing vehicles for GHG and fuel economy on either Tier 2 or Tier 3 test fuel (with Tier 3 test fuel testing incorporating the associated adjustment factors proposed in this notice).

Next, to ensure continued progress toward Tier 3 fuel testing, for MYs 2023 and 2024 we propose that manufacturers perform all GHG and fuel economy testing of new vehicle models (*i.e.,* those that do not use carryover criteria emission data) on Tier 3 fuel. For vehicle models essentially unchanged from an earlier model year, we propose that manufacturers be able to use carryover GHG and fuel economy test data from testing on earlier model year vehicles using Tier 2 fuel, so long as the manufacturer and EPA consider that data to be appropriate for that vehicle model. Finally, beginning in MY 2025, we propose that all testing for GHG and fuel economy reporting (including carryover testing) would need to be performed on Tier 3 test fuel and use the proposed test procedure adjustment factors.

We also propose to apply the same phased implementation schedule to heavy-duty Class 2b and 3 vehicles,[33] with the exception that the option to test on Tier 3 fuel would begin with MY 2022 instead of MY 2021 (MY 2022 is the first year of the Tier 3 test fuel requirement for those vehicles under the Tier 3 program).

Finally, as stated above, we recognize that the time it has taken EPA to propose, and will take to finalize, these provisions will necessarily extend beyond the time that most manufacturers will need to begin testing for the 2020 model year, sales for which a manufacturer may choose to begin as early as January 2, 2019. Again, our intention is to avoid disruption of manufacturer testing plans during the transition to Tier 3 E10 test fuel. Therefore, until this proposal is finalized, a manufacturer may request in writing to perform fuel economy testing for 2020 MY vehicles on Tier 2 E0 test fuel, based on the ''special procedures'' provisions of 40 CFR 1066–10(c) and 40 CFR 1065–10(c)(2). EPA would expect to approve such requests because a vehicle cannot be appropriately tested on Tier 3 E10 test fuel until EPA finalizes the adjustment factors proposed in this action. Test results produced in this way would be acceptable for all regulatory purposes, including compliance with fuel economy labeling requirements and compliance with CAFE and GHG emissions standards. Upon EPA's issuing of a final rule for this proposed rule, the phased implementation process proposed in this action (or as revised based on comments) would become effective and replace any interim use of special procedures.

Because the fundamental purpose of the proposed test procedure adjustments is to maintain program stringency during the transition to Tier 3 fuel, we do not believe that this proposed phased delay in the requirement for

[32] Tier 3 (non-GHG) testing is done according to ''test groups,'' with testing on one worst-case vehicle normally covering a number of vehicle models within the test group. While the non-GHG emission characteristics are treated as the same across the models in the test group (using the worst case model), GHG and CAFE values typically vary significantly among the models in the test group, resulting in many times more required tests.

[33] These vehicles, primarily pickups and large vans, are tested using similar test procedures and calculations to those that apply to light-duty vehicles.

manufacturers to test on Tier 3 test fuel will result in any changes in overall emission levels from the fleet (or in vehicle technology costs) (See Section VI below). EPA requests comment on this proposed approach to implementing the transition to exclusive use of Tier 3 test fuel.

VI. Projected Impacts

This proposed action is designed to ensure that the changes in vehicle test fuel characteristics occurring under existing regulations do not affect the stringency of the current GHG and fuel economy standards or unnecessarily add to manufacturer testing burdens. As a result, this proposed action by design should not result in any significant changes in the emissions or fuel consumption benefits originally projected for the EPA GHG or the DOT CAFE programs, nor any significant changes in the projected incremental technology costs of the standards to manufacturers.

As we discuss in Section IV above, we derived the proposed test procedure adjustments on a fleetwide average basis. Thus, it is possible that vehicle manufacturers may find that for some individual vehicle models the proposed adjustments result slightly different certification CO_2 emissions and fuel economy calculations in one direction or the other. Overall, because manufacturers also certify on a fleet-average basis, we believe that the proposed adjustment factors would result in no significant net changes in certification results for manufacturers. In addition, as noted above, adjustments to the test procedure are necessary to maintain the same level of stringency for the GHG and CAFE standards. As also noted above, we believe that model-by-model adjustment factors would be so unwieldly and burdensome on both EPA and manufacturers that an averaging approach is more appropriate. We request comment on this conclusion, including any data or information indicating that the proposed approach would be problematic for any individual manufacturer's fleet.

Regarding the additional certification vehicle testing that the transition from Tier 2 to Tier 3 test fuel now underway will temporarily require, we discuss in Section V above a proposed implementation schedule for the transition to required use of Tier 3 test fuel (with the associated test procedure adjustments proposed here). As discussed in Section V above, we believe that the proposed phased implementation schedule will minimize any potential disruption of any manufacturer's current testing plans. Because the purpose of this rule is to align certification results before and after the transition in test fuels, the proposed gradual implementation, including the proposed delay until MY 2021 for the required use of Tier 3 fuel, should have no impact on the projected benefits and costs of the GHG and CAFE programs.

VII. Implications of Proposed Adjustments on the Fuel Economy and Environment Label

A. Background

Prior to introducing a vehicle into commerce, manufacturers are required to perform testing to generate the fuel economy and GHG emission performance estimates that will be displayed on the Fuel Economy and Environment Label (window sticker on new cars and light trucks). This testing is performed by the manufacturer on one or more versions of a given vehicle model (*e.g.* Ford F150 Regular cab, Super cab, Supercrew cab). Testing for the label is based on EPA regulations and guidance, generally using an average of the projected highest volume versions of a vehicle model that they plan to build for that coming model year.[34] The results are used to determine the city and highway fuel economy estimates, and the CO_2 performance level that will be displayed on the window sticker to provide consumers important information when making purchasing decisions. Under the interim Tier 3 fuel economy requirements described in 40 CFR 600.117, the fuel economy and CO_2 performance values are currently based on testing using Tier 2 E0 test fuel.

As described in 40 CFR 600.210–12, the fuel economy label city and highway ratings are calculated using one of two primary methods permitted under the labeling requirements. The first method is the 5-cycle methodology where the FTP and HFET and three additional test cycles (US06, SC03, Cold FTP), are used in a set of formulas that weight the different portions of the five test cycles to produce the city and highway fuel economy rating for the label.[35] The 5-cycle formulas result in city and highway fuel economy estimates displayed on the label that have been adjusted to more accurately represent the fuel economy that customers can expect to achieve in the real world.

The other method is the derived 5-cycle methodology, where the city and the highway label values are determined using a correlation from a large data set of 5-cycle results across different vehicle types. The derived 5-cycle methodology reduces the number of tests required to two, the FTP and HFET.[36] However, the derived 5-cycle correlation method requires an initial check on the certification emission-data vehicle that is used to demonstrate compliance with criteria pollutant emission standards for the FTP (city), HFET (highway), US06, SC03 and Cold FTP tests. The fuel economy results of these five tests are used for the initial check to determine whether fuel economy label testing may be performed using the 5-cycle method or the derived 5-cycle method. This check is commonly called the ''litmus test'' and it determines whether or not the derived 5-cycle method is a reliable predictor of 5-cycle fuel economy performance for a given test group. Other flexibilities exist in the program if a vehicle meets the litmus test criteria for only the FTP test but doesn't meet the litmus test criteria for the HFET test. The ''litmus test'' criteria are outlined in 40 CFR 600.115–11.

The CO_2 performance of a vehicle is also displayed on the label in different forms. The first way CO_2 performance information is made available on the label is in the form of a numerical value in grams/mile determined by the 5-cycle or derived 5-cycle methods, or, if actual test data was not collected, by an analytically derived equivalent value. The second way CO_2 performance is displayed is in the ''Fuel Economy and Greenhouse Gas Rating'' horizontal bar scaled from one (worst) to ten (best). The rating bar indicates the weighted city and highway CO_2 levels from testing, relative to other vehicles in the same model year. Note that similarly to the fuel economy estimates shown on the label, the CO_2 estimates displayed on the label are also adjusted using the 5-cycle or derived 5-cycle formula to more accurately represent the (tailpipe) CO_2 emissions that customers can expect to achieve in the real world.

[34] The minimum data requirements for labeling are outlined in 40 CFR 600.010(c) and EPA Advisory Circular 83A (*https://iaspub.epa.gov/otaqpub/publist1.jsp*).

[35] The three additional cycles account for more extreme driving conditions, like higher speeds and accelerations, air conditioning use, and cold ambient temperatures.

[36] US06 testing is sometimes required for relatively few labels that use the derived 5-cycle method to determine the FE Label city estimate and use the modified 5-cycle method to determine the FE Label highway estimate. See 40 CFR 600.115–11(b)(2)(ii)(B). In the 2017 model year, 54 of 1404 labels (3.8%) used the modified 5-cycle method to determine the highway fuel economy label estimates.

B. City and Highway Fuel Economy Estimates Displayed on the Label

EPA strives to provide accurate Fuel Economy and Environment Label estimates to consumers and endeavors to maintain as much consistency as possible among vehicles and across model years. The labeling methodology adjusts laboratory test results downward to reflect multiple real-world variables that are not incorporated into dynamometer test results, including roadway roughness, road grade (hills), wind, low tire pressure, heavier loads, snow/ice, effects of ethanol in gasoline, larger vehicle loads (*e.g.,* trailers, cargo, multiple passengers), and others. (See 71 FR 77876). Real-world fuel ethanol content has increased since the development of the label 5-cycle methodology established in 2008, but ethanol energy content is only one of many variables that affect fuel economy.

If the isolated effect of increased ethanol in the new test fuel were to be reflected on the label, there could be a one MPG decrease on a significant number of vehicle labels as a result of the lower energy content of E10, relative to the current methodology. However, there are many variables that affect fuel economy, and EPA believes that a comprehensive assessment of real world fuel economy is the best process to ensure that all real-world effects are reflected. In the future, EPA may reassess the label adjustments to determine the overall effect of changes over time in real world driving conditions. EPA recognizes that individual vehicle mileage will always vary for a number of reasons, believes the EPA fuel economy values provide the best currently available estimates for typical U.S. drivers and average driving conditions, and finds that piecemeal changes to attempt to reflect changes due to E10 are not warranted. Therefore, for calculating Fuel Economy and Environment label values from testing on Tier 3 E10 test fuel, EPA is proposing to apply adjustment factors to the test results, such that the values remain consistent with those generated under the current program (that is, on Tier 2 E0 test fuel). We invite comment on this proposed approach.

EPA proposes that for a given label, all emission test cycles should be performed using the same test fuel and test procedures for purposes of determining the fuel economy label estimates. We propose that the city and highway fuel economy estimates for labels be determined from test results on Tier 3 E10 test fuel, using the proposed new fuel economy equation, including the new R_a adjustment factor, to align with Tier 2 E0 test fuel results (as described in Section IV.B above), beginning with testing for the same model year that CAFE and GHG compliance for a vehicle becomes based on the new Tier 3 E10 test fuel. This would ensure that the Fuel Economy and Environment Label values remain consistent with the respective values generated from Tier 2 E0 results under the current program. Note that fuel economy label values based on Tier 2 E0 test fuel testing, whether the data are new or carried over, would continue to require the use of Tier 2 E0 fuel and the current test procedures across all test cycles.

Because the city and highway fuel economy label values can be based on the sales-weighted results of different vehicle versions as described above, we propose that all the test results used for a sales-weighted Fuel Economy and Environment Label be based on the same test fuel and test procedures. For example, if a manufacturer switches one version of a vehicle model used in a sales weighted fuel economy label to the new Tier 3 E10 test fuel and test procedures, the other versions used for that weighted label must also have results based on the Tier 3 E10 test fuel. In this example, the fuel economy estimates displayed on the label would be calculated using the newly-proposed Tier 3 E10 gasoline fuel economy equation to align the Tier 3 E10 test fuel testing with Tier 2 E0 test fuel results (and then adjusted using the 5-cycle or derived 5-cycle formula to more accurately represent the fuel economy that customers can expect to achieve in the real world).

C. CO_2 Performance Estimates Displayed on the Label

As described above, the CO_2 estimates displayed in both forms on the Fuel Economy and Environment Label (numerically and graphically) represent the same results, in CO_2 form, as the results used to generate the city and highway fuel economy labels. Therefore, we propose that CO_2 results from testing on Tier 3 E10, adjusted by the factor of 1.0166 proposed in Section IV.A, be used as input CO_2 values for the 5-cycle or derived 5-cycle equations used to determine the CO_2 information shown on the label.[37] As with the approach proposed for fuel economy label values above, this adjustment to the CO_2 test results on Tier 3 E10 fuel would ensure that CO_2 label values remain consistent with Tier 2 E0 results generated under the current program. We invite comment on this approach.

D. Litmus Test

As discussed in Section VII. A. above, the ''litmus test'' is performed on emission certification vehicles and is used as an initial check to determine whether fuel economy label testing may be performed using the derived 5-cycle method instead of the full 5-cycle method. Currently the provisions of 40 CFR 600.117(d) allow manufacturers to perform the litmus test using either Tier 2 E0 test fuel or Tier 3 E10 test fuel (using the current fuel economy equation), provided all five tests use a test fuel with the same nominal ethanol content. Consistent with the test procedure changes proposed in this notice, we also propose that the ''litmus test'' requirements transition to using Tier 3 E10 test fuel-based results on the same implementation schedule as the proposed GHG and CAFE test procedure adjustments discussed in Section IV above.[38] We invite comment on this proposed approach.

VIII. Statutory Authority and Executive Order Reviews

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

This action is a ''significant regulatory action'' that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

This proposed action is designed to ensure that the changes in vehicle test fuel characteristics occurring under existing regulations do not affect the stringency of the current GHG and fuel economy standards or unnecessarily add to manufacturer testing burdens. As a result, this proposed action by design should not result in any significant changes in the emissions or fuel consumption benefits originally projected for the EPA GHG or the DOT CAFE programs, nor any significant changes in the projected incremental technology costs of the standards to manufacturers. Thus, a regulatory impact evaluation or analysis is unnecessary.

[37] Consistent with Section VII.B. above, we propose that all the test results used for the CO_2 estimates for the label be based on the same test fuel and test procedures. For example, if a manufacturer tests one version of a vehicle model used in a label on Tier 3 E10 test fuel and Tier 3 test procedures, the other test vehicle versions used for that label must also be tested using Tier 3 E10 test fuel and test procedures.

[38] The litmus test is discussed in more detail in EPA Guidance letter CISD–2010–04, ''2011 Fuel Economy Label Implementation.''

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

This proposed rule is not expected to be subject to the requirements of EO13771 because this proposed rule is expected to result in no more than de minimis costs.

C. Paperwork Reduction Act (PRA)

This proposed action would not impose any new information collection burden under the PRA, since the proposal would simply adjust the calculations already required under the existing CAFE and GHG emissions standards. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0104.

D. Regulatory Flexibility Act (RFA)

I certify that this proposed action would 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 proposed action is designed to ensure that the changes in vehicle test fuel characteristics occurring under existing regulations do not affect the stringency of the current GHG and fuel economy standards or unnecessarily add to manufacturer testing burdens. We therefore anticipate no costs and therefore no regulatory burden associated with this proposed rule. Further, small entities are generally exempt from the light-duty vehicles greenhouse gas standards unless the small entity voluntarily opts into the program. See 40 CFR 86.1801–12(j). We have therefore concluded that this proposed action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

F. Executive Order 13132: Federalism

This proposed 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 proposed action does not have tribal implications as specified in Executive Order 13175. This rule only corrects and clarifies regulatory provisions that apply to light-duty vehicle manufacturers. Tribal governments would be affected only to the extent they purchase and use regulated vehicles. 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 proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because there are no environmental health or safety risks created by this action that could present a disproportionate risk to children. This proposed rule merely maintains existing regulatory provisions.

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

This proposed action is not subject to Executive Order 13211, because it is not economically significant as defined in Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action involves technical standards.

We are proposing to revise the test procedures as required for proper measurement of an ethanol-blended test fuel. Specifically, we propose to use the following voluntary consensus standards:

- The current regulation specifies ASTM D3338 for net heat of combustion (or net heating value). This method is appropriate for neat gasoline, but it is not valid for measuring net heat of combustion for gasoline blended with ethanol. We are instead specifying that manufacturers must use either ASTM D240 (January 2017) or ASTM D4809 (May 2013), each of which provides a technically appropriate measurement method for net heat of combustion with ethanol-blended gasoline.
- The current regulation specifies ASTM D3343 for carbon mass fraction of gasoline test fuel. This method is appropriate for neat gasoline, but it is not valid for determining carbon mass fraction for gasoline blended with ethanol. We are instead specifying that manufacturers use ASTM D5291 (May 2010), which provides a technically appropriate measurement method for carbon mass fraction with ethanol-blended gasoline. ASTM D5291 is already the method we specify for measuring criteria emissions in § 1065.655.
- The current regulation specifies ASTM D1298 (June 2012, reapproved in July 2017) as the method for measuring specific gravity. This method is no longer commonly used. As a result, we are proposing to specify ASTM D4052 as an upgraded procedure, consistent with industry practice.

If ASTM publishes new versions of these or other standards referenced in 40 CFR part 600 before the final rule is completed, we intend to reference those updated documents in the final rule.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This proposed regulatory action maintains the effect of a previously established regulatory action and as such does not have any impact on human health or the environment.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle

pollution, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

For the reasons set out in the preamble, we propose to amend title 40, chapter I of the Code of Federal Regulations as set forth below.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Amend § 86.1819–14 by revising paragraph (d)(4) to read as follows:

§ 86.1819–14 Greenhouse gas emission standards for heavy-duty vehicles.

* * * * *

(d) * * *

(4) Measure emissions using the procedures of subpart B of this part and 40 CFR part 1066. Determine separate emission results for the Federal Test Procedure (FTP) described in 40 CFR 1066.801(c)(1) and the Highway Fuel Economy Test (HFET) described in 40 CFR 1066.801(c)(3). Calculate composite emission results from these two test cycles for demonstrating compliance with the CO_2, N_2O, and CH_4 standards based on a weighted average of the FTP (55%) and HFET (45%) emission results. Note that this differs from the way the criteria pollutant standards apply. Test fuel requirements apply as described in 40 CFR 600.101(c). Multiply measured CO_2 emission results by 1.0166 for vehicles tested with E10 for demonstrating compliance with the fleet average CO_2 standard.

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PART 600—FUEL ECONOMY AND GREENHOUSE GAS EXHAUST EMISSIONS OF MOTOR VEHICLES

■ 3. The authority citation for part 600 continues to read as follows:

Authority: 49 U.S.C. 32901–23919q, Pub. L. 109–58.

■ 4. Amend § 600.011 by revising paragraphs (a) and (b) to read as follows:

§ 600.011 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a notice of the change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave. NW, Room B102, EPA West Building, Washington, DC 20460, (202) 202–1744, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* In addition, these materials are available from the sources listed below.

(b) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585, or *http://www.astm.org/.*

(1) ASTM D240–17, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, approved January 1, 2017, IBR approved for § 600.113–12(f).

(2) ASTM D975–13a, Standard Specification for Diesel Fuel Oils, approved December 1, 2013, IBR approved for § 600.107–08(b).

(3) ASTM D1298–12b (Reapproved 2017), Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, approved July 15, 2017, IBR approved for §§ 600.113–12(f) and 600.510–12(g).

(4) ASTM D1945–03 (Reapproved 2010), Standard Test Method for Analysis of Natural Gas By Gas Chromatography, approved January 1, 2010, IBR approved for § 600.113–12(f) and (k).

(5) ASTM D3338/D3338M–09 (Reapproved 2014), Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels, approved May 1, 2014, IBR approved for § 600.113–12(f).

(6) ASTM D3343–05 (Reapproved 2010), Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels, approved October 1, 2010, IBR approved for § 600.113–12(f).

(7) ASTM D4052–16, Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter, approved December 1, 2016, IBR approved for § 600.113–12(f).

(8) ASTM D4809–13, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), approved May 1, 2013, IBR approved for § 600.113–12(f).

* * * * *

■ 5. Add § 600.101 to subpart B to read as follows:

§ 600.101 Testing overview.

Perform testing under this part as described in § 600.111. This involves the following specific requirements:

(a) Perform the following tests and calculations for LDV, LDT, and MDPV:

(1) Testing to demonstrate compliance with Corporate Average Fuel Economy standards and greenhouse gas emission standards generally involves a combination of two cycles—the Federal Test Procedure and the Highway Fuel Economy Test (see 40 CFR 1066.801). Testing to determine values for fuel economy labeling under subpart D of this part generally involves testing with three additional test cycles; § 600.210 describes circumstances in which testing with these additional test cycles does not apply for labeling purposes.

(2) Diesel-fueled vehicles are not subject to cold temperature emission standards; however, you must test at least one vehicle in each test group over the cold temperature FTP to comply with requirements of this part. You may omit PM measurements during the cold temperature FTP test.

(3) Calculate fuel economy and CREE values for vehicle subconfigurations, configurations, base levels, model types as described in §§ 600.206 and 600.208. Calculate fleet-average values for fuel economy and CREE as described in § 600.510.

(4) Determine fuel economy values for labeling as described in § 600.210 using either the vehicle-specific 5-cycle method or the derived 5-cycle method as described in § 600.115.

(i) For vehicle-specific 5-cycle labels, the test vehicle (subconfiguration) data are adjusted to better represent in-use fuel economy and CO_2 emissions based on the vehicle-specific equations in § 600.114. Sections 600.207 and 600.209 describe how to use the ''adjusted'' city and highway subconfiguration values to calculate adjusted values for the vehicle configuration, base level, and the model type. These ''adjusted'' city, highway, and combined fuel economy estimates and the combined CO_2 emissions for the model type are shown on the fuel economy label.

(ii) For derived 5-cycle labels, calculate ''unadjusted'' fuel economy and CO_2 values for vehicle subconfigurations, configurations, base levels, and model types as described in §§ 600.206 and 600.208. Section 600.210 describes how to use the unadjusted model type values to calculate ''adjusted'' model type values for city, highway, and combined fuel economy and CO_2 emissions using the derived 5-cycle equations for the fuel economy label.

(b) Perform the following tests and calculations for chassis-tested HDV other than MDPV:

(1) Test vehicles as described in 40 CFR 86.1816 and 86.1819. Testing to demonstrate compliance with CO_2 emission standards generally involves a combination of two cycles for each test group—the Federal Test Procedure and the Highway Fuel Economy Test (see 40 CFR 1066.801). Fuel economy labeling requirements do not apply for heavy-duty vehicles (except MDPV).

(2) Determine fleet-average CO_2 emissions as described in 40 CFR 86.1819–14(d)(9).

(3) These CO_2 emission results are used to calculate corresponding fuel consumption values to demonstrate compliance with fleet average fuel consumption standards under 49 CFR part 535.

(c) Manufacturers must use E10 gasoline test fuel as specified in 40 CFR 1065.710(b) to demonstrate compliance with CO_2, CH_4, and N_2O emission standards and determine fuel economy values. This requirement starts in model year 2023 for all fuel economy and certification testing in test groups that do not use carryover data for criteria emission standards, and starting in model year 2025 for all other vehicles. Any vehicle that relies on E10 testing for fuel economy or any greenhouse gases must use the E10 testing results for all these values. For testing with California ARB's E10 gasoline test fuel (LEV III gasoline), all the provisions of this part apply as specified for EPA's E10 test fuel. The following interim provisions apply:

(1) Manufacturers may optionally use this E10 gasoline test fuel starting in model year 2021 for vehicles subject to standards under 40 CFR 86.1818, and starting in model year 2022 for vehicles subject to standards under 40 CFR 86.1819.

(2) Section 600.117 describes how to comply using E0 test fuel for greenhouse gas standards and fuel economy measurements, and using E10 test fuel for criteria emission standards.

■ 6. Amend § 600.113–12 by revising paragraphs (f)(1) and (o) and adding paragraph (p) to read as follows:

§ 600.113–12 Fuel economy, CO_2 emissions, and carbon-related exhaust emission calculations for FTP, HFET, US06, SC03 and cold temperature FTP tests.

* * * * *

(f) * * *

(1) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine fuel properties as follows for neat gasoline (E0) and for a low-level ethanol-gasoline blend (E10):

(i) *Specific gravity.* Determine specific gravity using ASTM D4052 (incorporated by reference in § 600.011). Note that ASTM D4052 refers to specific gravity as relative density.

(ii) *Carbon mass fraction.* (A) For E0, determine hydrogen mass percent using ASTM D3343 (incorporated by reference in § 600.011), then determine carbon mass fraction as CMF = 1 − 0.01 × hydrogen mass percent.

(B) For E10, determine carbon mass fraction using the following equation, rounded to three decimal places.

CMF_f = carbon mass fraction of test fule = $CMF_h \cdot (1 - MF_e) + CMF_e \cdot MF_e$.

Where:

MF_e = mass fraction ethanol in the test fuel =

$$\frac{VP_e}{100} \cdot \frac{SG_e}{SG_f}.$$

VP_e = volume percent ethanol in the test fuel as determined by ASTM D5599–00 or ASTM D4815–13 (incorporated by reference in § 600.011).

SG_e = specific gravity of pure ethanol. Use SG_e = 0.7939.

SG_f = specific gravity of the test fuel as determined by ASTM D1298–12b or ASTM D4052–11.

CMF_e = carbon mass fraction of pure ethanol. Use CMF_e = 0.5214.

CMF_h = carbon mass fraction of the hydrocarbon fraction of the test fuel as determined using ASTM D3343 (incorporated by reference in § 600.011) with the following inputs, using V_{Tier3} or V_{LEVIII} as appropriate:

A = aromatics content of the hydrocarbon fraction =

$$\frac{VP_{aro,f}}{1 - VF_e}.$$

G = API gravity of the hydrocarbon fraction =

$$\frac{141.5}{SG_h} - 131.5.$$

V_{Tier3} = average volatility of the Tier 3 hydrocarbon fraction =

$$\frac{T10 + T50 + T90}{3} + 14.8.$$

V_{LEVIII} = average volatility of the LEV III hydrocarbon fraction =

$$\frac{T10 + T50 + T90}{3} + 11.8.$$

Where:

$VP_{aro,f}$ = volume percent aromatics in the test fuel as determined by ASTM D1319–15 (incorporated by reference in § 600.011). An acceptable alternative method is ASTM D5769–10 (incorporated by reference in § 600.011), as long as the result is bias-corrected as described in ASTM D1319.

SG_h = specific gravity of the hydrocarbon fraction =

$$\frac{SG_f - SG_e \cdot VF_e}{1 - VF_e}.$$

T10, T50, T90 = the 10, 50, and 90 percent distillation temperatures of the test fuel, respectively, in degrees Fahrenheit, as determined by D86 (incorporated by reference in § 600.011).

(iii) *Net heat of combustion (MJ/kg).* (A) For E0, determine net heat of combustion using ASTM D3338/D3338M (incorporated by reference in § 600.011).

(B) For E10, determine net heat of combustion using the following equation, rounding the result to the nearest whole number:

NHC_f = net neat of combustion of test fule = NHGH $\cdot (1 - MF_e) + NHC_e \cdot MF_e$.

Where:

MF_e = mass fraction ethanol in the test fuel =

$$\frac{VP_e}{100} \cdot \frac{SG_e}{SG_f}.$$

VP_e = volume percent ethanol in the test fuel as determined by ASTM D5599–00 or ASTM D4815–13 (incorporated by reference in § 600.011).

SG_e = specific gravity of pure ethanol. Use SG_e = 0.7939.

SG_f = specific gravity of the test fuel as determined by ASTM D1298–12b or ASTM D4052–11 (incorporated by reference in § 600.011).

NHC_e = net heat of combustion of pure ethanol. Use NHC_e = 11,530 Btu/lb.

NHC_h = net heat of combustion of the hydrocarbon fraction of the test fuel as determined using ASTM D3338 (incorporated by reference in § 600.011) with the following inputs, using V_{Tier3} or V_{LEVIII} as appropriate:

A = aromatics content of the hydrocarbon fraction =

$$\frac{VP_{aro,f}}{1 - VF_e}.$$

G = API gravity of the hydrocarbon fraction =

$$\frac{141.5}{SG_h} - 131.5.$$

V_{Tier3} = average volatility of the Tier 3 hydrocarbon fraction =

$$\frac{T10 + T50 + T90}{3} + 14.8.$$

V_{LEVIII} = average volatility of the LEV III hydrocarbon fraction =

$$\frac{T10 + T50 + T90}{3} + 11.8.$$

Where:

$VP_{aro,f}$ = volume percent aromatics in the test fuel as determined by ASTM D1319–15 (incorporated by reference in § 600.011). An acceptable alternative method is ASTM D5769–10 (incorporated by reference in § 600.011), as long as the result is bias-corrected as described in ASTM D1319.

SG_h = specific gravity of the hydrocarbon fraction =

$$\frac{SG_f - SG_e \cdot VF_e}{1 - VF_e}.$$

$T10, T50, T90$ = the 10, 50, and 90 percent distillation temperatures of the test fuel, respectively, in degrees Fahrenheit, as determined by D86 (incorporated by reference in § 600.011).

* * * * *

(o)(1) For testing with E10, calculate fuel economy in miles per gallon using the following equation, rounded to the nearest 0.1 miles per gallon:

$$FE_{[\text{interval}]} = \frac{(CMF_{\text{testfuel}} \cdot SG_{\text{testfuel}}) \cdot (\rho_{\text{H2O}} \cdot SG_{\text{basefuel}} \cdot NHC_{\text{basefuel}})}{[(CMF_{\text{testfuel}} \cdot \text{NMOG}) + (0.749 \cdot \text{CH}_4) + (0.429 \cdot \text{CO}) + (0.273 \cdot \text{CO}_2)] \cdot \left[(R_a \cdot SG_{\text{testfuel}} \cdot NHC_{\text{testfuel}}) + \left(SG_{\text{basefuel}} \cdot NHC_{\text{basefuel}} \cdot (1 - R_a)\right)\right]}$$

Where:

CMF_{testfuel} = carbon mass fraction of the test fuel, expressed to three decimal places.

SG_{testfuel} = the specific gravity of the test fuel as obtained in paragraph (f)(1) of this section, expressed to three decimal places.

ρ_{H2O} = the density of pure water at 60 °F. Use ρ_{H2O} = 3781.69 g/gal.

SG_{basefuel} = the specific gravity of the 1975 base fuel. Use SG_{basefuel} = 0.7394.

NHC_{basefuel} = net heat of combustion of the 1975 base fuel. Use NHC_{basefuel} = 43.047 MJ/kg.

NMOG = NMOG emission rate over the test interval or duty cycle in grams/mile.

CH_4 = CH_4 emission rate over the test interval or duty cycle in grams/mile.

CO = CO emission rate over the test interval or duty cycle in grams/mile.

CO_2 = measured tailpipe CO_2 emission rate over the test interval or duty cycle in grams/mile.

R_a = sensitivity factor that represents the response of a typical vehicle's fuel economy to changes in fuel properties, such as volumetric energy content. Use R_a = 0.81.

NHC_{testfuel} = net heat of combustion by mass of test fuel as obtained in paragraph (f)(1) of this section, expressed to three decimal places.

(2) Use one of the following methods to calculate the carbon-related exhaust emissions for model year 2017 and later testing with the low-level ethanol-gasoline blend test fuel specified in 40 CFR 1065.710(b):

(i) For manufacturers not complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, calculate CREE in grams per mile using the following equation, rounded to the nearest whole gram per mile:

$$\text{CREE} = (\text{CMF}/0.273 \times \text{NMOG}) + (1.571 \times \text{CO}) + 1.0166 \times \text{CO}_2 + (0.749 \times \text{CH}_4)$$

Where:

CREE = carbon-related exhaust emissions.

NMOG = grams/mile NMOG as obtained in 40 CFR 1066.635.

CH_4 = grams/mile CH_4 as obtained in paragraph (g)(2) of this section.

CO = grams/mile CO as obtained in paragraph (g)(2) of this section.

CO_2 = measured tailpipe grams/mile CO_2 as obtained in paragraph (g)(2) of this section.

CMF = carbon mass fraction of test fuel as obtained in paragraph (f)(1) of this section and rounded according to paragraph (g)(3) of this section.

(ii) For manufacturers complying with the fleet averaging option for N_2O and CH_4 as allowed under § 86.1818 of this chapter, calculate CREE in grams per mile using the following equation, rounded to the nearest whole gram per mile:

$$\text{CREE} = [(\text{CMF}/0.273) \times \text{NMOG}] + (1.571 \times \text{CO}) + 1.0166 \times \text{CO}_2 + (298 \times \text{N}_2\text{O}) + (25 \times \text{CH}_4)$$

Where:

CREE means the carbon-related exhaust emissions as defined in § 600.002.

NMOG = Grams/mile NMOG as obtained in 40 CFR 1066.635.

CO = Grams/mile CO as obtained in paragraph (g)(2) of this section.

CO_2 = Measured tailpipe grams/mile CO_2 as obtained in paragraph (g)(2) of this section.

N_2O = Grams/mile N_2O as obtained in paragraph (g)(2) of this section.

CH_4 = Grams/mile CH_4 as obtained in paragraph (g)(2) of this section.

CMF = Carbon mass fraction of test fuel as obtained in paragraph (f)(1) of this section and rounded according to paragraph (g)(3) of this section.

(p) Equations for fuels other than those specified in this section may be used with advance EPA approval. Alternate calculation methods for fuel economy and carbon-related exhaust emissions may be used in lieu of the methods described in this section if shown to yield equivalent or superior results and if approved in advance by the Administrator.

■ 7. Amend § 600.114–12 by revising paragraphs (d)(2), (e)(3), (f)(1), (2), and (4) to read as follows:

§ 600.114–12 Vehicle-specific 5-cycle fuel economy and carbon-related exhaust emission calculations.

* * * * *

(d) * * *

(2) To determine the City CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in this paragraph (d). For fuel economy labels generated from E10 test data, use ''A166 CO_2'' input values to the equations in paragraph (d)(1) of this section (instead of CREE input values), where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

(e) * * *

(3) To determine the Highway CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in this paragraph (e). For fuel economy labels generated from E10 test data, use ''A166 CO_2'' input values to the equations in paragraphs (e)(1) and (2) of this section (instead of CREE input values), where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

(f) * * *

(1) *Four-bag FTP equations.* If the 4-bag sampling method is used, manufacturers may use the equations in paragraphs (a) and (b) of this section to determine city and highway CO_2 and carbon-related exhaust emissions values. For fuel economy labels generated from E10 test data, use ''A166 CO_2'' input values to the equation in paragraph (f)(1) of this section (instead of CREE input values), where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the

test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile. If this method is chosen, it must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions. Optionally, the following calculations may be used, provided that they are used to determine both city and highway CO_2 and carbon-related exhaust emissions values:

* * * * *

(2) *Two-bag FTP equations.* If the 2-bag sampling method is used for the 75 °F FTP test, it must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions. For fuel economy labels generated from E10 test data, use ''A166 CO_2'' input values to the equation in paragraph (f)(2) of this section (instead of CREE input values), where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile. The following calculations must be used to determine both city and highway CO_2 emissions and carbon-related exhaust emissions:

* * * * *

(4) To determine the City and Highway CO_2 emissions, use the appropriate CO_2 grams/mile values instead of CREE values in the equations in paragraphs (f)(1) through (3) of this section. For fuel economy labels generated from E10 test data, use ''A166 CO_2'' input values to the equations in paragraphs (f)(1) through (3) of this section (instead of CREE input values), where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

■ 8. Revise § 600.117 to read as follows:

§ 600.117 Interim provisions.

The following provisions apply if manufacturers demonstrate compliance with greenhouse gas emission standards and determine fuel economy values using E0 gasoline test fuel as specified in 40 CFR 86.113–04(a)(1):

(a) [Reserved]

(b) Manufacturers may demonstrate that vehicles comply with Tier 3 emission standards as specified in 40 CFR part 86, subpart S, during fuel economy or greenhouse gas measurements using the E0 gasoline test fuel specified in 40 CFR 86.113–04(a)(1), as long as this test fuel is used in fuel economy or greenhouse gas testing for all applicable duty cycles specified in 40 CFR part 86, subpart S. If a vehicle fails to meet a Tier 3 emission standard using the E0 gasoline test fuel specified in 40 CFR 86.113–04(a)(1), the manufacturer must retest the vehicle using the Tier 3 test fuel specified in 40 CFR 1065.710(b) (or the equivalent LEV III test fuel for California) to demonstrate compliance with all applicable emission standards over that test cycle.

(c) If a manufacturer demonstrates compliance with emission standards for criteria pollutants over all five test cycles using the Tier 3 test fuel specified in 40 CFR 1065.710(b) (or the equivalent LEV III test fuel for California), the manufacturer may use test data with the same test fuel to determine whether a test group meets the criteria described in § 600.115 for derived 5-cycle testing for fuel economy labeling. Such vehicles may be tested over the FTP and HFET cycles with the E0 gasoline test fuel specified in 40 CFR 86.113–04(a)(1) under this paragraph (c); the vehicles must meet the Tier 3 emission standards over those test cycles as described in paragraph (b) of this section. This paragraph (c) applies only for LDV, LDT, and MDPV.

(d) Manufacturers may perform testing with the appropriate gasoline test fuels specified in 40 CFR 86.113–04(a)(1), 40 CFR 86.213(a)(2), and in 40 CFR 1065.710(b) to evaluate whether their vehicles meet the criteria for derived 5-cycle testing under 40 CFR 600.115. All five tests must use test fuel with the same nominal ethanol concentration. This paragraph (d) applies only for LDV, LDT, and MDPV.

(e) For IUVP testing under § 86.1845, manufacturers may demonstrate compliance with greenhouse gas emission standards using a test fuel meeting specifications for demonstrating compliance with emission standards for criteria pollutants.

■ 9. Amend § 600.206–12 by revising paragraphs (a)(1), (2)(ii) and (iii) to read as follows:

§ 600.206–12 Calculation and use of FTP-based and HFET-based fuel economy, CO_2 emissions, and carbon-related exhaust emission values for vehicle configurations.

(a) * * *

(1) If only one set of FTP-based city and HFET-based highway fuel economy values is accepted for a subconfiguration at which a vehicle configuration was tested, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that subconfiguration. If only one set of FTP-based city and HFET-based highway CO_2 emissions and carbon-related exhaust emission values is accepted for a subconfiguration at which a vehicle configuration was tested, these values, rounded to the nearest gram per mile, comprise the city and highway CO_2 emissions and carbon-related exhaust emission values for that subconfiguration. When calculating CO_2 values for fuel economy labels generated from E10 test data, the FTP-based city and HFET-based highway CO_2 emissions for a test vehicle (and for the subconfiguration), shall be the ''A166 CO_2'' emission values for that test vehicle, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

(2) If more than one set of FTP-based city and HFET-based highway fuel economy and/or carbon-related exhaust emission values are accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.208–12(a)(3).

(ii) Within each group of data, all fuel economy values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon and all CO_2 emissions and carbon-related exhaust emission values are arithmetically averaged and rounded to the nearest tenth of a gram per mile in order to determine FTP-based city and HFET-based highway fuel economy, CO_2 emissions, and carbon-related exhaust emission values for each subconfiguration at which the vehicle configuration was tested. When calculating CO_2 values for fuel economy labels generated from E10 test data, the FTP-based city and HFET-based highway CO_2 emissions for a test vehicle shall be the ''A166 CO_2'' emission values for that test vehicle, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

(iii) All FTP-based city fuel economy, CO_2 emissions, and carbon-related exhaust emission values and all HFET-based highway fuel economy and carbon-related exhaust emission values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. Fuel economy values shall be harmonically averaged, and CO_2 emissions and carbon-related exhaust

emission values shall be arithmetically averaged. The resultant fuel economy values, rounded to the nearest 0.0001 mile per gallon, are the FTP-based city and HFET-based highway fuel economy values for the vehicle configuration. The resultant CO_2 emissions and carbon-related exhaust emission values, rounded to the nearest tenth of a gram per mile, are the FTP-based city and HFET-based highway CO_2 emissions and carbon-related exhaust emission values for the vehicle configuration. Note that for fuel economy labels generated from E10 test data, the vehicle subconfiguration CO_2 values calculated in paragraph (a)(1) or (a)(2)(ii) of this section as applicable (which are used to calculate the configuration CO_2 values in this paragraph (a)(2)(iii)) are required to be ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

■ 10. Amend § 600.207–12 by revising the section heading and paragraphs (a)(1) and (2)(ii) to read as follows:

§ 600.207–12 Calculation and use of vehicle-specific 5-cycle-based fuel economy and CO_2 emission values for vehicle configurations.

(a) * * *

(1) If only one set of 5-cycle city and highway fuel economy and CO_2 emission values is accepted for a vehicle configuration, these values, where fuel economy is rounded to the nearest 0.0001 of a mile per gallon and the CO_2 emission value in grams per mile is rounded to the nearest tenth of a gram per mile, comprise the city and highway fuel economy and CO_2 emission values for that configuration. Note that for fuel economy labels generated from E10 test data, the vehicle specific 5-cycle based CO_2 values calculated in paragraph § 600.114–12 are based on ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

(2) * * *

(ii) Within each subconfiguration of data, all fuel economy values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine 5-cycle city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested, and all CO_2 emissions values are arithmetically averaged and rounded to the nearest tenth of gram per mile to determine 5-cycle city and highway CO_2 emission values for each subconfiguration at which the vehicle configuration was tested. Note that for fuel economy labels generated from E10 test data, the vehicle specific 5-cycle based CO_2 values calculated in § 600.114–12 are based on ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

■ 11. Amend § 600.208–12 by revising paragraphs (a)(4)(i) and (4)(ii) and adding a new paragraph (b)(3)(iii)(C) to read as follows:

§ 600.208–12 Calculation of FTP-based and HFET-based fuel economy, CO_2 emissions, and carbon-related exhaust emissions for a model type.

(a) * * *

(4) Vehicle configuration fuel economy, CO_2 emissions, and carbon-related exhaust emissions, as determined in § 600.206–12(a), (b) or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy, CO_2 emissions, and carbon-related exhaust emissions from that vehicle configuration will constitute the fuel economy, CO_2 emissions, and carbon-related exhaust emissions for that base level. Note that for fuel economy labels generated from E10 test data, the vehicle configuration CO_2 values calculated in § 600.206–12(a)(2)(iii) (which are used to calculate the base level CO_2 values in this paragraph (a)(4)(i)) are required to be ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon; and the vehicle configuration CO_2 emissions and carbon-related exhaust emissions are arithmetically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant carbon-related exhaust emission value rounded to the nearest tenth of a gram per mile. Note that for fuel economy labels generated from E10 test data, the vehicle configuration CO_2 values calculated in § 600.206–12(a)(2)(iii) (which are used to calculate the base level CO_2 values in this paragraph (a)(4)(i)) are required to be ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) Note that for fuel economy labels generated from E10 test data, the base level CO_2 values determined in paragraphs (a)(4)(i) and (4)(ii) of this section, as applicable, (which are used to calculate the model type FTP-based city CO_2 values in this paragraph (b)(3)(iii)) are required to be ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

■ 12. Amend § 600.209–12 by revising paragraphs (a) and (b) to read as follows:

§ 600.209–12 Calculation of vehicle-specific 5-cycle fuel economy and CO_2 emission values for a model type.

(a) *Base level.* 5-cycle fuel economy and CO_2 emission values for a base level are calculated from vehicle configuration 5-cycle fuel economy and CO_2 emission values as determined in § 600.207 for low-altitude tests. Note that for fuel economy labels generated from E10 test data, the vehicle specific 5-cycle based CO_2 values calculated in § 600.114–12 are based on ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

(b) *Model type.* For each model type, as determined by the Administrator, city and highway fuel economy and CO_2 emissions values will be calculated by using the projected sales and fuel economy and CO_2 emission values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy and CO_2 emission values as determined in § 600.207, as applicable. Note that for fuel economy labels generated from E10 test data, the vehicle specific 5-cycle based CO_2 values calculated in § 600.114–12 are based on ''A166 CO_2'' values, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166 and rounded to the nearest 0.1 grams/mile.

* * * * *

■ 13. Amend § 600.210–12 by revising paragraphs (a)(2)(i)(B), ((ii)(B), (b)(2)(i)(B), and (ii)(B) to read as follows:

§ 600.210–12 Calculation of fuel economy and CO_2 emission values for labeling.

(a) * * *

(2) * * *

(i) * * * (B) For each model type, determine the derived five-cycle city CO_2 emissions using the following equation and coefficients determined by the Administrator:

Derived 5 − cycle City CO_2 = ({City Intercept} × A) + ({City Slope} × MT FTP CO_2)

Where:

A = 8,887 for gasoline-fueled vehicles, 10,180 for diesel-fueled vehicles, or an appropriate value specified by the Administrator for other fuels.

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

MT FTP CO_2 = the model type FTP-based city CO_2 emissions determined under § 600.208–12(b), rounded to the nearest 0.1 grams per mile. Note that for fuel economy labels generated from E10 test data, the MT FTP CO_2 input value is required to be ''A166 CO_2'' values for the model type, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166, rounded to the nearest 0.1 grams per mile, as obtained in § 600.208–12(b)(3)(iii).

* * * * *

(ii) * * *

(B) For each model type, determine the derived five-cycle highway CO_2 emissions using the equation below and coefficients determined by the Administrator:

Derived 5-cycle Highway CO_2 = ({Highway Intercept} × A) + ({Highway Slope} × MT HFET CO_2)

Where:

A = 8,887 for gasoline-fueled vehicles, 10,180 for diesel-fueled vehicles, or an appropriate value specified by the Administrator for other fuels.

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

MT HFET CO_2 = the model type highway CO_2 emissions determined under § 600.208–12(b), rounded to the nearest 0.1 grams per mile. Note that for fuel economy labels generated from E10 test data, the MT HFET CO_2 input value is required to be ''A166 CO_2'' values for the model type, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166, rounded to the nearest 0.1 grams per mile, as obtained in § 600.208–12(b)(3)(iii) and § 600.208–12(b)(4).

* * * * *

(b) * * *

(2) * * *

(i) * * * (B) Determine the derived five-cycle city CO_2 emissions of the configuration using the equation below and coefficients determined by the Administrator:

Derived 5-cycle City CO_2 = {City Intercept} + {City Slope} × Config FTP CO_2

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

Config FTP CO_2 = the configuration FTP-based city CO_2 emissions determined under § 600.206, rounded to the nearest 0.1 grams per mile. Note that for specific labels generated from E10 test data, the Config FTP CO_2 input value is required to be ''A166 CO_2'' values for the configuration, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166, rounded to the nearest 0.1 grams per mile, as obtained in § 600.206–12(a)(2)(iii).

* * * * *

(ii) * * * (B) Determine the derived five-cycle highway CO_2 emissions of the configuration using the equation below and coefficients determined by the Administrator:

Derived 5-cycle city Highway CO_2 = {Highway Intercept} + {Highway Slope} × Config HFET CO_2

Where:

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Config HFET CO_2 = the configuration highway fuel economy determined under § 600.206, rounded to the nearest tenth. Note that for specific labels generated from E10 test data, the Config HFET CO_2 input value is required to be ''A166 CO_2'' values for the configuration, where ''A166 CO_2'' emissions are equal to the measured tailpipe CO_2 emissions for the test cycle multiplied by a factor of 1.0166, rounded to the nearest 0.1 grams per mile, as obtained in § 600.206–12(a)(2)(iii).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–74, GN Docket No. 16–142; FCC 20–43; FRS 16707]

Rules Governing the Use of Distributed Transmission System Technologies, Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to modify the Commission's rules governing the use of distributed transmission system (DTS) technologies by broadcast television stations. Specifically, the Commission seek comment on amending section 73.626 of its rules to permit, within certain limits, DTS signals to spill over beyond a station's authorized service area by more than the ''minimal amount'' currently allowed; how DTS signals extending beyond their current service areas should be treated for interference purposes if such spillover is allowed; potential impacts to other spectrum users, such as TV translators and LPTV stations, including whether there are alternatives to the proposed rule changes that could accomplish the intended objectives; whether to modify the DTS rules as they relate to Class A and LPTV licensees; and whether and to what extent the proposed changes are also appropriate for stations broadcasting in ATSC 1.0.

DATES: *Comments Due:* June 12, 2020. *Replies Due:* July 13, 2020.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–74 and GN Docket No. 16–142, by any of the following methods:

- Federal Communications Commission's website: *http://apps.fcc.gov/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ty Bream, Industry Analysis Division,

Media Bureau, *Ty.Bream@fcc.gov,* (202) 418–0644.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in MB Docket No. 20–74 and GN Docket No. 16–142, FCC 20–43, adopted on March 31, 2020 and released on April 1, 2020. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/FCC-20-43A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.) and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to *fcc504@fcc.gov* or calling the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on changes to the Commission's rules governing the use of a distributed transmission system (DTS), or single frequency network (SFN), by a broadcast television station. Consistent with the joint petition for rulemaking (Petition) submitted by America's Public Television Stations (APTS) and the National Association of Broadcasters (NAB) (collectively, Petitioners), by this NPRM we seek input regarding technical changes to the DTS rules that could enable the broadcast television industry to expand DTS use as it deploys the next generation broadcast television standard (ATSC 3.0). The Commission's current rules regarding DTS use were first adopted more than a decade ago in advance of the digital television (DTV) transition, which was completed for full-power television stations in 2009. Petitioners contend that, while certain characteristics associated with ATSC 3.0 make the use of DTS more efficient and more economical in conjunction with that standard, the Commission's current rules inhibit expanded DTS deployments, particularly near the edge of a station's coverage area. Accordingly, Petitioners ask that we amend our rules to permit, within certain limits, DTS signals to spill over beyond a station's authorized service area by more than the ''minimal amount'' currently allowed by our rules. We seek comment below on whether and, if so, how to modify our DTS rules to ensure that broadcasters planning to deploy ATSC 3.0 are able to use DTS effectively while at the same time minimizing potential impacts on other spectrum users. To that end, we seek comment on amending our rules consistent with the changes proposed in the Petition. As Petitioners note, the Commission has recognized numerous potential benefits of DTS technology, including the ability to serve hard-to-reach viewers, improved indoor and mobile reception, and the more efficient use of TV spectrum.

2. With this NPRM, we seek to facilitate the use of new and innovative technologies by broadcasters. In particular, as the Commission has recognized, the voluntary transition to ATSC 3.0 could enable broadcasters to offer enhanced over-the-air programming, wireless broadcasts and emergency alerts, and advanced data services supported by broadband connectivity. ATSC 3.0 proponents have claimed that this transmission standard has the potential to revolutionize the viewing experience for consumers by providing them more immersive content through new, IP-based consumer applications. DTS technology used in conjunction with ATSC 3.0 technology thereby has the potential to promote enhanced service offerings to broadcast television viewers, public safety organizations, and consumers of next generation services. Accordingly, with this proceeding, we seek to address technical issues that may impede the adoption of DTS technology.

Background.

3. Traditionally, a broadcast television station transmits its signal from a single elevated transmission site central to the service area, resulting in a stronger signal available near the transmitter and a weaker signal as the distance from the transmitter increases. Non-uniform terrain or morphological features can also weaken signals, regardless of distance from the transmitter. One way for a station to augment its signal strength is to provide fill-in service using one or more separately licensed secondary transmission sites that operate on a different radiofrequency (RF) channel than the main facility, *i.e.,* a television translator. By contrast, a distributed transmission system employs two or more transmission sites located around a station's service area, each using the same RF channel and synchronized to manage self-interference. DTS therefore offers an alternative to traditional full-power television transmission and the use of secondary translators on additional frequencies.

4. More than a decade ago, the Commission first recognized the potential uses and benefits of DTS technologies when the transition from analog to digital broadcasting brought with it the ability to transmit multiple television signals on the same channel without causing harmful interference, thus making DTS feasible for television for the first time. In November 2008, the Commission adopted a Report and Order establishing rules for the use of DTS in the DTV service. In the *2008 DTS Order,* the Commission noted that DTS could allow stations to reach more viewers in their coverage areas, distributes more uniform and higher-level signals near the edges of stations' coverage areas, improves indoor reception and reception on mobile devices, offers an alternative to stations limited by tower height and placement restrictions, increases spectrum efficiency by allowing networks to use the same channel for all operations, enhances the ability of broadcasters to compete with multichannel video programming distributors, and allows broadcasters to continue to reach viewers that lost service as a result of the digital transition.

5. Specifically, in the *2008 DTS Order,* the Commission adopted rules permitting a full-power DTV station to transmit using multiple lower power transmitter sites operating on the same frequency. In crafting these rules, the Commission defined a DTS station's maximum authorized service area to be an area ''comparable to that which the DTV station could be authorized to serve with a single transmitter.'' This was referred to as the ''Comparable Area Approach.'' To define the boundaries of this comparable service area (*i.e.,* a DTS station's maximum service area), the Commission established a ''Table of Distances,'' which it derived from the hypothetical maximum service area that a DTV station would be allowed to apply for under the Commission's rules. The maximum service area defined by the Table of Distances is centered around the station's reference facility. Among other things, the Commission's rules require that each DTS transmitter must be located within either the reference station's Table of Distances area or its authorized service area. In addition, each DTS transmitter's coverage (*i.e.,* its noise-limited service contour (NLSC)) must be contained within either the station's Table of Distances area or its authorized service area, except where such extension of coverage beyond the station's authorized service area is of a ''minimal amount'' and necessary to ensure that

the combined coverage from all of its DTS transmitters covers all of the station's authorized service area. The Commission affords primary regulatory status to DTS transmitters within the areas they are authorized to serve. Finally, the rules allow licensees of multiple digital Class A, low power television (LPTV), and/or television translator stations to operate through interconnected single frequency DTS networks, *i.e.,* to operate a network of stations co-channel using their multiple licenses.

6. In November 2017, the Commission adopted a Report and Order authorizing broadcast television stations to use the ATSC 3.0 transmission standard on a voluntary, market-driven basis while they continue to deliver current-generation DTV broadcast service to their viewers using the ATSC 1.0 standard (*Next Gen TV Order*). In the *Next Gen TV Order,* the Commission concluded that the existing rules authorizing DTS stations generally were adequate to authorize the operation of an ATSC 3.0 SFN and that the record did not support changes to the authorized service areas for DTS stations at that time. The Commission further stated that it would monitor the deployment of ATSC 3.0 in the marketplace and consider changes to the DTS rules in the future, if appropriate. The Commission also noted that a station interested in pursuing a change to its DTS service area may file for a waiver of the DTS rules pursuant to the Commission's general waiver standard.

7. On October 3, 2019, Petitioners filed a joint petition for rulemaking seeking to amend section 73.626 of the Commission's rules relating to DTS. Petitioners assert that broadcasters planning ATSC 3.0 deployments are interested in exploring the advanced capabilities of ATSC 3.0 to facilitate the use of DTS. The Petition asks the Commission to ''amend its methodology for determining DTS service limits while preserving the current interference requirements.'' Petitioners contend that the DTS rules, which currently allow DTS signals to spill over by only a ''minimal amount'' beyond a station's authorized service area, ''limit broadcasters' ability to deploy additional [DTS] transmitters near the edge of a station's coverage area, hampering the deployment of [DTS] networks.'' Petitioners do not seek to place DTS transmitters beyond a station's authorized service area. Rather, Petitioners ask the Commission to change the DTS rules to permit stations more flexibility in the placement of their DTS transmitters, particularly near the edge of a station's coverage area. Specifically, Petitioners propose that the placement of DTS transmitters would be limited by what Petitioners refer to as the DTS transmitter's ''interference contour,'' which could not exceed that of the reference facility. Petitioners assert that their requested rule changes would allow them to ''unlock'' the ''numerous'' benefits of DTS operations beyond what the current DTS rules enable, such as further improving service throughout a station's coverage area, improving mobile reception, and allowing more efficient use of broadcast spectrum by reducing the need for television translators using separate channels.

8. On October 11, 2019, the Media Bureau issued a public notice seeking comment on the Petition and setting comment and reply comment deadlines of November 12, 2019 and November 27, 2019, respectively (Public Notice). Thirteen parties filed comments in response to the Public Notice. Seven parties filed reply comments, including Petitioners.

9. The majority of commenters support the Petition, although some with reservations. For example, ARK Multicasting (ARK) and the LPTV Spectrum Rights Coalition (LPTV Coalition) state that they support the Petition provided that LPTV stations and TV translators are protected from displacement. National Public Radio (NPR) urges the Commission to address the risk of interference posed by DTV Channel 6 (DTV6) stations in spectrum adjacent to reserved band noncommercial educational (NCE) FM stations. Two commenters—The National Translator Association (NTA) and Microsoft Corporation (Microsoft), the latter a supporter of white space device operations—oppose the Petition. NTA states that the Petition is ''premature'' and that the issues put forth by the Petition should be considered in three to five years ''once the penetration of home reception and broadcast station transmissions are both far enough along for the affected [parties] to understand many of the strengths and weaknesses in this ambitious upgrade and replacement program.'' Microsoft asserts that the ''rule changes proposed in the [P]etition . . . appear to go well beyond what is needed to fill coverage gaps within broadcasters' service areas'' and that Petitioners have not made a persuasive showing that the flexibility in the existing rules as to *de minimis* spillover is insufficient. Microsoft further states that any rule changes should be closely tailored to the need to fill coverage gaps, and not extend service beyond a station's service contour.

10. In their reply, Petitioners state that their proposals would not expand the area within which a DTS transmitter can be located, would not enlarge the area within which a DTV station is protected from interference, and would not permit a DTV station to increase its antenna height or effective radiated power beyond what is currently allowed. Petitioners also assert that their proposals are tailored to minimize impact on LPTV and television translator stations and that adopting their proposed rule changes would ''provide the enhanced spectrum efficiency Microsoft seeks.'' Together with their reply, Petitioners filed a brief technical study analyzing the impact of their proposed rule changes on LPTV stations (Petitioners' Study). While Petitioners do not seek interference protection for any spillover stemming from their proposed rule changes, they acknowledge, based on the submitted Petitioners' Study, that impacts to LPTV or translator stations from such spillover are ''unavoidable.'' Nonetheless, Petitioners contend that the Commission should not consider elevating the rights of secondary services as part of this proceeding. Although Petitioners' Study does not address white space devices, Petitioners respond to Microsoft's concerns with assurances that they do not propose that DTS transmitters could be located outside a station's service area, that broadcasters could enlarge the area within which a DTV station is protected from interference, or that DTS transmitters could cause interference to other broadcast stations above currently permitted levels.

Discussion

11. We seek comment below on changing our DTS rules consistent with the proposals set forth in the Petition. Specifically, we seek comment on whether any change to our DTS rules is necessary or appropriate at this time, and if so, whether to adopt the proposals or whether there are alternatives we should consider. In doing so, we seek comment on whether to permit more than a ''minimal amount'' of DTS spillover beyond a station's authorized service area, how we should treat DTS signals beyond their current service areas if such spillover is allowed, and, finally, the use of DTS by Class A and LPTV licensees. We also seek comment on whether and to what extent the following or other changes are appropriate for ATSC 3.0, ATSC 1.0, or both.

12. We seek comment on whether to change our rules to replace the current

standard, which limits spillover beyond a reference station's authorized service area to a ''minimal amount,'' with a less restrictive standard.

13. In particular, we seek comment on Petitioners' claim that such a rule change is needed now as the industry embarks on ATSC 3.0 deployment. Petitioners maintain that DTS is now both technically and economically feasible with ATSC 3.0 in ways that it has never been with ATSC 1.0. They contend, however, that the current rules inhibit efficient and economical deployment of additional transmitters near the edges of a station's coverage area. We seek comment on Petitioners' claims. We also seek comment on the opposing argument that it is premature to change the DTS rules now and that the Commission should allow the ATSC 3.0 marketplace to develop further before considering changes. What impact, if any, will deferring DTS rule changes have on the development of the ATSC 3.0 marketplace? If the rules should be changed, we seek comment on the appropriate time to take such action.

14. In addition to limiting spillover, our rules currently require that each DTS transmitter be located within either a station's Table of Distances area or its authorized service area. Petitioners and commenters addressing the issue of transmitter location agree that we should maintain this requirement. We tentatively conclude not to modify this requirement but welcome comment on this issue.

15. Petitioners argue that the current DTS rules undercut a key benefit of DTS—facilitating service to hard-to-reach viewers. We seek comment on whether, and if so how, revising our rules consistent with the proposals in the Petition would benefit viewers. How many more viewers likely would be reached if we changed our rules? Are there additional services that could be provided to broadcast television viewers and other consumers in local markets? Would there be offsetting adverse effects for viewers, and if so, how should we balance those trade-offs with potential benefits to viewers? How, if at all, would facilitating the deployment of DTS impact the viability of non-broadcast service offerings, such as advanced data services? What would be the costs and benefits to the local market generally?

16. If we were to revise our rules consistent with the proposals in the Petition, DTS spillover would be permitted outside the boundaries of a station's service area to the extent additional coverage is necessary either to ''achieve a practical design'' or, as articulated in the current rule, to ensure that ''combined coverage from all of the DTS transmitters covers all of the applicant's authorized service area.'' In place of the current rule's ''minimal amount'' limitation, the extent of spillover permitted would be subject instead to the limitation that (for UHF stations) the DTS transmitter's 36 dBu F(50, 10) ''interference'' contour not exceed the reference facility's 36 dBu F(50, 10) contour. Petitioners claim that using this value would reduce interference with co-channel Class A and LPTV operations, yet, at the same time, they acknowledge that there may be instances where disruption to LPTV stations would be ''unavoidable.'' We seek comment on the most likely impact of this approach. Additionally, consistent with the proposals in the Petition, we tentatively conclude that the area within which a station may locate a DTS transmitter would not expand as a result of this rule change, nor would the station's authorized antenna height or authorized effective radiated power increase beyond what is currently allowed for the station. We seek comment on these tentative conclusions.

17. In addition, we seek comment on whether to eliminate the current standard that limits spillover to a ''minimal amount'' necessary to ensure full coverage of the applicant's service area, and to replace it with a standard based on whether spillover is ''necessary to achieve a practical design.'' Petitioners contend that the Commission's policy of allowing only a ''*de minimis* extension of a station's coverage area on a case-by-case basis'' is insufficient to facilitate deployment of DTS transmitters near the edges of a station's coverage area. We seek comment on claims that the current minimal spillover allowance and the ability to seek a waiver are inadequate to fulfill the promise of DTS and facilitate deployment. Is ''necessary to achieve a practical design'' an appropriate standard? What would be its effect? If we adopt it, how should we define ''necessary'' for purposes of applying this standard? Moreover, how would the Commission appropriately determine what constitutes a ''practical design,'' and how difficult would it be to administer such a standard? Are there specific factors (*e.g.,* related to logistical issues, speed of deployment, or cost) that we should consider in determining whether a proposed DTS deployment is, in fact, ''necessary to achieve a practical design?'' Should we require applicants seeking to satisfy this standard to demonstrate that alternatives would be prohibitively costly and/or substantially less beneficial than the applicant's purportedly ''necessary'' design? Are there other standards that we should consider? For instance, should we replace the ''minimal amount'' standard with a more specific quantitative standard, and if so, what should that standard be?

18. We also seek comment on whether to adopt a 36 dBu F(50, 10) ''interference'' contour as the limiting contour for permissible spillover. Is this proposal reasonable and appropriate? Are Petitioners accurate in asserting that adoption of this contour would reduce interference with co-channel Class A and LPTV operations? For instance, should the Petitioners' proposal be modified in view of the fact that the DTV co-channel interference desired-to-undesired ratio varies between 15 and 23 dB, depending on the signal strength of the desired station? Is there another contour that could or should be used instead? Should we consider changing the ''minimal amount'' standard without also adopting the proposed interference contour (or with some different limiting contour)? To what extent could we expect other services, including Class A and LPTV stations, to be operating in the spillover area permitted if we revise our rules consistent with the proposals in the Petition?

19. In addition, we seek comment on issues related to implementation of any changes to the DTS rules. For example, are there changes to the Commission's DTS licensing process that should be considered so as to facilitate the deployment of DTS sites shared by multiple licensees? What would be the implications of any such changes, for instance, in terms of the need to make changes to Commission forms or licensing systems? Are there any other issues that could arise given substantive differences between or among multiple licensees? In addition, should we impose power restrictions on DTS transmitters to ensure they are used only to fill coverage gaps? If so, should we establish a blanket power restriction, or should we tailor power restrictions to the specific circumstances of each case? What should those power restrictions be, if any? Should we require applicants to certify that their objective is to fill coverage gaps and not to extend service? Should the Commission consider the potential for either self-interference or coverage improvements realized from enhanced signals due to operation of co-channel DTS transmitters within stations' NLSCs? Are there any other technical complexities or effects on any of our other rules that we should

consider? What other implementation issues, if any, should we address?

20. We also seek comment on the implications of changing our DTS rules in light of the original purposes and justifications for those rules. As noted above, revising our rules consistent with the proposals in the Petition would permit DTS signals to reach beyond what the Commission authorized in the *2008 DTS Order.* In that proceeding, the Commission determined that a DTS station's maximum authorized service area should be comparable to that which the DTV station could be authorized to serve with a single transmitter (the Comparable Area Approach). It prohibited DTS stations from operating on either a primary or secondary basis beyond that limit. In particular, the Commission rejected requests to adopt an Expanded Area Approach allowing DTS stations to reach an area wider than achievable with a traditional single-transmitter station and specifically to the boundaries of their DMAs. The Commission was also concerned that an Expanded Area Approach ''would subvert [its] current licensing rules by allowing a station to obtain the rights to serve a new community where a new station, including a low-power station, might otherwise be licensed'' and would be inconsistent with the statutory requirement to assign new licenses through a competitive bidding process, as appropriate. In addition, the Commission concluded that ''[a]n Expanded Area Approach is not necessary to implement DTS service or obtain its core benefits.''

21. We seek comment on the continuing relevance of these or other conclusions that led the Commission to adopt a Comparable Area Approach in the *2008 DTS Order* and to retain that approach—at least tentatively—in the *Next Gen TV Order.* Do such conclusions remain current and sound? For example, would the proposal enable broadcasters to serve additional areas without going through a competitive bidding process? Would that result be an appropriate exercise of our spectrum management authority under the Communications Act? Would revising our rules consistent with the proposals in the Petition effectively amount to adopting the previously rejected Expanded Area Approach? Are the reasons for rejecting the Expanded Area Approach still valid given marketplace developments over the past 12 years?

22. We also seek comment on the potential impact of the proposed rule changes on the Commission's policy goal of promoting localism. Nexstar asserts that the proposed rule changes would promote localism by enabling more viewers within a service area to access the local news and informational programming of an ATSC 3.0 broadcaster. Further, several other broadcaster commenters contend that maximizing broadcasters' ability to utilize DTS would promote localism because the geo-targeted programming capabilities of ATSC 3.0 will allow broadcasters to tailor programming, including news, weather, and emergency alerts, to specific communities. We seek comment on these issues.

23. How should we evaluate these claims in light of the fact that the Commission previously rejected an Expanded Area Approach, in part because it felt that permitting broadcasters to reach viewers beyond their authorized service areas could distract them from the primary responsibility of providing programming responsive to the needs and interests of their community of license? At that time, the Commission cautioned that ''DTS must not be used to undermine localism and that a DTS service area should not shift a station's primary focus from its community of license.'' The Commission also expressed concern that allowing DTS signals to spill over beyond a station's existing service area and into new communities would foreclose opportunities for the licensing of new LPTV stations to serve those communities. In advancing their proposal, however, Petitioners assert that the proposed rule changes would not harm localism because their recommended interference contour would prevent DTS stations from encroaching on the service of stations in adjacent markets.

24. We seek comment on whether, on balance, revising our rules consistent with the proposals in the Petition would hinder or promote our localism goal and the delivery of programming responsive to the needs and interests of local communities. What is the relevance in today's marketplace of the Commission's prior conclusions regarding the impact of an Expanded Area Approach on localism? Is there any evidence that these concerns have or would come to pass as a result of DTS use? To what extent have LPTV stations entered areas that DTS stations might otherwise have served? What would be the effect on localism if the proposed rule changes precluded future LPTV service in spillover areas?

25. To inform our analysis of proposed rule changes, we seek comment on the deployment of DTS, both now and in the future. As noted above, the *Next Gen TV Order* made clear that, in addition to ATSC 1.0 broadcasters, ATSC 3.0 broadcasters also are currently permitted to deploy SFNs under the Commission's existing DTS rules. We seek comment on the current and reasonably foreseeable future state of DTS deployment using either ATSC 1.0 or ATSC 3.0. At present, there are fewer than two dozen active DTS stations. To what extent are current DTS deployments providing benefits, including those envisioned in the *2008 DTS Order*? What factors, if any, are inhibiting additional DTS deployments or restricting the realization of such benefits today? Are there types of locations or circumstances where DTS has proven, or is expected to prove, particularly valuable? Are there characteristics of ATSC 3.0 that are particularly conducive to DTS use, and, if so, what are they? How does the potential for co-channel interference within a station's DTS service area differ between a deployment using ATSC 1.0 and a deployment using ATSC 3.0, and what are the potential benefits in improved coverage realized by each technology due to the enhancement of signal strength within an NLSC? Are there specific types of deployments, network configurations, or uses that ATSC 3.0 enables that are infeasible or impractical under ATSC 1.0? In particular, we seek comment from broadcasters intending or considering whether to deploy DTS networks. What challenges do they face?

26. To what extent would broadcasters decline to deploy DTS transmitters if the rule is not changed? To what extent could directional antennas or other solutions obviate or reduce the need for a rule change? In other words, can DTS transmitters employ a directional antenna to reach viewers at the edge of a station's coverage area without spilling beyond that area? If so, are there additional costs associated with the deployment of a directional antenna that make it a less attractive option? Are there terrain-specific factors that render the use of directional antennas impractical in some situations? We invite commenters to provide specific real-world examples of circumstances where use of DTS signals would be impractical under the current rules but would be viable if the rules were changed. How common are such situations?

27. We also ask commenters to quantify, to the extent possible, not just the need for rule changes but also the benefits and costs of adopting rule changes, including rule changes that are consistent with the proposals in the Petition. What are the costs associated with deploying, operating, and

maintaining a DTS transmitter or network of transmitters? How significantly do these costs differ when adding one or more transmitters to an existing structure versus constructing a new facility? On average, how many transmitters could we expect each station to deploy if we modify our rules as suggested herein? Would the changes proposed herein reduce the cost of deployment of DTS and, if so, how and to what degree? For example, would fewer DTS transmitters be required? What other quantifiable benefits would flow from changing our rules? What are the potential impacts of more numerous DTS deployments? Would it require the construction of new towers, or would stations be able to use existing towers or other structures? What would be the costs stemming from proposed rule changes, particularly to other licensees that may be affected or displaced by the changes? We ask that, in responding, commenters quantify the specific costs entailed with deployment and any specific savings that would flow from the proposed technical changes.

28. In addition to costs and benefits associated with deployment, are there costs or benefits we should consider related to spectrum efficiency? For example, several commenters point to the more efficient use of spectrum that can be achieved by using DTS transmitters instead of translators, given that DTS transmitters broadcast on the same channel as the main transmitter. Microsoft contends that the Commission should encourage broadcasters to relinquish their dedicated translator channels and transition their translator facilities to DTS, thereby freeing up spectrum for other uses. We seek comment on Microsoft's suggestion. If rule changes would increase opportunities to create DTS networks, how much more spectrum is likely to become available as a result of no longer needing translators to rebroadcast the primary station's signal? How likely is that recovered spectrum to be used and for what purposes? Spectrum efficiency is also enhanced when broadcasters use portions of their spectrum not dedicated to over-the-air programming to provide non-broadcast services, such as advanced data services. Would the use of DTS networks increase the likelihood that broadcasters would offer such services? And, if so, are there costs and benefits that we should consider?

29. If we modify our DTS rules to change our restriction that currently limits DTS spillover to a ''minimal amount,'' the next fundamental issue we ask commenters to address is the level of interference protection that should be afforded to, and expected from, DTS station signals in the spillover area. Notably, Petitioners do not seek interference protection for DTS signals in the spillover area, and we tentatively conclude that if we were to modify our rules consistent with the Petition, we would not enlarge the area within which a DTV station is protected from interference. Petitioners acknowledge, however, that such spillover signals could cause disruption to secondary services in some instances. We seek comment below regarding how other spectrum users, including LPTV and translator stations, wireless microphones, and white spaces devices, could be affected by such rule changes and whether there are steps we could and should take to mitigate such impacts.

30. As an initial matter, we seek comment on what regulatory status, if any, should be granted to DTS signals beyond the reference station's service area. In the *2008 DTS Order,* the Commission rejected requests to confer either primary or secondary status to DTS transmissions that spilled over a station's authorized service area. As discussed above, the Commission's rationales included treating single-transmitter and DTS stations consistently, protecting localism, and preserving opportunities for new low-power stations. The Commission also noted that DTS broadcasters can achieve the same benefits as a secondary service by using digital on-channel translator/LPTV stations under Part 74 of the Commission's rules. We seek comment on these prior conclusions. Do they remain sound? How, if at all, should we take account of changes in the intervening 12 years when considering these conclusions? What would be the effects if a DTS transmitter's spillover signal were given secondary status versus being afforded no protection at all? How would such decisions affect new or existing spectrum users, including those discussed below?

31. In particular, we seek comment on the effects of any rule changes on Class A, LPTV, and translator stations. Several commenters urge the Commission to ensure that Class A stations, LPTV stations, TV translators, and the holders of construction permits for such facilities would not be affected or displaced by any rule changes. Petitioners contend that their proposed interference contour of 36 dBu F(50, 10) would ensure that DTS stations would not interfere with co-channel Class A and LPTV operations. They also claim that their suggested limit would prevent DTS stations from encroaching on the service of stations in adjacent markets. Despite Petitioners' assurances, a number of commenters, while supportive of DTS generally, express concern about potential interference to their operations. In responding to commenters' concerns, Petitioners acknowledge that ''there may be instances where disruption is unavoidable,'' namely to LPTV stations. Petitioners further contend that nothing in their proposal would change the interference protection rights of LPTV and TV translator stations—which are afforded protection only with respect to secondary and unlicensed users—and that the Commission should not consider elevating those rights as part of this proceeding. We seek comment on this view. How accurate is Petitioners' claim that the proposed interference contour would not cause interference issues for existing co-channel Class A and LPTV stations? Moreover, we seek comment on ARK's concern regarding interference to LPTV stations operating on adjacent channels, rather than on co-channels. How often is this type of interference likely to occur?

32. Further, we seek comment on Petitioners' interference study, which calculated that, under the parameters used in the study, 3.73 to 5.05% of co-channel LPTV stations and 2.23 to 2.84% of adjacent-channel LPTV stations would experience interference above a ''2% threshold'' as determined by performing an ''OET–69 interference study.'' Does Petitioners' Study analyze the full range of interference concerns that LPTV stations would face? Are the assumptions it relies on reasonable? Are its conclusions valid? Are there areas that warrant additional study?

33. We note that in 2018 Congress acted to reimburse licensees of LPTV stations and TV translators for expenses incurred as a result of displacements precipitated by the broadcast incentive auction. To the extent that changing the DTS rules would risk causing another round of displacement for these licensees, or otherwise nullify the time, money, and effort spent to relocate LPTV and translator operations following the incentive auction repack, we seek comment on whether such action would be consistent with congressional intent regarding LPTV and translator services. Should the number or percentage of displaced LPTV licensees impact our consideration of this issue? In addition, ARK asserts that allowing full-power licensees to extend their existing contours in a manner that impinges on LPTV stations would contravene Congress' intent in the Middle-Class Tax Relief and Job Creation Act of 2012 not to alter LPTV rights. Given, however, that Petitioners are not proposing that

we take any action in this proceeding pursuant to that Act, we tentatively conclude that this specific statutory provision does not preclude us from adopting the proposal.

34. In addition, NTA warns that allowing new DTS facilities to overlap the contours of existing LPTV and TV translators could harm viewers who rely on such existing stations to provide over-the-air television. NTA proposes a 41 dBuV/m protected contour for ATSC 3.0 translators and LPTV stations. It claims that a 41 dBuV/m contour would promote spectrum efficiency and would enable more consumers in sparsely populated areas to receive the benefits of ATSC 3.0 through LPTV and translator service. MWG posits that Class A stations, LPTV stations, and TV translators stand to benefit from the proposed rule changes as more spectrum would become available for other services to the extent translators shift operations to DTS. MWG further contends that the ability of full-power stations to increase their signal strength in peripheral areas using DTS would allow other services in those areas also to operate at higher power levels (while still maintaining a sufficient desired-to-undesired ratio) without causing impermissible interference to the full-power stations. We seek comment on NTA's proposal and MWG's claims.

35. Moreover, we seek comment on whether there is a way to accomplish our objectives without jeopardizing other services. For instance, could we protect existing LPTV and translator stations by treating spillover from DTS signals as secondary facilities with respect to interference caused to such LPTV and translator services? We envision that, under such an approach, if interference complaints were received from affected LPTV or translator viewers within the spillover area, the onus would be on the DTS facility to resolve the problem, for example, by means of a directional antenna and/or power reduction. By contrast, with regard to alleged interference inside the authorized service area, the DTS facility would be treated as primary and would be under no obligation to resolve interference complaints from LPTV or translator viewers. Would this approach minimize potential disruption to existing LPTV and translator stations, and if so, to what extent? In addition, if we treated spillover from DTS signals as secondary facilities, to what extent would we be limiting opportunities for new LPTV and translator stations to be licensed in spillover areas? How should we think about the Commission's concern expressed in the *2008 DTS Order* that an Expanded Area Approach would limit opportunities for new licensees, including LPTV stations, in spillover areas? Is this concern still as relevant today as it was in 2008?

36. In addition, NPR urges the Commission to address the interference risk that DTV Channel 6 stations pose generally to NCE FM stations in the adjacent band. Specifically, NPR asks the Commission to require broadcasters to use more stringent filters in the construction and operation of DTS facilities for DTV Channel 6 stations and to impose specific filtering requirements like the Commission established for DTV channels 14 and 17. It appears that at least some of NPR's concerns may relate to the use of DTV Channel 6, generally, rather than the use of DTS, in particular. We seek comment on NPR's concerns, including whether such concerns are sufficiently specific to DTS use that we should consider them in the context of this proceeding.

37. We also seek comment on the potential effects of revising our rules consistent with the proposals in the Petition, or any alternative approaches, on licensed and unlicensed wireless microphone operations in the TV spectrum. If we treated spillover from DTS signals as secondary facilities with respect to the interference caused to other services, as noted above, to what extent could we limit the potential for harmful interference to licensed wireless microphones? Should we additionally consider potential impacts that DTS transmissions will have on unlicensed wireless microphones?

38. In addition, we seek comment on the potential effects that revising our rules consistent with the proposals in the Petition, or any alternative approaches, would have on white space device users. In February 2020, the Commission launched a proceeding to provide additional opportunities for unlicensed white space devices operating in the broadcast television bands to deliver wireless broadband services in rural areas and applications associated with the Internet of Things. We have recognized that spurring the growth of the white space device ecosystem can help bring affordable broadband service to rural and underserved communities that can help close the digital divide. The Commission remains committed to these goals and, in pursuing its proposed measures in this proceeding, it is not our intent to undo the agency's progress in improving broadband coverage that will benefit American consumers in rural and underserved areas. Microsoft, a supporter of white space device operations, asserts that Petitioners' proposed rule changes ''go well beyond'' what full-power television stations need to do in order to fill coverage gaps in their service areas and that television stations using DTS should not be granted interference protection outside their defined service areas. Should we consider, as Microsoft suggests, the potential impact that DTS transmissions will have on white space devices providing services to rural communities via TV spectrum, such as high-speed broadband? We seek comment on MWG's contrary position that there would be little risk to white space devices given MWG's view that DTS build-out is likely to be uneconomical in the areas where white spaces are used to serve rural consumers. What effect, if any, would the Commission's proposed measures to promote the use of white spaces have on DTS use, and vice versa?

39. Finally, we seek comment on the use of DTS by Class A and LPTV licensees. In the *2008 DTS Order,* the Commission approved the use of DTS technologies on an experimental basis by a single digital Class A, LPTV, or TV translator station to provide service within its authorized service area, finding that there was not an adequate record at that time to resolve the technical issues for LPTV, as they differ from full-power television stations. Furthermore, the Commission concluded that it did not have ''sufficient indication of widespread interest in DTS among individual low power stations;'' that LPTV stations serve smaller geographic areas than full-power stations, making the likelihood of needing DTS to provide service relatively low; and that Class A and LPTV stations, which were not subject to the 2009 DTV transition, did not have the same urgent need for DTS to provide post-transition service. The Commission indicated that it would revisit its decision if there were a ''demonstrated interest in or need for DTS as an alternative for individual low power stations on a permanent basis.''

40. Have things changed in the past 12 years that make the use of DTS more attractive for Class A or LPTV stations today? For instance, have changes in the marketplace including, but not limited to, the DTV transition, technological innovations such as ATSC 3.0, and the spectrum repack, affected the Commission's prior conclusions regarding DTS use by Class A and LPTV stations in any way? Is there additional information we should consider that might lead us to different conclusions now?

41. In this proceeding, some commenters recommend allowing the DTS rules that apply to full-power

television stations to apply also to Class A and LPTV stations. Columbus Broadcasting requests that Class A television stations be permitted to use DTS in the same manner as full-power television stations. ARK, a strategic partner of LPTV licensees in the deployment of ATSC 3.0, similarly requests that the Commission harmonize the DTS rules for full-power television and LPTV stations, asserting that ''the use of very low power DTS transmitters will play a very significant role in the addition of utility value and performance for ATSC 3.0 networks'' and that, depending on the local topography, foliage and buildings, it intends to deploy DTS transmitters that are optimized for specific local conditions. We seek comment on the Columbus Broadcasting and ARK proposals or any other proposals to expand permitted uses of DTS technologies by Class A and/or LPTV stations. What would be the impact of these proposals, if adopted? Moreover, we seek comment on whether any rule changes we adopt in this proceeding for full-power stations should also be applied to Class A and/or LPTV stations.

42. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM.

43. *Paperwork Reduction Act.* This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

44. *Ex Parte Rules—Permit-But-Disclose.* The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Commission's pre-meeting Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

45. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent 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.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (Mar. 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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

47. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

48. *Additional Information.* For additional information on this proceeding, contact Ty Bream, *Ty.Bream@fcc.gov,* of the Industry Analysis Division, Media Bureau, (202) 418–0644.

Initial Regulatory Flexibility Analysis

49. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified

as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objective of, the Proposed Rules

50. The NPRM seeks comment on changes to the Commission's rules governing the use of a distributed transmission system (DTS), or single frequency network (SFN), by a broadcast television station in light of continuing developments in ATSC 3.0, the new ''Next Gen'' broadcast television transmission standard, the potential benefits of DTS, and the Commission's interest in encouraging use of DTS. Traditionally, a broadcast television station transmits its signal from a single elevated transmission site central to the service area, resulting in a stronger signal available near the transmitter and a weaker signal as the distance from the transmitter increases. Non-uniform terrain or morphological features can also weaken signals, regardless of distance from the transmitter. One way for a station to augment its signal strength is to provide fill-in service using one or more separately licensed secondary transmission sites that operate on a different radiofrequency (RF) channel than the main facility, *i.e.,* a television translator. By contrast, a distributed transmission system employs two or more transmission sites located around a station's service area, each using the same RF channel and synchronized to manage self-interference. DTS therefore offers an alternative to traditional full-power television transmission and the use of secondary translators on additional frequencies.

51. The NPRM seeks comment on changing the Commission's DTS rules consistent with the proposals set forth in the October 3, 2019 joint petition for rulemaking. The Petition asks the Commission to change the DTS rules to permit stations more flexibility in the placement of their DTS transmitters, particularly near the edge of a station's coverage area. Specifically, Petitioners propose that the placement of DTS transmitters would be limited by what Petitioners refer to as the DTS transmitter's ''interference contour,'' which could not exceed that of the station's reference facility. Petitioners assert that their requested rule changes would allow them to unlock the benefits of DTS operations beyond what the current DTS rules enable, such as further improving service throughout a station's coverage area, improving mobile reception, and allowing more efficient use of broadcast spectrum by reducing the need for television translators using separate channels.

52. In the NPRM, the Commission seeks comment on whether any change to its DTS rules is necessary or appropriate at this time, and if so, whether to adopt the rule changes proposed in the NPRM or whether there are alternatives it should consider, how to treat DTS signals beyond their current service areas if such spillover is allowed, and, finally, the use of DTS by Class A and LPTV licensees. The Commission also seeks comment on whether and to what extent the following or other changes are appropriate for ATSC 3.0, ATSC 1.0, or both. In doing so, the Commission seeks comment on whether to amend the current DTS spillover allowance in Section 73.626 of the Commission's rules from a ''minimal amount'' beyond a station's authorized service area to the amount of DTS spillover ''necessary to achieve a practical design.''

B. Legal Basis

53. The proposed action is authorized pursuant to sections 1, 4, 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

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

55. Rule changes, if adopted, could apply to television broadcast licensees and potential licensees of television stations. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than $25 million. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

56. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374. Of this total, 1,263 stations (or 91.9%) had revenues of $41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 5, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388. The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

57. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

58. Rule changes, if adopted, could also apply to licensees of Class A stations, LPTV stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. As noted above, the SBA defines such businesses as a small business if they have $41.5 million or less in annual receipts.

59. There are 387 Class A stations. Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $41.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

60. Given the potential impact of Petitioners' proposal and other proposals on other spectrum users, radio broadcasting stations, in particular noncommercial educational FM stations, may be affected by rule changes.

61. The U.S. Economic Census radio broadcasting category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for this category: those having $38.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

62. Apart from the U.S. Census, the Commission has estimated the number of licensed AM radio stations to be 4,593 and the number of commercial FM radio stations to be 6,772, along with 8,182 FM translator and booster stations. As of [September 2019, 4,294 a.m. stations and 6,739 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,135. NCE stations are non-profit and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

63. The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: those having $41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,169. Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, we will presume that these licensees qualify as small entities under the SBA definition.

64. We note again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

65. Rule changes, if adopted, could also impact radio and television broadcasting and wireless communications equipment manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

66. This NPRM seeks comment on changes to the Commission's rules governing the use of a DTS by a broadcast television station in light of continuing developments in ATSC 3.0, the new ''Next Gen'' broadcast television transmission standard, the potential benefits of DTS, and the Commission's interest in encouraging use of DTS. The use of DTS is at the discretion of the broadcast licensee. The NPRM does not impose any new mandatory reporting, recordkeeping, or compliance requirements for small entities, unless such entities, *i.e.,* licensees, choose to use DTS. The NPRM thus will not impose additional obligations or expenditure of resources on small businesses. However, we note that the adoption of the proposed rules may require modification of current requirements and processes for entities that choose to use DTS, such as modification of FCC forms, including but not limited to, FCC Forms 301 and 340.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

68. Specifically, in addition to issues raised by commenters, the NPRM seeks comment on alternatives to the proposed rule changes, *i.e.,* the ''necessary to achieve a practical design'' standard, including, but not limited to, (1) making no changes to the DTS rules at this time or (2) changing the ''minimal amount'' standard without also adopting the proposed interference contour. In addition, the Commission considers the alternatives of (1) protecting existing LPTV and translator stations (including those that are small entities) by treating newly authorized spillover from DTS transmitters as secondary facilities (*i.e.,* in contrast to the primary regulatory status afforded to DTS transmitters within the areas they are authorized to serve) with respect to interference potentially caused to such LPTV and translator services or (2) affording no protection to newly authorized spillover from DTS transmitters. The Commission's evaluation of the comments filed on these topics as well as on other questions in the NPRM will shape the final conclusions it reaches and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

69. None.

List of Subjects in 47 CFR Part 73

Television; Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. Amend § 73.626 by revising paragraphs (c), (f)(2) and (5) to read as follows:

§ 73.626 DTV DISTRIBUTED TRANSMISSION SYSTEMS.

* * * * *

(c) *Table of Distances.* The following Table of Distances describes (by channel and zone) a station's maximum service area that can be obtained in applying for a DTS authorization and the maximum interference area that can be created by its facilities.

		Service Area		Interference Area	
Channel	Zone	F(50,90) field strength (dBU)	Distance from reference point	F(50,10) field strength (dBU)	Distance from reference point
2–6	1	28	108 km (67 mi)	28	184 km (114 mi).
2–6	2 and 3	28	128 km (80 mi)	28	209 km (130 mi).
7–13	1	36	101 km (63 mi)	33	182 km (113 mi).
7–13	2 and 3	36	123 km (77 mi)	33	208 km (129 mi).
14–51	1, 2, and 3	41	103 km (64 mi)	36	245 km (153 mi).

* * * * *

(f) * * *

(2) Each DTS transmitter's coverage is contained within either the DTV station's Table of Distances area (pursuant to paragraph (c) of this section) or its authorized service area, except where such extension of coverage beyond the station's authorized service area is necessary to achieve a practical design or to meet the requirements of paragraph (f)(1) of this section. In no event shall the F(50,10) interference contour of any DTS transmitter extend beyond that of its reference facility (described in paragraph (c)(2) of this section). The interference contour field strength is given in the Table of Distances (in paragraph (c) of this section) and is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50,10) charts);

* * * * *

(5) The ''combined field strength'' of all the DTS transmitters in a network does not cause interference to another station in excess of the criteria specified in § 73.616, where the combined field strength level is determined by a ''root-sum-square'' calculation, in which the combined field strength level at a given location is equal to the square root of the sum of the squared field strengths from each transmitter in the DTS network at that location as corrected for the receiving antenna directivity in the direction of each transmitter.

[FR Doc. 2020–09625 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2020–009; Docket No. FAR–2020–0009; Sequence No. 1]

RIN 9000–AO07

Federal Acquisition Regulation: List of Domestically Nonavailable Articles

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: DoD, GSA, and NASA are considering amending the Federal Acquisition Regulation (FAR) to update the list of domestically nonavailable

articles under the Buy American statute. DoD, GSA, and NASA are seeking information that will assist in identifying domestic capabilities and for evaluating whether some articles on the list of domestically nonavailable articles are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

DATES: Interested parties should submit comments at the address shown below on or before July 13, 2020.

ADDRESSES: Submit comments in response to FAR Case 2020–009 by to *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2020–009''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2020–009.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2020–009'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR case 2020–009'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2020–009.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Buy American statute (41 U.S.C. chapter 83) generally requires that only domestically mined, produced, or manufactured articles be procured for public use in the United States. The Buy American statute provides an exception for articles not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. FAR 25.103(b)(1) provides a determination that articles listed at FAR 25.104(a) meet the conditions of this exception. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand. See FAR 25.103(b)(1)(i).

The established list of articles identified in FAR 25.104(a) is a comprehensive and wide-ranging mix of natural resources, compounds, materials, and other items of supply. Although some articles on the list have no known domestic production sources (*e.g.,* quartz crystals or vanilla beans), many of the articles are known to have some domestic production sources, but those sources have been determined in the past to be inadequate to meet U.S. demand. Examples of such articles range from goat and kidskins (negligible domestic production), to crude iodine (5 percent of U.S. Government and nongovernment demand), to bismuth (not in excess of 50 percent of U.S. Government and nongovernment demand).

The list is reviewed every five years, as required by FAR 25.104(b). DoD, GSA, and NASA last published in the **Federal Register** a request for public comment on the list on March 24, 2015 (80 FR 15544).

DoD, GSA, and NASA are seeking information to determine whether some articles should be removed from the list because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Specific information with regard to domestic production capacity in relation to U.S. Government and nongovernment demand and the quality of domestically produced items would be most helpful in determining whether articles should remain on or be removed from the list. A sources-sought notice will be published in the Governmentwide point of entry (GPE) in an effort to increase the awareness of this request and to receive greater responses from interested parties on the nonavailable articles listing.

B. The current domestically nonavailable listing at FAR 25.104 is as follows:

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bamboo shoots.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynaphthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Crane rail (85-pound per foot).
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emetine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen, altar.
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat hair canvas.
Goat and kidskins.
Grapefruit sections, canned.
Graphite, natural, crystalline, crucible grade.
Hand file sets (Swiss pattern).
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kauri gum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Modacrylic fiber.
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green), pitted or unpitted, or stuffed, in bulk.
Opium, crude.

Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products.
Pineapple, canned.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Water chestnuts.
Wax, carnauba.
Wire glass.
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Yarn, 50 Denier rayon.
Yeast, active dry and instant active dry.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, this proposed rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This proposed rule is not a major proposed rule under 5 U.S.C. 804.

III. Executive Order 13771

This proposed rule is not subject to E.O. 13771, because this proposed rule is not a significant regulatory action under E.O. 12866.

List of Subjects in 48 CFR Part 25

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–09208 Filed 5–12–20; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 85, No. 93

Wednesday, May 13, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Food Purchase Study IV

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a request for reinstatement with changes of a previously approved information collection under OMB Control Number 0584–0471, which expired on March 21, 2012. This is the fourth in a series of studies designed to provide statistically valid national estimates of food acquisitions (both purchased foods and USDA Foods) made by school food authorities (SFAs) participating in the Federally supported school nutrition programs.

DATES: Written comments must be received on or before July 13, 2020.

ADDRESSES: Comments may be sent to: Jinee Burdg, MPP, RDN, LDN, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Jinee Burdg at 703–305–2576 or via email to *Jinee.Burdg@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 1320 Braddock Place, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jinee Burdg at 703–305–2744.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: School Food Purchase Study IV.

Form Number: None.

OMB Number: 0584–0471

Expiration Date: 3/21/2012

Type of Request: Reinstatement with changes of a previously approved OMB package.

Abstract: This study is the fourth in a series of studies designed to provide statistically valid national estimates of food acquisitions (both purchased foods and USDA Foods) made by school food authorities (SFAs) participating in the Federally supported National School Lunch Program (NSLP) and School Breakfast Program (SBP). In the decade following the release of the third School Food Purchase Study (SFPS III) report, the school nutrition environment has undergone considerable changes. Key among them are the provisions of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296) which required updated nutrition standards for the NSLP and SBP. These standards require meals to include greater quantities of fruits and vegetables, whole grains, and low-fat dairy and reduced sodium. These changes have affected the purchasing practices of SFAs in terms of the types, volume, and cost of foods. This study is restricted to public SFAs to allow for direct comparisons of the results (*i.e.,* changes in the mix of acquired foods) to the prior study, SFPS III, which was conducted in SY 2009–2010. In addition, the study will describe food purchase practices of SFAs so that information associated with food purchasing efficiency can be provided to all SFAs.

The study will include a nationally representative sample of 630 public SFAs. At the onset of the study, State-level Child Nutrition Directors will email sampled SFAs of their selection in to the study and encourage their participation. All sampled SFAs will be invited to attend a study overview webinar that will provide details of the study and highlight the upcoming data collection activities. Following the webinar, SFAs will complete an online Survey of Food Purchase Practices, which will be pretested with four SFA Directors. For collection of food purchase data, SFAs will be assigned to one of four quarters of the school year, and invited to attend a food purchase data webinar held at the beginning of that quarter. SFAs will then submit detailed food purchase data (vendor summaries, invoices, etc.) for all food acquisitions made during their assigned quarter. This ensures that data are collected from SFAs across the entire school year and minimizes the burden on individual SFAs. It also allows for the examination of relationships between food purchasing practices and annual costs of foods to schools.

To supplement the food purchase data provided by SFAs, State Distributing Agency Directors will provide USDA Foods procurement data for their sampled SFAs for each quarter. In addition, up to 25 of the top (most frequent) food service management companies (FSMCs) and food vendors serving sampled SFAs will be provided study background information so they are aware of the study and its purpose.

Though the data collected from SFAs in SFPS IV are almost exactly the same as in the prior study, technological advances and a change in approach to the timing of the data collection activities account for differences in the burden estimate from the prior study. In SFPS III, sampled SFAs completed a paper-based survey of food purchase

practices and provided detailed food purchase data, all after the end of the quarter of the school year for which they were sampled. In this study, SFPS IV, the survey is web-based and will be completed by all SFAs at the beginning of the study, following OMB approval. SFAs will separately provide purchase data for their sampled quarter. In addition, to reduce SFA burden and help ensure the completeness of the data, all State Distributing Agencies will provide data on USDA Foods for the sampled SFAs in each quarter. Expanding the respondent groups from SFAs alone to including all SDAs, and collecting data from SDAs on a quarterly basis has increased the number of responses from those reported for the SFPS III study. Despite the increase in responses, however, the burden hours for the SFPS IV have decreased, because the activities for this study are estimated to take from 1 minute to 5.25 hours to complete, as opposed to the SFPS III where the activities were estimated to take from 30 minutes to 10 hours to complete.

Affected Public: State, Local and Tribal Government and Business or Other-for-Profit. The respondents include Child Nutrition and State Distributing Agency Directors (State Government), SFA Directors (Local Government), and FSMCs and food vendors (For Profit Businesses).

Estimated Number of Respondents: The universe of participants is 757, and 551 will respond to data collection activities and 206 will be non-respondents. This includes four SFA Directors for cognitive testing of the study instruments. In the main study, up to 49 Directors from State Child Nutrition Agencies and 49 Directors from State Distributing Agencies will respond to the data collection activity. Six hundred and thirty (630) SFA Directors within the contiguous United States will be invited to participate in the study; 504 will complete the Survey of Food Purchase Practices; and 424 will provide food purchase data. Twenty five (25) FSMCs/food vendors will be informed of the study via email and all will read the informational email and study brochure.

Estimated Frequency of Response: Respondents will complete each data collection activity once. The estimate of frequency of responses across the entire collection is 14.0 (10,582/757): 18.3 (10,060/551) for respondents and 2.5 (522/206) for nonrespondents. State Child Nutrition Directors will respond twice; State Distributing Agencies will respond up to five times; FSMCs/vendors will respond twice to read the background material and study brochure; and SFA Directors will respond five times annually (to read the study brochure, to attend two webinars, complete the Survey of Food Purchase Practices, and provide detailed food purchase data for one quarter). The SFAs are assigned to one of the four quarters and will only report data for the one quarter. The expected response and non-response for these four quarters have been combined into one line item in the burden chart, instead of being broken down into the four quarters.

Estimated Total Annual Responses: 10,582. This includes 10,060 for respondents and 522 for non-respondents.

Estimated Time per Response per Respondent: The estimated time of response varies from 1 minute to 5.25 hours, depending on the activity. The estimated time per response across the entire collection is 0.46 hours (4,844 hours/10,582 responses). We will cognitively test the survey with four SFA directors. The cognitive test of the survey will take 2 hours; this includes time to schedule and conduct the interview.

Estimated Total Annual Burden on Respondents: The total annual public reporting burden (see burden table below) for this collection of information is estimated at 4,844 hours; 4,835 for respondents and 9 for nonrespondents.

Burden Table

Respondent Type	Respondent Description	Type of Survey Instrument	Sample Size	Respondents: Estimated Number of Respondents	Respondents: Frequency of Response (Annual)	Respondents: Total Annual Responses	Respondents: Average Burden Hours per Response	Respondents: Sub-Total Annual Burden Estimate (hours)	Nonrespondents: Estimated Number of Non-respondents	Nonrespondents: Frequency of Response (Annual)	Nonrespondents: Total Annual Responses	Nonrespondents: Average Burden Hours per Response	Nonrespondents: Sub-Total Annual Burden Estimate (hours)	Total Annual Burden Estimate (hours)
State Government	State Child Nutrition Agency Director (a)	FNS Notification to State Directors	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Study Team Notification to States	49	49	1	49	0.0835	4.09	0	1	0	0.0167	0	4.09
		Study Brochure (from FNS and Study)	49	49	2	98	0.0501	4.91	0	2	0	0.0167	0	4.91
		State Email to Sampled SFAs (template) (1)	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Batch Email from States to Sampled SFAs (using template)	49	49	1	49	0.3340	16.37	0	1	0	0.0167	0	16.37
	State Distributing Agency Director (a)	FNS Notification to State Directors	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Study Team Notification to States	49	49	1	49	0.0835	4.09	0	1	0	0.0167	0	4.09
		Study Brochure (from FNS and Study)	49	49	2	98	0.0501	4.91	0	2	0	0.0167	0	4.91
		Overview of USDA Foods Data	49	49	4	196	0.0501	9.82	0	4	0	0.0167	0	9.82
		Request to Submit USDA Foods Data (2)	49	49	4	196	0.0501	9.82	0	4	0	0.0167	0	9.82
		USDA Foods Data	49	49	4	196	1.0000	196.00	0	4	0	0.0167	0	196.00
SUBTOTAL OF STATE GOVERNMENT			**98**	**98**	**11**	**1,078**	**0.2388**	**257.37**	**0**	**0**	**0**	**0.0000**	**0**	**257.37**
Local Government	School Food Authority (SFA) Director (b)	Pre-test of Instruments	4	4	1	4	2.0000	8.00	0	1	0	0.0167	0.00	8.00
		State Email to Sampled SFAs	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		FedEx letter to Sampled SFAs	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Study Brochure (from FNS and Study)	630	630	2	1,260	0.0501	63.13	0	2	0	0.0167	0.00	63.13
		Study FAQs (enclosed in FedEx)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Letters of Support (enclosed in FedEx)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Overview Webinar Invitation Email	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Overview Webinar (4)	630	535	1	535	1.0000	535.00	95	1	95	0.0167	1.59	536.59
		Email with Link to Survey of Food Purchase Practices (SFPP)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Survey of Food Purchase Practices (3)	630	504	1	504	1.7500	882.00	126	1	126	0.0167	2.10	884.10
		Purchase Data Webinar Invitation	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Purchase Data Webinar (4)	630	535	1	535	1.0000	535.00	95	1	95	0.0167	1.59	536.59
		Email to Submit Purchase Data	630	630	1	630	0.0835	52.61	0	1	0	0.0167	0.00	52.61
		Food Purchase Data Template	630	630	1	630	0.0835	52.61	0	1	0	0.0167	0.00	52.61
		Purchase Data (5)	630	424	1	424	5.2500	2226.00	206	1	206	0.0167	3.44	2,229.44
SUBTOTAL OF LOCAL GOVERNMENT			**634**	**428**	**20.87**	**8,932.0**	**0.5122**	**4575.28**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,583.99**
SUBTOTAL OF STATE AND LOCAL GOVERNMENT			**732**	**526**	**31.87**	**10,010.0**	**0.75098**	**4832.65**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,841**
For-Profit Business	Food Service Management Companies and Vendors	FNS Notification to Vendors	25	25	1	25	0.0501	1.25	0	1	0	0.0501	0	1.25
		Study Brochure	25	25	1	25	0.0501	1.25	0	1	0	0.0501	0	1.25
SUBTOTAL FOR PROFIT BUSINESS			**25**	**25**	**2**	**50**	**0.0501**	**2.51**	**0**	**0**	**0**	**0.0000**	**0**	**2.51**
GRAND TOTAL			**757**	**551**	**18.26**	**10,060**	**0.4806**	**4835.15**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,843.87**

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–10206 Filed 5–12–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: School Meals Operations Study: Evaluation of the School-Based Child Nutrition Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection for the School Meals Operations (SMO) Study's continuation of the Child Nutrition Program Operations Study II (CN–OPS II, OMB control number 0584–0607) information collection with updated survey instruments beginning in school year (SY) 2020–2021. This study will collect supplemental administrative data, including data on the CN COVID–19 waivers.

DATES: Written comments must be received on or before July 13, 2020.

ADDRESSES: Comments may be sent to: Holly Figueroa, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Pl, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Holly Figueroa at 703–305–2576 or via email to *Holly.Figueroa@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Holly Figueroa at 703–305–2105.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: School Meals Operations Study: Evaluation of the School-based Child Nutrition Programs.

Form Number: N/A.

OMB Number: 0584–0607.

Expiration Date: 08/31/2022.

Type of Request: Revision of a currently approved collection.

Abstract: FNS administers the school-based Child Nutrition (CN) Programs (*i.e.,* the school meal programs) in partnership with States and local school food authorities (SFAs). Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the U.S. Department of Agriculture Secretary to conduct annual national performance assessments of the school meal programs. FNS plans to conduct this annual assessment through the School Meals Operations (SMO) Study for school year (SY) 2020–2021. The SMO Study will also collect timely data from State agencies on the use and effectiveness of the CN COVID–19 waivers, as required by the Families First Coronavirus Response Act (PL 116–127).

The SMO Study is a revision of the currently approved Child Nutrition Program Operations Study II (CN–OPS II). It will collect timely data on policy, administrative, and operational issues on the school-based CN Programs, including, but not limited to, the preparation of the program budget, development and implementation of program policy and regulations, and identification of areas for technical assistance and training. Specifically, this study will help FNS obtain:

1. General descriptive data on the characteristics of school-based CN Programs to inform the budget process and answer questions about topics of current policy interest;

2. Data on program operations to identify potential topics for training and technical assistance for SFAs and State Agencies (SAs) responsible for administering the CN programs;

3. Administrative data to identify program trends and predictors;

4. Information on the use and effectiveness of the CN COVID–19 waivers.

The activities to be conducted subject to this notice include:

- Collecting administrative data from 69 State Agency Directors that are reported on forms FNS–10, Report of School Program Operations, FNS–418, Report of the Summer Food Service Program for Children, and FNS–44, Report of the Child and Adult Care Food Program (which are approved under OMB# 0584–0594 Food Programs Reporting System (FPRS), which is currently under review at OMB).
- Conducting a web survey of 69 State Agency Directors.
- Conducting a web survey of 1,266 SFA Directors.

Note: Personally identifiable information (PII) will not be used to retrieve survey records or data.

Affected Public: State, Local, and Tribal Governments: Respondent groups identified include: (1) SFA Directors for public schools, and (2) State Agency Directors from all 50 States, 5 territories and the District of Columbia.

Estimated Number of Respondents: The total estimated number of respondents is 1,341. This includes (1) 69 State Agency Directors who are expected to participate in the administrative data collection and the State Agency Director survey (3 of the 69 State Agency Directors are also expected to participate in the pretest), and (2) 1,272 SFA Directors. Six SFA Directors are expected to participate in the pre-test of the SFA Director web survey; these pretest participants are unique respondents and will not be included in the sample for the SFA survey. An additional 1,266 public SFA Directors will be included in the sample for the SFA Director web survey, of which 1,012 are expected to respond. The total number of respondents also includes 254 non-respondents whom FNS expects will not respond to the study activities.

Estimated Number of Responses per Respondent: State Agency Director respondents will be asked to complete an initial telephone meeting and respond to an administrative data request one time. SFA Director and State Agency Director respondents will be asked to complete their respective web surveys one time. In the event of non-response, State Agency Directors may receive a reminder email, phone call, and a last chance postcard until the target of 69 respondents is reached. Similarly, SFA Directors who do not respond may receive reminders via email, phone, or post card until the target number of 1,012 respondents is reached. FNS estimates that respondents will average 5.47 responses (5,946 responses/1,087 respondents) across the

entire collection, with non-respondents averaging 10.5 responses (2,676 responses/254 non-respondents). Across all participants in the collection (respondents and non-respondents) the average number of responses is 6.4 (8,622 responses/1,341 total respondents).

Estimated Total Annual Responses: 8,622.

Estimated Time per Response: The estimated time per response ranges from 3 minutes (0.05 hours) to 20 hours depending on the instrument, as shown in the table below, with an average estimated time for all participants of 17 minutes (0.28 hours) per response.

Estimated Total Annual Burden on Respondents: 146,635 minutes (2,443.92 hours). See the table below (Table 1) for estimated total annual burden for each type of respondent.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

Burden Table

Respondent Type	Respondent Description	Type of Survey Instrument	Sample Size	Respondents: Estimated Number of Respondents	Respondents: Frequency of Response (Annual)	Respondents: Total Annual Responses	Respondents: Average Burden Hours per Response	Respondents: Sub-Total Annual Burden Estimate (hours)	Nonrespondents: Estimated Number of Non-respondents	Nonrespondents: Frequency of Response (Annual)	Nonrespondents: Total Annual Responses	Nonrespondents: Average Burden Hours per Response	Nonrespondents: Sub-Total Annual Burden Estimate (hours)	Total Annual Burden Estimate (hours)
State Government	State Child Nutrition Agency Director (a)	FNS Notification to State Directors	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Study Team Notification to States	49	49	1	49	0.0835	4.09	0	1	0	0.0167	0	4.09
		Study Brochure (from FNS and Study)	49	49	2	98	0.0501	4.91	0	2	0	0.0167	0	4.91
		State Email to Sampled SFAs (template) (1)	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Batch Email from States to Sampled SFAs (using template)	49	49	1	49	0.3340	16.37	0	1	0	0.0167	0	16.37
	State Distributing Agency Director (a)	FNS Notification to State Directors	49	49	1	49	0.0501	2.45	0	1	0	0.0167	0	2.45
		Study Team Notification to States	49	49	1	49	0.0835	4.09	0	1	0	0.0167	0	4.09
		Study Brochure (from FNS and Study)	49	49	2	98	0.0501	4.91	0	2	0	0.0167	0	4.91
		Overview of USDA Foods Data	49	49	4	196	0.0501	9.82	0	4	0	0.0167	0	9.82
		Request to Submit USDA Foods Data (2)	49	49	4	196	0.0501	9.82	0	4	0	0.0167	0	9.82
		USDA Foods Data	49	49	4	196	1.0000	196.00	0	4	0	0.0167	0	196.00
SUBTOTAL OF STATE GOVERNMENT			**98**	**98**	**11**	**1,078**	**0.2388**	**257.37**	**0**	**0**	**0**	**0.0000**	**0**	**257.37**
Local Government	School Food Authority (SFA) Director (b)	Pre-test of Instruments	4	4	1	4	2.0000	8.00	0	1	0	0.0167	0.00	8.00
		State Email to Sampled SFAs	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		FedEx letter to Sampled SFAs	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Study Brochure (from FNS and Study)	630	630	2	1,260	0.0501	63.13	0	2	0	0.0167	0.00	63.13
		Study FAQs (enclosed in FedEx)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Letters of Support (enclosed in FedEx)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Overview Webinar Invitation Email	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Overview Webinar (4)	630	535	1	535	1.0000	535.00	95	1	95	0.0167	1.59	536.59
		Email with Link to Survey of Food Purchase Practices (SFPP)	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Survey of Food Purchase Practices (3)	630	504	1	504	1.7500	882.00	126	1	126	0.0167	2.10	884.10
		Purchase Data Webinar Invitation	630	630	1	630	0.0501	31.56	0	1	0	0.0167	0.00	31.56
		Purchase Data Webinar (4)	630	535	1	535	1.0000	535.00	95	1	95	0.0167	1.59	536.59
		Email to Submit Purchase Data	630	630	1	630	0.0835	52.61	0	1	0	0.0167	0.00	52.61
		Food Purchase Data Template	630	630	1	630	0.0835	52.61	0	1	0	0.0167	0.00	52.61
		Purchase Data (5)	630	424	1	424	5.2500	2226.00	206	1	206	0.0167	3.44	2,229.44
SUBTOTAL OF LOCAL GOVERNMENT			**634**	**428**	**20.87**	**8,932.0**	**0.5122**	**4575.28**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,583.99**
SUBTOTAL OF STATE AND LOCAL GOVERNMENT			**732**	**526**	**31.87**	**10,010.0**	**0.75098**	**4832.65**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,841**
For-Profit Business	Food Service Management Companies and Vendors	FNS Notification to Vendors	25	25	1	25	0.0501	1.25	0	1	0	0.0501	0	1.25
		Study Brochure	25	25	1	25	0.0501	1.25	0	1	0	0.0501	0	1.25
SUBTOTAL FOR PROFIT BUSINESS			**25**	**25**	**2**	**50**	**0.0501**	**2.51**	**0**	**0**	**0**	**0.0000**	**0**	**2.51**
GRAND TOTAL			**757**	**551**	**18.26**	**10,060**	**0.4806**	**4835.15**	**206**	**2.53**	**522**	**0.0167**	**8.72**	**4,843.87**

[FR Doc. 2020–10205 Filed 5–12–20; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–20–ELECTRIC–0020]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named agency to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of RUS Electric Engineering Architectural Services, and Design Policies and Procedures.

DATES: Comments on this notice must be received by July 13, 2020.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202) 720–2825. Email *arlette.mussington@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an existing information collection that the Agency is submitting to OMB for extension.

Comments

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RUS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–20–ELECTRIC–0020 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR part 1724, and Part 1738, Electric Engineering, Architectural Services and Design Policies and Procedures.

OMB Control Number: 0572–0118.

Type of Request: Revision of a currently approved collection.

Abstract: The Agency requires borrowers to use standard contract forms under certain circumstances. The use of standard forms helps assure the Agency that appropriate standards and specifications are maintained, that the Agency's loan security is not adversely affected, and that loan and loan guarantee funds are used effectively and for the intended purpose. Standardization of forms by the Agency results in substantial savings to Borrowers. If standard forms were not used, borrowers would be required to prepare documents and the government would require extensively and costly review by both the Agency and the Office of General Counsel.

RUS Form 220, ''Architectural Services Contract.'' may be used per 7 CFR 1724.21(a) and RUS Form 236, ''Engineering Service Contract Electric System Design and Construction.'' may be used per 7 CFR 1724.31(b). These two forms were previously required to be used but are no longer required to be used according to a **Federal Register** notice published July 9, 2019. These two forms have been removed from the previous version of this information collection package. The contract forms included in this collection of information are RUS Form 211, ''Engineering Service Contract for the Design and Construction of a Generating Plant''.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 4.

Total Annual Responses: 4.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–10213 Filed 5–12–20; 8:45 am]
BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–822, A–301–804, A–729–804. A–560–837, A–475–843, A–557–819, A–421–814, A–517–806, A–791–826, A–469–821, A–583–868, A–723–001, A–489–842, A–823–817, A–520–809]

Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva; AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 16, 2020, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of prestressed concrete steel wire strand (PC strand) from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey (Turkey), Ukraine, and the United Arab Emirates (UAE) filed in proper form on behalf the

petitioners,[1] domestic producers of PC strand.[2] The Petitions were accompanied by a countervailing duty (CVD) petition concerning imports of PC strand from Turkey.[3]

Between April 21 and 23, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[4] The petitioners filed responses to the supplemental questionnaires on April 27, 2020.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the PC strand industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

Periods of Investigation

Because the Petitions were filed on April 16, 2020, the period of investigation (POI) for these AD investigations is April 1, 2019 through March 31, 2020, pursuant to 19 CFR 351.204(b)(1).[7]

Scope of the Investigations

The products covered by these investigations are PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 26, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 5, 2020, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of PC strand to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe PC strand, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

[1] Insteel Wire Products, Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, the petitioners).

[2] *See* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 16, 2020 (the Petitions).

[3] *Id.*

[4] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates: Supplemental Questions,'' dated April 21, 2020 (General Issues Supplemental); and Country-Specific Supplemental Questionnaires: Argentina Supplemental, Colombia Supplemental, Egypt Supplemental, Indonesia Supplemental, Italy Supplemental, Malaysia Supplemental, the Netherlands Supplemental, Saudi Arabia Supplemental, South Africa Supplemental, Spain Supplemental, Taiwan Supplemental, Tunisia Supplemental, Turkey Supplemental, and the United Arab Emirates Supplemental, dated April 21, 2020, April 22, 2020, or April 23, 2020. Commerce did not request additional information with respect to Ukraine.

[5] *See* Petitioners' Country-Specific Supplemental Responses, dated April 27, 2020; *see also* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates—Petitioners' Amendment to Volume I Concerning General Issues,'' dated April 27, 2020 (General Issues Supplement).

[6] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[7] *See* 19 CFR 351.204(b)(1).

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 26, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on June 5, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that PC strand, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the domestic like product, as well as the 2019 production of Strand-Tech Manufacturing, Inc., a supporter of the Petitions.[15] The petitioners compared the production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.[16] We relied on data provided by the petitioners for purposes of measuring industry support.[17]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, with regard to Colombia, Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Turkey, the petitioners allege that subject imports exceed the negligibility threshold provided for

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* Volume I of the Petitions at 19–20 and Exhibits GEN–4 and GEN–5; *see also* General Issues Supplement at 4.

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* country-specific AD Initiation Checklists at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[15] *See* Volume I of the Petitions at 4 and Exhibits GEN–2 and GEN–3; *see also* General Issues Supplement at 4 and Exhibit GEN–SUPP–3.

[16] *See* Volume I of the Petitions at 4 and Exhibits GEN–1 through GEN–3; *see also* General Issues Supplement at 3–4 and Exhibits GEN–SUPP–2 and GEN–SUPP–3.

[17] *See* Volume I of the Petitions at 4 and Exhibits GEN–1 through GEN–3; *see also* General Issues Supplement at 3–4 and Exhibits GEN–SUPP–2 and GEN–SUPP–3. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.

[18] *See* Volume I of the Petitions at 4 and Exhibits GEN–1 through GEN–3; *see also* General Issues Supplement at 3–4 and Exhibits GEN–SUPP–2 and GEN–SUPP–3. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.

[19] *See* Attachment II of the country-specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[20] *See* Attachment II of the country-specific AD Initiation Checklists.

[21] *Id.*

[22] *Id.*

under section 771(24)(A) of the Act.[23] With regard to Argentina, Egypt, the Netherlands, Saudi Arabia, Taiwan, Ukraine, and the UAE, while the allegedly dumped imports from each of these countries do not individually exceed the statutory requirements for negligibility, the petitioners provide data demonstrating that the aggregate import share from these seven countries is 8.4 percent, which exceeds the seven percent threshold established by the exception in section 771(24)(A)(ii) of the Act.[24] Therefore, the subject imports from these countries are not negligible for purposes of the material injury analysis in these Petitions.[25]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; declining market share; underselling and price suppression; lost sales and revenues; declines in production, shipments, capacity utilization, and employment; and declining financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

U.S. Price

For Argentina and Taiwan, the petitioners based export price (EP) on the average unit value of publicly available import data. For Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Tunisia, Turkey, Ukraine, and the UAE, the petitioners based EP or constructed export price (CEP), as applicable, on pricing information for sales of, or sales offers for, PC strand produced in and exported from each country. The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.[28]

Normal Value [29]

For all countries, the petitioners based NV on a home market price quote obtained through market research for PC strand produced in and sold, or offered for sale, in each country within the applicable time period.[30] For Ukraine, the petitioners provided information indicating that the price quote was below the COP and, therefore, the petitioners also calculated NV based on constructed value (CV).

For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Normal Value Based on Constructed Value

As noted above, the petitioners provided information indicating that the price charged for PC strand produced in and sold, or offered for sale, in Ukraine was below the COP. Accordingly, the petitioners also based NV on CV.[31] Pursuant to section 773(e) of the Act, the petitioners calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[32]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP or CEP, as applicable, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for PC strand for each of the countries covered by this initiation are as follows: (1) Argentina—60.40 percent; (2) Colombia—86.09 percent; (3) Egypt—29.72 percent; (4) Indonesia—72.28 percent; (5) Italy—30.61 percent; (6) Malaysia—39.57 percent; (7) the Netherlands—30.86 percent; (8) Saudi Arabia—194.40 percent; (9) South Africa—155.10 percent; (10) Spain—38.57 percent; (11) Taiwan—23.89 percent; (12) Tunisia—53.11 percent; (13) Turkey—53.65 percent; (14) Ukraine—17.70 and 53.83 percent; and (15) the UAE—170.65 percent.[33]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioners named one company in Argentina, two companies in Colombia, three companies in Egypt, four companies in Indonesia, seven companies in Italy, three companies in Malaysia, one company in the Netherlands, two companies in Saudi Arabia, one company in South Africa, two companies in Spain, five companies in Taiwan, one company in Tunisia, three companies in Turkey, one company in Ukraine, and two companies in the UAE [34] as producers/exporters of PC strand.

Following standard practice in AD investigations involving market

[23] *See* Volume I of the Petitions at 21–22 and Exhibit GEN–11.

[24] Section 771(24)(A)(ii) of the Act states ''[i]mports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported in to the United States during the applicable 12-month period.''

[25] *See* Volume I of the Petitions at 21–22 and Exhibit GEN–11.

[26] *See* Volume I of the Petitions at 25–39 and Exhibits GEN–9 and GEN–12 through GEN–16.

[27] *See* country-specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates (Attachment III).

[28] *See* country-specific AD Initiation Checklists.

[29] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015 (TPEA), amending section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[30] *See* country-specific AD Initiation Checklists.

[31] *See* country-specific AD Initiation Checklists for details of calculations.

[32] *See* Ukraine AD Initiation Checklist.

[33] *See* country-specific Initiation Checklists for details of calculations.

[34] *See* Volume I of the Petitions at Exhibit GEN–8.

economy countries, in the event Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the appendix.

On May 4, 2020, Commerce released CBP data on imports of PC strand from Colombia, Egypt, Indonesia, Italy, Malaysia, Saudi Arabia, Spain, Taiwan, Turkey, and the UAE under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[35] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.*

The petitioners identified one company in Argentina as the producer/exporter of PC strand (*i.e.,* Acindar Industria De Sinai S.A.), one company in the Netherlands as the producer/exporter PC strand (*i.e.,* Nedri Spanstaal BV), one company in South Africa as the producer/exporter of PC strand (*i.e.,* Scaw Metals Group), one company in Tunisia as the producer/exporter of PC strand (*i.e.,* Ste. Ten. De Trefilage Maklada), and one company in Ukraine as the producer/exporter of PC strand (*i.e.,* PJSC PA Stalkanat Silur), and provided independent third-party information as support.[36] We currently know of no additional producers/exporters of PC strand from Argentina, the Netherlands, South Africa, Tunisia, and Ukraine. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.,* the companies cited above).

Parties wishing to comment on respondent selection for Argentina, the Netherlands, South Africa, Tunisia, and Ukraine must do so within three business days of the publication of this notice in the **Federal Register**. Commerce will not accept rebuttal comments regarding respondent selection for Argentina, the Netherlands, South Africa, Tunisia, and Ukraine. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the UAE via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and/or the UAE are materially injuring, or threatening material injury to, a U.S. industry.[37] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[38] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[39] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[40] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 504 of the TPEA amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[41] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

[35] *See* Memorandum, ''Antidumping Duty Investigation of PC strand: Release of Customs Data from U.S. Customs and Border Protection,'' dated May 4, 2020.

[36] *See* Volume I of the Petitions at Exhibit GEN–8; *see also* General Issues Supplement at 3 and Exhibit GEN–SUPP–1.

[37] *See* section 733(a) of the Act.

[38] *Id.*

[39] *See* 19 CFR 351.301(b).

[40] *See* 19 CFR 351.301(b)(2).

[41] *See* TPEA, Public Law 114–27, 129 Stat. 362 (2015).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[42] Parties must use the certification formats provided in 19 CFR 351.303(g).[43] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[44]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475. The PC strand subject to these investigations is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

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[42] *See* section 782(b) of the Act.

[43] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[44] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Initiation of Countervailing Duty Investigation

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

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva; AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

The Petition

On April 16, 2020, the Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey), filed in proper form on behalf of the petitioners,[1] domestic producers of PC strand.[2] The Petition was accompanied by antidumping duty (AD) petitions concerning imports of PC strand from Argentina, Columbia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine and the United Arab Emirates.

Between April 21 and 23, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition in separate supplemental questionnaires.[3] The petitioners filed responses to the supplemental questionnaires on April 27, 2020.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of Turkey (GOT) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of PC strand in Turkey, and that imports of

[1] The petitioners consist of Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation.

[2] *See* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 16, 2020 (the Petition).

[3] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates: Supplemental Questions,'' dated April 21, 2020 (General Issues Supplement); and ''Petition for the Imposition of Countervailing Duties on Imports of Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Supplemental Questions,'' dated April 21, 2020.

[4] *See* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from Argentina, Columbia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Ukraine, and United Arab Emirates—Petitioners' Amendment to Volume I Concerning General Issues,'' dated April 27, 2020 (General Issues Supplement Response); and ''Prestressed Concrete Steel Wire Strand from Argentina, Columbia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates—Petitioners' Amendment to Volume XVII Related to Countervailing Duties from the Republic of Turkey,'' dated April 27, 2020.

such products are materially injuring, or threatening material injury to, the domestic PC strand industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the petitioners provided reasonably available information in the Petition to support their allegation.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.[5]

Period of Investigation

Because the Petition was filed on April 16, 2020, the period of investigation is January 1, 2019 through December 31, 2019.

Scope of the Investigation

The product covered by this investigation is PC strand from Turkey. For a full description of the scope of this investigation, *see* the appendix to this notice.

Scope Comments

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 26, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 5, 2020, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must also be filed on the records of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS), unless an exception applies.[8] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOT of the receipt of the Petition and provided them the opportunity for consultations with respect to the Petition.[9] Consultations were held with the GOT on April 27, 2020.[10] The GOT submitted consultation remarks on April 27, 2020.[11]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.[14] Based on our analysis of the information submitted on the record, we have determined that PC strand, as defined in the scope, constitutes a single domestic like

[5] *See* the ''Determination of Industry Support for the Petition'' section, *infra.*

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See* 19 CFR 351.102(b) (21) (defining ''factual information'').

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), and *Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[9] *See* Commerce's Letter, ''Countervailing Duty Petition on Prestressed Concrete Steel Wire Strand from the Republic of Turkey; Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 17, 2020.

[10] *See* Memorandum, ''Consultations with Officials from the Government of the Republic of Turkey Regarding the Countervailing Duty Investigation of Prestressed Concrete Steel Wire Strand from the Republic of Turkey,'' dated April 27, 2020.

[11] *See* GOT's Letter, ''Countervailing Duty Petition on Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Consultations Held on April 27, 2020,'' dated April 27, 2020.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989)).

[14] *See* Volume I of the Petition at 19–20 and Exhibits GEN–4 and GEN–5; *see also* General Issues Supplement Response at 4.

product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the domestic like product, as well as the 2019 production of Strand-Tech Manufacturing, Inc., a supporter of the Petition.[16] The petitioners compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioners for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[23]

Injury Test

Because Turkey is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; declining market share; underselling and price suppression; lost sales and revenues; declines in production, shipments, capacity utilization, and employment; and declining financial performance.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of PC strand from Turkey benefit from countervailable subsidies conferred by the GOT. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation, on 21 of the 22 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Turkey CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petition, the petitioners named three companies as producers/exporters of PC strand.[27] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates for each company. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the appendix to this notice.

On May 4, 2020, Commerce released CBP data on imports of PC strand from Turkey under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[28]

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from the Republic of Turkey (Turkey CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

[16] *See* Volume I of the Petition at 4 and Exhibits GEN–2 and GEN–3; *see also* General Issues Supplement Response at 4 and Exhibit GEN–SUPP–3.

[17] *See* Volume I of the Petition at 4 and Exhibits GEN–1 through GEN–3; *see also* General Issues Supplement Response at 3–4 and Exhibits GEN–SUPP–2 and GEN–SUPP–3.

[18] *See* Volume I of the Petition at 4 and Exhibits GEN–1 through GEN–3; *see also* General Issues Supplement Response at 3–4 and Exhibits GEN–SUPP–2 and GEN–SUPP–3. For further discussion, *see* Attachment II of the Turkey CVD Initiation Checklist.

[19] *See* Attachment II of the Turkey CVD Initiation Checklist.

[20] *Id.; see also* section 702(c)(4)(D) of the Act.

[21] *See* Attachment II of the Turkey CVD Initiation Checklist.

[22] *Id.*

[23] *Id.*

[24] *See* Volume I of the Petition at 21–22 and Exhibit GEN–11.

[25] *See* Volume I of the Petition at 25–39 and Exhibits GEN–9, and GEN–12 through GEN–16.

[26] *See* Turkey CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates (Attachment III).

[27] *See* Volume I of the Petition at Exhibit GEN–8.

[28] *See* Memorandum, ''Petition for the Imposition of Countervailing Duties on Imports of Prestressed

Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.* We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOT via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of PC strand from Turkey are materially injuring, or threatening material injury to, a U.S. industry.[29] A negative ITC determination will result in this investigation being terminated.[30] Otherwise, this investigation will proceed according to the statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [31] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[32] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

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Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[33] Parties must use the certification formats provided in 19 CFR 351.303(g).[34] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[35]

This notice is issued and published pursuant to sections 702(c)(2) and 777(i) of the Act and 19 CFR 351.203(c).

Dated: May 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2020–10234 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–DS–P

Concrete Steel Wire Strand from the Republic of Turkey: Release of Customs Data from U.S. Customs and Border Protection,'' dated May 4, 2020.

[29] *See* section 703(a)(2) of the Act.

[30] *See* section 703(a)(1) of the Act.

[31] *See* 19 CFR 351.301(b).

[32] *See* 19 CFR 351.301(b)(2).

[33] *See* section 782(b) of the Act.

[34] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[35] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA163]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold an online meeting to discuss items on the Pacific Council's June 2020 meeting agenda. The meeting is open to the public.

DATES: The webinar will be held Friday, May 29, 2020, from 9 a.m. to 11 a.m., Pacific Daylight Time, or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer; telephone: (503) 820–2426; email: *todd.phillips@noaa.gov.*

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's June 2020 meeting. The GMT will discuss items related to groundfish management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: May 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–10212 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA177]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Southern Resident Killer Whale (SRKW) Workgroup (Workgroup) will host two online meetings that are open to the public.

DATES: The first meeting will be held Monday, June 1, 2020, from 10:30 a.m. until 3:30 p.m., Pacific Daylight Time (PDT), or until business is complete. The second meeting will be held Tuesday, June 30, 2020, from 9 a.m. until 2 p.m., PDT, or until business is complete.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410; email: *robin.ehlke@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of these online meetings will be to continue to discuss and consider the potential development of recommendations for salmon management/conservation measures, and any associated modeling and analysis that may be needed. The Workgroup may also discuss and prepare for future Workgroup meetings and future meetings with the Pacific Council and its advisory bodies. Members of the Salmon Advisory Subpanel will also be in attendance. This is a public meeting and not a public hearing. Public comments will be taken at the discretion of the Workgroup co-chairs as time allows.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*; (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: May 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–10210 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA156]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its

advisory committees will meet June 1, 2020 through June 5, 2020, and June 8, 2020 through June 10, 2020 via web conference.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8:30 a.m. on Monday, June 1, 2020 and continue through Wednesday, June 3, 2020. The Council's Advisory Panel (AP) will begin at 8:30 a.m. on Thursday, June 4, 2020 and continue through Friday, June 5, 2020. The Council will begin its plenary session at 8:30 a.m. on Monday, June 8, 2020 continuing through Wednesday, June 10, 2020.

ADDRESSES: The meeting will be a web conference. Join online through the link at *http://meetings.npfmc.org/Meeting/Details/1443.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave. Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via web conference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: *diana.evans@noaa.gov.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Please note that if additional changes to the June Council meeting are required as a result of the evolving public health situation regarding COVID–19, Council staff will post notice of any changes prominently on our website: *https://www.npfmc.org/.* Potential meeting participants are encouraged to check the Council's website frequently for such information and updates.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, June 1, 2020 Through Wednesday, June 3, 2020

The SSC agenda will include the following issues:

(1) Alaska Fishery Science Center Report
(2) Scallop SAFE Report—ABC/OFL Specifications
(3) BSAI Crab AIGKC, PIGKC, WAIRKC—ABC/OFL Specifications
(4) Cook Inlet Salmon FMP Amendment—Preliminary Review
(5) Observer update with respect to Covid–19 response
(6) Sablefish apportionment workshop—Report
(7) EFH 5-year review modeling workplan—Report
(8) Marine Mammal conservation status—Report (tentative)

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Thursday, June 4, 2020 Through Friday, June 5, 2020

The Advisory Panel agenda will include the following issues:

(1) Scallop SAFE Report—ABC/OFL Specifications
(2) BSAI Crab AIGKC, PIGKC, WAIRKC—ABC/OFL Specifications
(3) St Matthew Blue King Crab Rebuilding Plan—Final Action
(4) Cook Inlet Salmon FMP Amendment, CISC report—Preliminary Review
(5) Observer update with respect to Covid–19 response, FMAC Report

Monday, June 8, 2020 Through Wednesday, June 10, 2020

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report
(2) NMFS Management Report
(3) Alaska Fisheries Science Center Report
(4) NOAA GC Report
(5) NOAA Enforcement Report
(6) ADF&G Report
(7) USCG Report
(8) USFWS Report
(9) SSC Report (in full)
(10) AP Report (in full)
(11) Scallop SAFE Report—ABC/OFL Specifications
(12) BSAI Crab AIGKC, PIGKC, WAIRKC—ABC/OFL Specifications
(13) St Mathew Blue King Crab Rebuilding Plan—Final Action
(14) Cook Inlet Salmon FMP Amendment, CISC Report—Preliminary Review
(15) Observer update with respect to Covid–19 response—FMAC Report
(16) Committees, New Business, Tasking—Review

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1443.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to: *https://meetings.npfmc.org/Meeting/Details/1443.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The deadline for written comments is June 7, 2020, at 12 p.m. Alaska Time.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests should be directed to Shannon Gleason at (907) 903–3107 at least 7 working days prior to the meeting date.

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

Dated: May 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–10209 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA149]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a half day webinar meeting of its Standing, Reef Fish, and Socioeconomic Scientific and Statistical Committees (SSC).

DATES: The meeting will convene on Monday, June 1, 2020, from 1 p.m. to 4 p.m., EDT.

ADDRESSES: The meeting will take place via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, June 1, 2020; 1 p.m.–4 p.m.

The meeting will begin with introductions, adoption of agenda, and approval of minutes from the March 11, 2020 webinar meeting; along with a review of Scope of Work and selection of an SSC Representative to attend the June Council meeting in St. Petersburg, FL. The Committees will review SEDAR 67—Gulf of Mexico Vermilion Snapper Stock Assessment: Assessment Presentation and Stock Status Determination, Projections, and Stock Assessment Executive Summary.

Lastly, the Committees will discuss any Other Business items.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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

Dated: May 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–10208 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA168]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Hawaii Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), American Samoa Archipelago FEP AP, Mariana Archipelago FEP-Guam AP, and Mariana Archipelago FEP-Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Hawaii Archipelago FEP AP will meet on Friday, May 29, 2020 between 9 a.m. and 11 a.m.; the Mariana Archipelago FEP-Guam AP will meet on Saturday, May 30, 2020, between 9 a.m. and 11 a.m.; the American Samoa Archipelago FEP AP will meet on Saturday, May 30, 2020 from 10 a.m. to 12 p.m.; and the Mariana Archipelago FEP–CNMI AP will meet on Saturday, June 6, 2020 between 9 a.m. and 11 a.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Each of the meetings will be held by web conference. Audio and visual portions for all of the web conferences can be accessed at: *https://wprfmc.webex.com/join/info.wpcouncilnoaa.gov.* Web conference access information will also be posted on the Council's website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. Information on how to provide public comment will be posted on the Council's website at *www.wpcouncil.org.* The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Friday, May 29, 2020, 9 a.m.–11 a.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Pacific Remote Island Area (PRIA) Marine Conservation Plan (MCP)
   B. Mandatory Electronic Reporting
   C. 2019 Annual Stock Assessment and Fishery Evaluation (SAFE) Reports
   D. Update on Hawaii Small-boat Fishery Management
   E. Considerations for Developing Reasonable and Prudent Measures (RPMs) and/or Reasonable and Prudent Alternatives (RPAs) for the American Samoa Longline Fishery
4. Hawaii Reports
5. Report on Hawaii Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the Mariana Archipelago FEP-Guam AP Meeting

Saturday, May 30, 2020, 9 a.m.–11 a.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Guam MCP
   B. PRIA MCP
   C. Mandatory Electronic Reporting
   D. 2019 Annual SAFE Reports
   E. Update on Data Reporting App and Launch Plans
4. Guam Reports
5. Report on Mariana Archipelago FEP Advisory Panel Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the American Samoa FEP AP Meeting

Saturday, May 30, 2020, 10 a.m.–12 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Specifying Annual Catch Limits for American Samoa Bottomfish
   B. Pacific Remote Island Area (PRIA) Marine Conservation Plan (MCP)
   C. Mandatory Electronic Reporting
   D. 2019 Annual Stock Assessment and Fishery Evaluation (SAFE) Report
   E. Update on Data Reporting App and Launch Plans
   F. Considerations for Developing RPMs and/or RPAs for the Hawaii Deep-set Longline Fishery
4. American Samoa Reports
5. Report on American Samoa Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the Mariana Archipelago FEP–CNMI AP Meeting

Saturday, June 6, 2020, 9 a.m.–11 a.m.

1. Welcome and Introductions

2. Review of the last AP meeting and recommendations
3. Council Issues
   A. PRIA MCP
   B. Mandatory Electronic Reporting
   C. 2019 Annual SAFE Reports
   D. Update on Data Reporting App and Launch Plans
4. Commonwealth of the Northern Mariana Islands Reports
5. Report on Mariana Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–10211 Filed 5–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On March 30, 2020, the Department of Education (Department) published in the **Federal Register** (85 FR 17548) a notice inviting applications (NIA) for the fiscal year (FY) 2020 Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling competition, Catalog of Federal Domestic Assistance (CFDA) number 84.129B. The NIA established a deadline date of May 14, 2020, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until June 15, 2020 at 11:59 p.m. and extends the date of intergovernmental review until August 14, 2020.

DATES:

Deadline for Transmittal of Applications: June 15, 2020.

Deadline for Intergovernmental Review: August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Diandrea Bailey, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW, Room 5065A, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6244. Email: *84.129B@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 March 30, 2020, we published the NIA for the FY 2020 Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling competition in the **Federal Register** (85 FR 17548) available at *https://www.federalregister.gov/documents/2020/03/30/2020-06535/applications-for-new-awards-rehabilitation-long-term-training-program-vocational-rehabilitation.* We are extending the deadline date for transmittal of applications in order to allow applicants more time to prepare and submit their applications. This extension reflects serious consideration of the adverse effect the COVID–19 pandemic has had on potential applicants.

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.

Note: Grants.gov has relaxed the requirement for applicants to have an active registration in the System for Award Management (SAM) in order to apply for funding during the COVID–19 pandemic. An applicant that does not have an active SAM registration can still register with *Grants.gov*, but must contact the *Grants.gov* Support Desk, toll-free, at 1–800–518–4726, in order to take advantage of this flexibility.

Program Authority: 29 U.S.C. 772.

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. 2020–10260 Filed 5–12–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–171–E]

Application to Export Electric Energy; Powerex Corp.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Powerex Corp (Applicant or Powerex) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 12, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On November 3, 2015, DOE issued Order EA–171–D, which authorized Powerex to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities appropriate for open access. The authorization expires on November 17, 2020. On May 5, 2020, Powerex filed an application (Application or App.) with DOE for renewal of the export

authorization contained in Order No. EA–171–D.

Powerex states that it is a ''corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business . . . in Vancouver, British Columbia, Canada.'' App. at 2. Powerex is a ''wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority (''BC Hydro''), a provincial Crown Corporation owned by the Government of British Columbia.'' *Id.* Powerex further states that it ''will purchase the power to be exported to Canada from other power marketers, from independent power producers, from Mexican sources, or from US electric utilities, municipalities, and federal power marketing agencies.'' App. at 4. Powerex contends that its proposed exports will not impair the sufficiency of electric supply within the United States and will neither impede nor tend to impede the operational reliability of the bulk power system.'' *See id.* at 5.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Powerex's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–171–E. Additional copies are to be provided directly to Connor Curson, 666 Burrard Street, Suite 1300, Vancouver, British Columbia, Canada V6C 2X8, *connor.curson@powerex.com;* Deanna E. King, 111 Congress Avenue, Suite 2300, Austin, TX 78701, *deanna.king@bracewell.com;* and Tracey L. Bradley, 2001 M Street NW, Suite 900, Washington, DC 20036, *tracey.bradley@bracewell.com.*

A final decision will be made on this Application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on May 8, 2020.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2020–10265 Filed 5–12–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–149–000.
Applicants: Minco Wind I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Minco Wind I, LLC.
Filed Date: 5/6/20.
Accession Number: 20200506–5248.
Comments Due: 5 p.m. ET 5/27/20.

Docket Numbers: EG20–150–000.
Applicants: Ponderosa Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Ponderosa Wind, LLC.
Filed Date: 5/6/20.
Accession Number: 20200506–5249.
Comments Due: 5 p.m. ET 5/27/20.

Docket Numbers: EG20–151–000.
Applicants: Sky Global Power Two LLC.
Description: Notice of Self-Certification of EWG Status of Sky Global Power Two LLC.
Filed Date: 5/6/20.
Accession Number: 20200506–5250.
Comments Due: 5 p.m. ET 5/27/20.

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

Docket Numbers: ER19–1890–002.
Applicants: MATL LLP.
Description: Compliance filing: Order No. 845 Compliance Filing Amendment ER19–1890 to be effective 5/22/2019.
Filed Date: 5/7/20.
Accession Number: 20200507–5120.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1452–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Resubmit 2020 TACBAA Update to be effective 6/1/2020.
Filed Date: 5/7/20.
Accession Number: 20200507–5096.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1777–000.
Applicants: Jersey Central Power & Light Company.
Description: § 205(d) Rate Filing: Rate Schedules and Agreements Yards Creek to be effective 7/5/2020.
Filed Date: 5/6/20.
Accession Number: 20200506–5216.
Comments Due: 5 p.m. ET 5/27/20.

Docket Numbers: ER20–1778–000.
Applicants: Idaho Power Company.
Description: Tariff Cancellation: Cancellation of NTTG Funding Agreement to be effective 4/30/2020.
Filed Date: 5/7/20.
Accession Number: 20200507–5000.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1779–000.
Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.
Description: § 205(d) Rate Filing: 2020–05–07_SA 3326 MP–BPU 1st Rev T–T (Brainerd) to be effective 5/8/2020.
Filed Date: 5/7/20.
Accession Number: 20200507–5025.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1780–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–07_SA 3488 MDU–MDU GIA (R1000) to be effective 4/23/2020.
Filed Date: 5/7/20.
Accession Number: 20200507–5038.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1781–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Bulldog Solar (Bulldog Solar I) LGIA Filing to be effective 4/24/2020.
Filed Date: 5/7/20.
Accession Number: 20200507–5088.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: ER20–1782–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions Regarding Make Whole Payments and Minimum Run Time to be effective 12/31/9998.
Filed Date: 5/7/20.
Accession Number: 20200507–5116.
Comments Due: 5 p.m. ET 5/28/20.

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: May 7, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10279 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2837–000]

Erie Boulevard Hydropower, L.P.; Notice of Authorization for Continued Project Operation

On March 29, 2018, Erie Boulevard Hydropower, L.P., licensee for the Granby Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Granby Hydroelectric Project is on the Oswego River in the town of Fulton in Oswego County, New York.

The license for Project No. 2837 was issued for a period ending March 31, 2020. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2837 is issued to Erie Boulevard Hydropower, L.P., for a period effective April 1, 2020 through March 31, 2021, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2021, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Erie Boulevard Hydropower, L.P., is authorized to continue operation of the Granby Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10258 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2669–000]

Bear Swamp Power Company, LLC; Notice of Authorization for Continued Project Operation

On March 30, 2018, Bear Swamp Power Company, LLC, licensee for the Bear Swamp Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Bear Swamp Hydroelectric Project is on Deerfield River, in Berkshire and Franklin Counties, Massachusetts.

The license for Project No. 2669 was issued for a period ending March 31, 2020. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2669 is issued to Bear Swamp Power Company, LLC for a period effective April 1, 2020 through March 31, 2021, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2021, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Bear Swamp Power Company, LLC, Inc. is authorized to continue operation of the Bear Swamp Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10257 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–44–001.

Applicants: ONEOK Gas Transportation, L.L.C.

Description: Tariff filing per 284.123(b),(e)+(g): Revised Statement of Conditions Pursuant to 18 CFR Section 284.123(g) to be effective 3/1/2020.

Filed Date: 5/1/2020.

Accession Number: 202005015344.

Comments Due: 5 p.m. ET 5/22/2020.

284.123(g) Protests Due: 5 p.m. ET 5/22/2020.

Docket Number: PR20–56–000.

Applicants: Enstor Katy Storage and Transportation, L.P.

Description: Tariff filing per 284.123(b)(2)+(g): Enstor Katy Storage SOC Filing to be effective 5/4/2020.

Filed Date: 5/4/2020.

Accession Number: 202005045089.

Comments Due: 5 p.m. ET 5/26/2020

284.123(g) Protests Due: 5 p.m. ET 7/6/2020.

Docket Numbers: RP95–408–087.

Applicants: Columbia Gas Transmission, LLC.

Description: Annual Report on Sharing Profits from Base Gas Sales with Customers of Columbia Gas Transmission, LLC.

Filed Date: 4/15/20.

Accession Number: 20200415–5156.

Comments Due: 5 p.m. ET 5/13/20.

Docket Numbers: RP20–860–000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: Statement of Negotiated Rates V16–Buzzard Bench to be effective 5/1/2020.

Filed Date: 5/6/20.

Accession Number: 20200506–5088.

Comments Due: 5 p.m. ET 5/18/20.

Docket Numbers: RP20–861–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–05–05 Negotiated Rate Agreements to be effective 5/5/2020.

Filed Date: 5/6/20.

Accession Number: 20200506–5142.

Comments Due: 5 p.m. ET 5/18/20.

Docket Numbers: RP20–862–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–05–06 Negotiated Rate Agreements to be effective 5/6/2020.

Filed Date: 5/6/20.

Accession Number: 20200506–5191.

Comments Due: 5 p.m. ET 5/18/20.

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 date(s). 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: May 7, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10280 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–12–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Leach Xpress Project Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Leach XPress Project Amendment (Amendment), proposed by Columbia Gas Transmission, LLC (Columbia Gas) in the above-referenced docket. Columbia Gas proposes to amend the Order Issuing Certificate and Approving Abandonment issued on January 19, 2017 in Docket No. CP15–514–000 in order to modify the full-load operation of its Ceredo Compressor Station and modify the noise level requirements for the Ceredo and Crawford Compressor Stations. The Ceredo and Crawford Compressor Stations are located in Wayne County, West Virginia, and Fairfield County, Ohio, respectively.

The EA assesses the potential environmental effects of the Amendment in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission sent a copy of the *Notice of Availability* for the EA to federal, state, and local government representatives and agencies; elected officials; and potentially affected landowners in the Amendment area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.* CP20–12). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on June 8, 2020.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference

the project docket number (CP20–12–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the Amendment is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10251 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2155–053]

Pacific Gas and Electric Company, Sacramento Municipal Utility District; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On March 25, 2020, Pacific Gas and Electric Company (transferor) and Sacramento Municipal District (transferee) filed a joint application for the transfer of license of the Chili Bar Hydroelectric Project No. 2155. The project is located on the South Fork American River in El Dorado County, California.

The applicants seek Commission approval to transfer the license for the Chili Bar Hydroelectric Project from the transferor to the transferee.

Applicants Contact: For Transferor: Annette Faraglia, Chief Counsel, Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, B30A–3005, San Francisco, CA 94105, phone: (415) 973–7145, fax: (415) 973–5520, Email: *annette.faraglia@pge.com* and Jan Nimick, Vice President—Power Generation, Pacific Gas and Electric Company, 245 Market Street, Room 1163, San Francisco, CA 94105, phone: (415) 973–0629, Email: *jan.nimick@pge.com.*

For Transferee: Joe Schofield, Deputy General Counsel, Sacramento Municipal Utility District, 6201 S Street, Sacramento, CA 95817, phone: (916) 732–5446, fax: (916) 732–6581, Email: *joe.schofield@smud.org* and Ross Gould, Director Power Generation, Sacramento Municipal District, 4401 Bradshaw Rd., Mail Stop EA 405, Sacramento, CA 95827, phone: (916) 732–6584, Email: *ross.gould@smud.org.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. 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 the Federal Energy Regulatory Commission 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. The first page of any filing should include docket number P–2155–053.

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10255 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–06–000]

Commission Information Collection Activities (FERC–725A(1B)); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–725A(1B) (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due June 12, 2020.

ADDRESSES: Send written comments on FERC–725A(1B) to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0292) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. Please submit copies of your comments to the Commission (identified by Docket No. IC20–06–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions

OMB submissions: Must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain*. Using the search function under the Currently Under Review field select Federal Energy Regulatory Commission; click ''submit'' and select omment to the right of the subject collection.

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

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

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

SUPPLEMENTARY INFORMATION:

Title: FERC–725A(1B), (Mandatory Reliability Standards for the Bulk Power System).

OMB Control No.: 1902–0292.

Type of Request: Three-year extension of the FERC–725A(1B) information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: The FERC–725A(1B) Under section 215 of the Federal Power Act (FPA), the Commission proposes to approve Reliability Standards TOP–010–1 (Real-time Reliability Monitoring and Analysis Capabilities) submitted by North American Electric Corporation (NERC). In this order, the Reliability Standards build on monitoring, real-time assessments and support effective situational awareness. The Reliability Standards accomplish this by requiring applicable entities to: (1) Provide notification to operators of real-time monitoring alarm failures; (2) provide operators with indications of the quality of information being provided by their monitoring and analysis capabilities; and (3) address deficiencies in the quality of information being provided by their monitoring and analysis capabilities. FERC–725A(1B) address situational awareness objectives by providing for operator awareness when key alarming tools are not performing as intended. These collections will improve real-time situational awareness capabilities and enhance reliable operations by requiring reliability coordinators, transmission operators, and balancing authorities to provide operators with an improved awareness of system conditions analysis capabilities, including alarm availability, so that operators may take appropriate steps to ensure reliability. These functions include planning, operations, data sharing, monitoring, and analysis.

Type of Respondent: Balancing Authority (BA),Transmission Operations (TOP) and Reliability Coordinators (RC).

Estimate of Annual Burden: [1] The Commission estimates the total annual burden and cost [2] for this information collection in the table below.

FERC–725A(1B), CHANGES DUE TO TOP–010–1 IN DOCKET NO. IC20–6–000 [3]

Entity	Requirements & period	Number of respondents [4]	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [5]	Total annual burden hours & total annual cost	Cost per respondent ($)
		(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
BA [6]	Annual reporting	98	1	98	42 hrs.; $2,696.40	4,116 hrs.; $264,247.20	$2,696.40
TOP [7]	Annual reporting	169	1	169	40 hrs.; $2,568.00	6,760 hrs.; $433,992.00	2,568.00
BA/TOP	Annual Record Retention.	267	1	267	2 hrs.; $75.38	534 hrs.; $20,126.46	$75.38
Total Burden Hours Per Year.						11,410 hrs.; $718,365.66 per year, (starting in year 2).	

Averaging One-Time Burden and Responses for FERC–725A(1B), TOP–010–1 in Docket No. IC20–6–000

—For purposes of this OMB clearance, the annual burden and record retention of 11,410 hrs.

Summary and Response to Public Comment

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility

[1] Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[2] Costs (for wages and benefits) are based on wage figures from the Bureau of Labor Statistics (BLS) for May 2019 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (at *https://www.bls.gov/news.release/ecec.nr0.htm*).

[3] Our estimates are based on the NERC Compliance Registry Summary of Entities and Functions as of April 24, 2020, which indicates there are registered as BA and TOP.

[4] The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

[5] The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of May 2019 (at *http://www.bls.gov/oes/current/naics2_22.htm,* with updated benefits information for March 2019 at *http://www.bls.gov/news.release/ecec.nr0.htm*), for an electrical engineer (code 17–2071, $68.17/hour), and for information and record clerks record keeper (code 43–4199, $40.84/hour). The hourly figure for engineers is used for reporting; the hourly figure for information and record clerks is used for document retention.

[6] Balancing Authority (BA). The following Requirements and associated measures apply to balancing authorities: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R2: Quality monitoring logs and the data errors and corrective action logs.

[7] Transmission Operations (TOP). The following Requirements and associated measures apply to transmission operators: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R3: Alarm process monitor performance logs to maintain performance logs and corrective action plans.

and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10256 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–312–000]

Equitrans, L.P.; Notice of Application

Take notice that on April 30, 2020, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania, 15317, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA), and a notice pursuant to section 4 of the NGA requesting the Commission to authorize the abandonment of approximately 191 miles of certificated gathering lines, nine certificated compressor station units, approximately 736 miles of non-certificated gathering lines, nine non-certificated compressor station units, and any appurtenant facilities located in West Virginia and Pennsylvania (Equitrans Gathering System). All as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659. 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.

Any questions concerning this application may be directed to Matthew T. Eggerding, Assistant General Counsel, Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317, by phone at (412) 553–5786; or by email to *MEggerding@equitransmidstream.com.*

Equitrans requests approval to abandon the Equitrans Gathering System using a two-step process. Equitrans states that, as part of the two-step process it will attempt to abandon the gathering facilities by sale and, if that is not successful, Equitrans will abandon the gathering facilities in place. Equitrans requests approval to remove Rate Schedule AGS and references thereto from its Tariff.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's website (*http://www.ferc.gov*) under the e-Filing link.

Comment Date: 5:00 p.m. Eastern Time on May 28, 2020.

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10254 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–19–000]

Commission Information Collection Activities (FERC–561); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–561 (Annual Report of Interlocking Positions).

DATES: Comments on the collection of information are due July 13, 2020.

ADDRESSES: You may submit comments (identified by Docket No. IC20–19–000) by either of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Express Services:* 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.

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

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

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

SUPPLEMENTARY INFORMATION:

OMB Control No.: 1902–0099.

Abstract: The FERC Form 561 responds to the FPA requirements for annual reporting of similar types of positions which public utility officers and directors hold with financial institutions, insurance companies, utility equipment and fuel providers, and with any of an electric utility's 20 largest purchasers of electric energy (*i.e.,* the 20 entities with high expenditures of electricity). The FPA specifically defines most of the information elements in the Form 561 including the information that must be filed, the required filers, the directive to make the information available to the public, and the filing deadline.

The Commission uses the information required by 18 CFR 131.31 and collected by the Form 561 to implement the FPA requirement that those who are authorized to hold interlocked directorates annually disclose all the interlocked positions held within the prior year. The Form 561 data identifies persons holding interlocking positions between public utilities and other entities, allows the Commission to review these interlocking positions, and allows identification of possible conflicts of interest.

Type of Respondents: Public utility officers and directors holding financial positions, insurance companies, security underwriters, electrical equipment suppliers, fuel provider, and any entity which is controlled by these.

Estimate of Annual Burden: [1] The Commission estimates the total annual burden and cost [2] for this information collection as follows:

FERC FORM 561, (ANNUAL REPORT OF INTERLOCKING POSITIONS)

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
2,700	1	2,700	0.25 hrs.; $20.00	675.00 hrs.; $54,000	$20.00

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

Dated: May 7, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10252 Filed 5–12–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10009–53–Region 10]

Final Reissuance of NPDES General Permit for Concentrated Animal Feeding Operations in Idaho (IDG010000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final reissuance of NPDES general permit.

SUMMARY: The Director of the Water Division, Environmental Protection Agency (EPA), Region 10, is reissuing the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) located in Idaho, excluding facilities in Indian Country. The General Permit authorizes discharges of wastewater from CAFOs. The previous permit NPDES General Permit for CAFOs in Idaho expired on May 8, 2017. This permit will transfer to the State of Idaho in July 2020 as part of the phased implementation of Idaho's administration of the NPDES program. The EPA will remain the permitting authority for CAFO facilities located in Indian Country in Idaho.

DATES: The issuance date of the General Permit is May 13, 2020. The General Permit will be effective on June 15, 2020 and will expire on June 14, 2025.

ADDRESSES: Copies of the general permits, Fact Sheet and Response to Comments are available upon request. Written requests may be submitted to: Water Division; USEPA Region 10; 1200 Sixth Avenue, Suite 155, WD19–C04; Seattle, WA 98101–3188. These documents can be accessed online on the EPA Region 10 website at: *https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho.*

[1] Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–561 are approximately the same as the Commission's average cost. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year (or $80.00/hour).

FOR FURTHER INFORMATION CONTACT: Requests may be made to Audrey Washington at (206) 553–0523 or to Nicholas Peak at (208) 378–5765. Requests may also be electronically mailed to: *washington.audrey@epa.gov,* or *peak.nicholas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

All animal feeding operations (AFOs) that meet the regulatory definition of a CAFO and are subject to 40 CFR part 412 are eligible for coverage under the permit, excluding facilities in Indian Country. Eligible CAFOs may apply for authorization under the terms and conditions of the permit by submitting a Notice of Intent (NOI) and nutrient management plan (NMP). Upon receipt, the EPA will review the NOI and NMP to ensure that all permit requirements are met. If the EPA makes a preliminary determination that the NOI is complete, the NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available for a thirty (30) day public review and comment period.

If determined appropriate by the EPA, CAFOs will be granted coverage under the permit upon written notification by the EPA.

The EPA received 81 comments from six different organizations/entities during the public comment period which extended from October 23, 2019 through December 9, 2019. A Response to Comments document was prepared to respond to public comments received and explain any changes made to the draft general permit to produce the final general permit. The EPA received the final State CWA 401 certification on April 8, 2020.

The EPA has completed a Biological Evaluation for these Permit actions. Consultation under the Endangered Species Act between the EPA and the National Marine Fisheries Service and the U.S. Fish and Wildlife Service has been completed. The Services concurred on the EPA's determination that the Permit actions are not likely to adversely affect species listed under the Endangered Species Act or designated critical habitat.

II. Other Legal Requirements

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866, *Regulatory Planning and Review,* and 13563, *Improving Regulation and Regulatory Review,* and was determined to be not significant.

Dated: May 7, 2020.

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2020–10227 Filed 5–12–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Concepts 9, *Materiality: Amending Statement of Federal Financial Accounting Concepts (SFFAC) 1, Objectives of Federal Financial Reporting, and SFFAC 3, Management's Discussion and Analysis*

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Concepts (SFFAC) 9, *Materiality: Amending Statement of Federal Financial Accounting Concepts (SFFAC) 1, Objectives of Federal Financial Reporting, and SFFAC 3, Management's Discussion and Analysis.*

SFFAC 9 is available on the FASAB website at *https://fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 4, 2020.

Monica R. Valentine,

Executive Director.

[FR Doc. 2020–10154 Filed 5–12–20; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1210; FRS 16737]

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 July 13, 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: 3060–1210.

Title: Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government, and Federal Government.

Number of Respondents and Responses: 4,394 respondents; 29,028 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: Recordkeeping, on occasion; one-time; quarterly and semi-annual reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Statutory authority for this information collection is contained in 47. U.S.C. Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 143,138 hours.

Total Annual Cost: No Cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is requesting that respondents submit confidential information to the Commission in the context of the test bed. Nationwide Commercial Mobile Radio Service (CMRS) providers must make data from the test bed available to small and regional CMRS providers so that the smaller providers can deploy technology throughout their networks that is consistent with a deployment that was successfully tested in the test bed. CMRS providers also may request confidential treatment of live 911 call data reports, but the Commission reserves the right to release aggregate or anonymized data on a limited basis to facilitate compliance with its rules.

Needs and Uses: Section 9.10(i)(2)(ii)(A) requires that, within three years of the effective date of rules, CMRS providers shall deliver to uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 9.10(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. The requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 9.10(i)(2)(ii)(C) and (D) requires that in each of the top 50 cellular market areas (CMAs), nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology. CMRS providers that deploy z-axis technology must also comply with the compliance certification and live call data reporting requirements of paragraphs (i)(2)(iii) and (i)(3) of section 9.10. Pursuant to Section 9.10(i)(2)(ii)(E), non-nationwide CMRS providers shall have an additional year to comply with these requirements.

Section 9.10(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the goals that they themselves agreed to.

Section 9.10(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for indoor location. The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 9.10(i)(3)(ii) requires that beginning 18 months from the effective date of the rules, CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls. Nationwide CMRS providers must submit call data on a quarterly basis; non-nationwide CMRS providers need only submit this data every six months. Non-nationwide providers that do not provide service in any of the Test Cities may satisfy this requirement by collecting and reporting data based on the largest county within the carrier's footprint. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

The Commission developed a reporting template to assist CMRS providers in collecting, formatting, and submitting aggregate live 911 call data in accordance with the requirements in the rules. The template will also assist the Commission in evaluating the progress CMRS providers have made toward meeting the 911 location accuracy benchmarks. The template is an Excel spreadsheet and will be available for downloading on the Commission's website. The Commission may also develop an online filing mechanism for these reports in the future.

Section 9.10(i)(4)(ii) requires that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission a report on its progress toward implementing improved indoor location accuracy. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 9.10(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. This requirement is necessary to ensure that the four nationwide CMRS providers are building in privacy and security measures to the NEAD from its inception.

Section 9.10(i)(4)(iv) requires that before use of the NEAD or any information contained therein, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the NEAD.

Section 9.10(i)(4)(v) requires that prior to use of z-axis information to meet the Commission's 911 vertical location accuracy requirements in paragraph (i)(2)(ii) of section 9.10, ''CMRS providers must certify that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain z-axis information will provide z-axis location information privacy and security protection equivalent to the NEAD.''

Section 9.10(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement will serve to make the use of C/U data easier for PSAPs.

Section 9.10(j)(4) also requires upon meeting the timeframes pursuant to paragraphs (i)(2)(ii)(C) and (D) of this

section, CMRS providers shall provide with wireless 911 calls that have dispatchable location or z-axis (vertical) information the C/U data required under paragraph (j)(1) of this section. Where available to the CMRS provider, floor level information must be provided with associated C/U data in addition to z-axis location information.

Section 9.10(k) requires that CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–10158 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0760; FRS 16728]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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

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

DATES: Written PRA comments should be submitted on or before July 13, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

OMB Control Number: 3060–0760.

Title: 272 Sunset Order, WC Docket No. 06–120; Access Charge Reform, CC Docket No. 96–262, First Report and Order; Second Order on Reconsideration and Memorandum Opinion and Order; and Fifth Report and Order; Business Data Services Report and Order, WC Docket No. 16–143 *et al.*

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 66 responses.

Estimated Time per Response: 3–80 hours.

Frequency of Response: One-time reporting requirement; on-occasion reporting requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i)–(j), 201–205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201–205, and 303(r).

Total Annual Burden: 1,256 hours.

Total Annual Cost: $63,360.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information requested is not of a confidential nature. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On April 28, 2017, the Commission released the *Business Data Services Order,* WC Docket No. 16–143 *et al.,* FCC 17–43, reforming the business data services/special access regulations for incumbent and competitive LECs. The Commission's reforms included replacing the application-based pricing flexibility rules with a new framework under which: (a) Packet-based services, time division multiplexing (TDM) services with bandwidth greater than 45 mbps, and TDM transport services are not subject to ex ante pricing regulation; (b) a new standard is applied to determine the extent to which the Commission regulates price cap LECs' TDM end user channel terminations with bandwidth less than 45 mbps and certain other low bandwidth business data services. Under this standard, a price cap LEC is not subject to ex ante pricing regulation in the provision of these services in counties deemed competitive under the Commission's competitive market test or for which the price cap LEC previously obtained Phase II pricing flexibility; (c) the price cap LEC is subject to ex ante pricing regulation in other counties where it is the incumbent LEC, but in these counties the price cap LEC has downward pricing flexibility (*i.e.,* the equivalent of Phase I pricing flexibility under the prior rules); and (d) the Commission will update the competitive market test results every three years using data already collected in FCC Form 477.

Among other rules changes, the *Business Data Services Report and Order* repealed section 1.774, which set forth requirements for pricing flexibility applications, and added section 1.776, which limits the circumstances under which price cap LECs must file their business data services contracts as contract-based tariffs. The Commission also amended section 69.701 of its rules to specify that its pricing flexibility rules no longer apply to business data services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–10161 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–55; DA 20–321; FRS 16716]

Improving Public Safety Communications in the 800 MHZ Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes steps to accelerate the successful conclusion of the Commission's 800 MHz band reconfiguration program, or rebanding. Specifically, this Order declares a list of licensees that have completed physical rebanding but, because they (a) have failed timely to complete the closing process dictated by the Commission's 800 MHz Orders or (b) timely filed notification that they have a remaining dispute with Sprint, are deemed to have completed rebanding and have no further rights under the Commission's 800 MHz orders, including recourse to the dispute resolution or other services of the 800 MHz Transition Administrator.

DATES: Effective June 12, 2020.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Homeland Security Bureau's Order in WT Docket No. 02–55, DA 20–321, released on March 23, 2020. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. In the Order, the Bureau, after consultation with Sprint and the Transition Administrator, has determined each of the licensees listed below has: (a) Completed physical reconfiguration, (b) has not submitted a timely, accurate completion certification, and (c) has not timely advised that it has an outstanding dispute with Sprint. The Bureau is satisfied, therefore, that the listed licensees have been successfully rebanded and that Sprint has satisfied its rebanding obligations to them.

2. Pursuant to the authority delegated to it, the Bureau deems the licensees listed below to have completed rebanding. Consequently, the Bureau terminates each listed licensee's rights under the Commission's 800 MHz rebanding orders, including the right to the TA's dispute resolution process and further reimbursement of costs.

Procedural Matters

A. Paperwork Reduction Act of 1995 Analysis

3. The Order document does not contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

B. Report to Congress

4. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any rules of particular applicability.

Ordering Clause

5. Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303, and 403, the Order *is hereby adopted.*

6. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR 0.191 and 0.392.

Appendix—Listing by Licensee Name

LISTING OF LICENSEES BY LICENSEE NAME THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT TIMELY SUBMITTED AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT

Licensee name	Call sign(s)	FRA ID	FRA name
3KFA, LLC	KNJH406	DL8910460127	3KFA, LLC.
ACTION COMMUNICATIONS INC	WPGY701	DL8910458167	Action Communications Inc.
ARAPAHOE, COUNTY OF	WPFH510, WPKM930, WQCZ740	DL8910427769	Colorado, State of PH II.
ArcelorMittal Cleveland Inc	WNLH463, WNXG931	DL8910447621	ArcelorMittal Cleveland Inc.
ARMIJO, DONALD	WPGY705	DL8910458167	Action Communications Inc.
BACA, COUNTY OF	WPNP223, WQDZ548	DL8910427769	Colorado, State of PH II.
BAYAMON, MUNICIPAL GOVERNMENT OF	WPHZ368	DL8910427603	BAYAMON, MUNICIPAL GOVERNMENT OF, PR PH II.
BELL, COUNTY OF	WPML265, WPML266, WQHS400	DL8910427609	BELL, COUNTY OF, TX PH II.
BIBB, COUNTY OF	WNVR832	DL8904418967	BIBB, COUNTY OF, GA.
BIRMINGHAM, CITY OF	WPZE311	DL8910427624	BIRMINGHAM, CITY OF, AL PH II.
BLANCO, COUNTY OF	WQGB437	DL8910437765	Blanco County, TX PH II.
BOSSIER, CITY OF	WNBU589	DL8910427637	Bossier, City of, LA PH II.
Boston Public Health Commission, City of	WPHZ634	DL8910427665	Boston Public Health Commission, City of, MA PH II.
BOSTON, CITY OF	WNGY708, WPFF631, WPFF645, WPHY940, WQBA899, WQBB424.	DL8904426344	Boston, City of—Police (MA).
BOSTON, CITY OF	KKR520, KNJA565, WPYH902, WQDU213	DL8910427639	BOSTON, CITY OF, MA PH II—Trunked System.
BOSTON, CITY OF	WPHZ904, WPLZ982, WPMD613	DL8910432845	BOSTON, CITY OF, MA PH II—POLICE.
BOULDER, CITY OF	WPRG380	DL8910427769	Colorado, State of PH II.
BOULDER, COUNTY OF	WPRG378	DL8910427769	Colorado, State of PH II.
BROWNSVILLE, CITY OF	WPGR394, WPGT607, WQLR527	DL8910427656	BROWNSVILLE, CITY OF, TX PH II.
CAMDEN, CITY OF	WQDC490	DL8910427676	CAMDEN, CITY OF, NJ PH II.
Cameron, County of	WNVL281, WQMH572	DL8910458177	Cameron, County of, TX.
CAPITAL REGION AIRPORT COMMISSION	WPLX453	DL8910427680	CAPITAL REGION AIRPORT COMMISSION, VA PH II.
CARMEL, CITY OF	WNVF998	DL8910427915	HAMILTON, COUNTY OF, IN PH II.
CARROLLTON, CITY OF	KNJU868	DL8910427686	CARROLLTON, CITY OF, TX PH II.
CHARLES, COUNTY OF	WPZH908, WPZI729, WPZR834, WPZR835, WQCL724, WQFY836, WQFY838, WQLG538.	DL8910427695	CHARLES, COUNTY OF, MD PH II.
Charlotte, City of	WPUN602, WQHB874, WQHB875	DL8910428114	MECKLENBURG, COUNTY OF, NC PH II.
CHERRY HILL, TOWNSHIP OF	WPRI877, WPRI907	DL8910427707	CHERRY HILL, TOWNSHIP OF, NJ PH II.
CHICAGO, CITY OF	WNAJ329	DL8910434745	Chicago, City of, IL PH II Aviation.
City of Richmond	WPPB793	DL8910428350	RICHMOND, CITY OF, VA PH II.

LISTING OF LICENSEES BY LICENSEE NAME THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT TIMELY SUBMITTED AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT—Continued

Licensee name	Call sign(s)	FRA ID	FRA name
COLORADO, STATE OF	WNXN848, WPAZ640, WPCJ843, WPFQ225, WPFQ267, WPHK881, WPJU925, WPKK592, WPMF617, WPNT769, WPPU345, WPPU346, WPPU347, WPPU371, WPPU372, WPRR696, WPRR740, WPRR756, WPRV777, WPRV815, WPRV816, WPRZ828, WPSG917, WPSH437, WPSH613, WPSK325, WPSK701, WPSM559, WPSQ525, WPTL723, WPTL725, WPTM601, WPTN359, WPTP867, WPTW329, WPUJ277, WPUJ668, WPUP350, WPUP354, WPUP356, WPUP357, WPUP362, WPUP364, WPUP366, WPUQ367, WPUS321, WPUU423, WPVU788, WPVU791, WPVU792, WPVW302, WPVW304, WPVW306, WPVW559, WPVW563, WPWK919, WPWK921, WPXA400, WPXA401, WPXA402, WPXA403, WPXA404, WPXA405, WPXC444, WPXC445, WPXH324, WPXY514, WPYS738, WPYS800, WPYT630, WPYT677, WPZR719, WPZR730, WPZR732, WPZS494, WQAM345, WQAW727, WQAW901, WQAX736, WQAY630, WQAZ298, WQBM307, WQBM309, WQBM311, WQBM312, WQBM328, WQBM329, WQBM330, WQBM331, WQBM336, WQBM791, WQBM793, WQCT916, WQCU591, WQDA801, WQDF397, WQDG483, WQDJ818, WQDK721, WQDL740, WQDM887, WQDT629, WQDW783, WQDX507, WQDY458, WQDY462, WQEA389, WQEA390, WQEA391, WQEA635, WQED556, WQEE615, WQEE616, WQEE617.	DL8910427769	Colorado, State of PH II.
COLTON UNIFIED SCHOOL DISTRICT	WYQ556	DL8910419021	COLTON UNIFIED SCHOOL DISTRICT.
COMANCHE COMMUNICATIONS	WPPB228, WPUP680, WQAF343	CERT050	Comanche Communications.
Continental Airlines, Inc	WNSK462	DL8910447661	Continental Airlines, Inc.
COPPERAS COVE, CITY OF	WQAH913	DL8910427743	COPPERAS COVE, CITY OF, TX PH II.
County of Catawba	WPTR976	DL8910428210	NORTH CAROLINA, STATE OF PH II.
CPC Arizona Holdings, Inc	WPPA535	DL8910458228	CPC Arizona Holdings, Inc.
Creative Communications—Interop Only	N/A	DL8910463987	Creative Communications—Interop Only.
DeKalb County Police Department	KNAN828, KR9746, WZC779	DL8904419062	DeKalb County Police Department, GA.
DeLasaux, Thomas G	WNXQ289, WNZY833	DL8904419804	DeLasaux, Thomas.
DILLON, RICHARD	WPGY693	DL8910458167	Action Communications Inc.
DOUGLAS, COUNTY OF	WPLW647, WQDE613, WQDG482, WQHK854	DL8910427769	Colorado, State of PH II.
EASTSIDE PUBLIC SAFETY COMMUNICATIONS AGENCY.	WPDU516, WPGR930, WQET932, WQET935, WQJL506, WQMQ368, WQOI770, WQOI771.	DL8910427818	Eastside Public Safety Comm Agency, WA.
EDINBURG CISD POLICE DEPARTMENT	WPTY454	DL8910427820	EDINBURG CISD POLICE DEPARTMENT, TX PH II.
EDMOND, CITY OF	WPTX256, WQCL942, WQHK876	DL8910427822	EDMOND, CITY OF, OK PH II.
ELGIN, CITY OF	KNBX891, WPHX763, WQGB480	DL8910427826	ELGIN, CITY OF, IL PH II.
ESCAMBIA, COUNTY OF	WPHY873	DL8904419269	PENSACOLA, CITY OF, FL.
Falcon Trucking Company	WPYJ962	CERT019	Falcon Trucking Company.
FAYETTEVILLE, CITY OF	WNLK950, WPFQ241, WPJJ239	DL8910427849	FAYETTEVILLE, CITY OF, NC PH II.
Fort Collins, City of	WPJT938	DL8910427769	Colorado, State of PH II.
GEAUGA, COUNTY OF	WNGS649, WQNC532	DL8910447690	Geauga, County of, OH.
GILA RIVER INDIAN COMMUNITY	WPVV494	DL8910427883	GILA RIVER INDIAN COMMUNITY, AZ PH II.
GRAND PRAIRIE, CITY OF	WNFV258, WPFF376	DL8910427891	GRAND PRAIRIE, CITY OF, TX PH II.
GREELEY, CITY OF	WPBP275	DL8910427769	Colorado, State of PH II.
GREEN, CITY OF	WPAQ935	DL8910433485	Green, City of OH.
GREENWICH, TOWN OF	WNNM890, WPMA766	DL8910427903	GREENWICH, TOWN OF, CT PH II.
HAMILTON, COUNTY OF	WNSD453	DL8910427915	HAMILTON, COUNTY OF, IN PH II.
HIDALGO, CITY OF	WQGM640, WRAP892	DL8910458248	Hidalgo, City of.
Holland, William M	WQCH480	DL8910464147	William Holland.
Hooper, Dennisse B	WPHS504	DL8904419125	HOOPER, STEVEN E.
HOUSTON INDEPENDENT SCHOOL DISTRICT	WPTE909, WPTN982	DL8910427946	HOUSTON INDEPENDENT SCHOOL DISTRICT, TX PH II.
HUERFANO, COUNTY OF	WQDZ774	DL8910427769	Colorado, State of PH II.
HUNTSVILLE UTILITIES	WPTJ977	DL8910427953	HUNTSVILLE, CITY OF, AL PH II.
HUNTSVILLE, CITY OF	WPHI451, WPPD898, WQAU729, WQER591	DL8910427953	HUNTSVILLE, CITY OF, AL PH II.
ILLINOIS PUBLIC SAFETY AGENCY NETWORK	WPHY365, WPKG583, WPKP764, WPKX703, WPSP557, WPXM784.	DL8910434725	Illinois, State of, PH II Public Safety Agency Network.
IRVING, CITY OF	WPJQ645, WQCJ480	DL8910427974	IRVING, CITY OF, TX PH II.
J. PAUL GETTY TRUST	KQG497	DL8910419140	J. Paul Getty Trust.
Jefferson County Commission	WPTC288	DL8910427624	BIRMINGHAM, CITY OF, AL PH II.
JEFFERSON PARISH FIRE DISTRICT 1	WNRE827	DL8904419147	JEFFERSON, PARISH OF, LA.
JEFFERSON, COUNTY OF	KNNJ873, WNHV507, WQDX703, WQEA798, WQIV850.	DL8910427624	BIRMINGHAM, CITY OF, AL PH II.
JEFFERSON, COUNTY OF	WPAP649, WPMI204, WQGX351	DL8910427769	Colorado, State of PH II.
JEFFERSON, PARISH OF	KNHH513, KNJA737	DL8904419147	JEFFERSON, PARISH OF, LA.
LA JUNTA, CITY OF	WQCD531	DL8910427769	Colorado, State of PH II.
LA MESA SPRING VALLEY SCHOOL DISTRICT	WNHS767	DL8910458272	La Mesa Spring Valley School District.
LAKE ELSINORE UNIFIED SCHOOL DISTRICT	WNQL811	DL8910419169	LAKE ELSINORE UNIFIED SCHOOL DISTRICT, CA.
LAKE HAVASU CITY, CITY OF	WPXB342	DL8910428033	LAKE HAVASU CITY, CITY OF, AZ PH II.
Las Cruces, City of	KNNP960, KNNP962, WNZU211	DL8910428043	LAS CRUCES, CITY OF, NM PH II.
LIBERTY COMMUNICATIONS INC	KNIQ708, WPBI305, WPDQ841, WPIT419, WPJW341, WPKJ959, WPLS383, WPLS406, WPXP611, WPXP955, WPXP958.	DL8904419190	Liberty Communications, Inc.
LIVE OAK, CITY OF	WPWD493	DL8910428061	LIVE OAK, CITY OF, TX PH II.
LONGVIEW, CITY OF	WPKT699	DL8910428070	LONGVIEW, CITY OF, TX PH II.
Los Angeles County Office of Education, Transportation Section.	WZA814	CERT047	Los Angeles County Office of Education.
LOWNDES, COUNTY OF	WPMT690, WPYU757, WQDF255	DL8910428078	LOWNDES, COUNTY OF, GA PH II.
Loya, Carmen G	WPPA500	DL8910458275	Loya, Carmen G.
LOYA, LUCILDA	WQES955	DL8910458275	Loya, Carmen G.
MACON, CITY OF	WPXX405	DL8904418967	BIBB, COUNTY OF, GA.

LISTING OF LICENSEES BY LICENSEE NAME THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT TIMELY SUBMITTED AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT—Continued

Licensee name	Call sign(s)	FRA ID	FRA name
MANSFIELD, CITY OF	WNXC886	DL8910428092	MANSFIELD, CITY OF, TX PH II.
MARION, COUNTY OF	WQDH468, WQDH497, WQGX541	DL8910428096	MARION, COUNTY OF, FL PH II.
MARYLAND, STATE OF—DPSCS	WPTX572	DL8910428102	MARYLAND, STATE OF PH II.
MASSACHUSETTS PORT AUTHORITY	WPAQ455	DL8910428105	MASSACHUSETTS PORT AUTHORITY, MA PH II.
MC NAMARA, ALICE J	WPGY689	DL8910458167	Action Communications Inc.
MCALLEN INDEPENDENT SCHOOL DISTRICT	WPRT853	DL8910458291	McAllen Independent School District.
MEARS DESTINATION SERVICES INC	WNNO864	DL8904419130	Hubbard Construction Company #3.
MECKLENBURG, COUNTY OF	WPEN288, WPUV635, WQEX452, WQFR285, WQFR286.	DL8910428114	MECKLENBURG, COUNTY OF, NC PH II.
MED CARE EMS INC	WPSE229	CERT055	Med Care EMS Inc.
METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY.	WQBZ553, WQCN601	DL8910428179	Metropolitan Atlanta Rapid Transit Authority, GA PH II.
METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (MWAA).	WPAY961, WQID395, WQID396, WQJE989	DL8910428126	METRO WASHINGTON AIRPORTS AUTH (MWAA) PH II.
Mobile Relay Associates	WQLD477	DL8910459907	Mobile Relay Associates Rebanding.
MOBILE RELAY PARTNERS LTD	WPTA416	DL8910458298	Mobile Relay Partners Ltd.
MOFFAT, COUNTY OF	WQCP257	DL8910427769	Colorado, State of PH II.
MONTROSE, CITY OF	WPYI943	DL8910427769	Colorado, State of PH II.
NASSAU, COUNTY OF	WNNM884, WNNM885	DL8910428185	NASSAU, COUNTY OF, NY PH II.
NEW HANOVER, COUNTY OF	WNUX409, WPHZ633, WQAQ374	DL8910428222	New Hanover, County of, NC PH II.
NEW ORLEANS, CITY OF	WPDT285, WQDF937	DL8910428196	New Orleans, City of, LA PH II.
NEW ORLEANS, PORT OF	WPHY866	DL8910435965	NEW ORLEANS, PORT OF PH II.
NORFOLK, COUNTY OF	WPXP591	DL8910428206	NORFOLK, COUNTY OF, MA PH II.
NORTH CAROLINA STATE HIGHWAY PATROL	WPHM257, WPMU588, WPMU769, WPMW363, WPQY486, WPQY584, WPUT647, WPXZ637, WQBB953, WQBK307, WQBK492, WQBK493, WQBK495, WQBK496, WQBK498, WQCQ970, WQCQ971, WQCQ972, WQCQ973, WQCR583, WQCR608, WQCS267, WQCS278, WQCS279, WQCS642, WQCS907, WQCS908, WQCS909, WQCS910, WQCS911, WQCT414, WQCT415, WQCT913, WQCT914, WQCU592, WQCV475, WQCV476, WQCV477, WQCV811, WQCV812, WQCV814, WQCW513, WQCW514, WQCW868, WQCX285, WQCX286, WQCX444, WQCX446, WQCX999, WQCZ372, WQCZ376, WQCZ378, WQCZ390, WQDE964, WQDE967, WQDE973, WQDE975, WQDE978, WQDE982, WQDE986, WQDE987, WQDE988, WQDE989, WQDE990, WQDE992, WQDE993, WQDE994, WQDE995, WQDE997, WQDE999, WQDF200, WQDF202, WQDF204, WQDF207, WQDF208, WQDF209, WQDF211, WQDF212, WQDF214, WQDF215, WQDG264, WQDJ700, WQDL934, WQDN676, WQDW238, WQEE271, WQEE297, WQEE298, WQEE299, WQEF260, WQEF742, WQEQ547, WQET821, WQET823, WQET824, WQFJ228, WQFJ585, WQFJ586, WQFK579, WQFK581, WQFK582, WQFK718, WQFK758, WQFK759, WQFK761, WQFN452, WQFN734, WQFN735, WQFN736, WQFP534, WQFQ491, WQFQ496, WQHJ334, WQHJ335.	DL8910428210	NORTH CAROLINA, STATE OF PH II.
NORTH CAROLINA, STATE OF	WPMU550, WPMU554, WPMU562, WPMU583, WPMU584, WPMU585, WPMU587, WPMU592, WPMU593, WPMU594, WPMU596, WPMU763, WPMU764, WPMU767, WPMU768, WPNY211, WPNZ303, WPRV578, WPSM549, WPSM605, WPUS216, WPUS587, WPUS984, WPUS985, WPUS986, WPUT648, WPUU518, WPUV349, WPUV498, WPXZ639.	DL8910428210	NORTH CAROLINA, STATE OF PH II.
NORTHERN ARIZONA UNIVERSITY	WQOM679	DL8910459767	Northern Arizona University.
Northern Colorado Radio Communications Network	WPOY442, WPSM706, WPXC683, WQHH604	DL8910427769	Colorado, State of PH II.
NORWALK, CITY OF	WNQS468	DL8910428219	NORWALK, CITY OF, CT PH II.
NOXUBEE, COUNTY OF	WQCB473, WQCC270	DL8910428220	NOXUBEE, COUNTY OF, MS PH II.
Onslow County of	WPSI475, WPSJ690, WQIT613	DL8910428244	ONSLOW COUNTY OF, NC PH II.
ORANGE, CITY OF	WNVP234	DL8910428250	Orange, City of, TX Ph II.
ORLEANS PARISH SCHOOL BOARD	KNBT295, KNJU690	DL8904419251	Orleans Parish School Board, LA.
Oxy USA Inc	WNLS488	CERT036	Oxy USA Inc.
Parma Heights, City of	WPIQ583	DL8910428326	Parma Heights, City of, OH.
PASCUA YAQUI TRIBE	WPQJ764	DL8910458310	Pascua Yaqui Tribe.
Pennington, Agnes	WPMQ450, WPPX541, WQTF798	DL8910458168	Agnes Pennington.
PENSACOLA, CITY OF	WPUB901	DL8904419269	PENSACOLA, CITY OF, FL.
PINELLAS, COUNTY OF	KNJH386, WPJR956, WPWU779, WPWX247, WPWX249, WQFQ771, WQIU920.	DL8910428295	PINELLAS, COUNTY OF, FL PH II.
PLANTATION, CITY OF	KNGK462	DL8910428302	PLANTATION, CITY OF, FL PH II.
POLK, COUNTY OF	WPTG316	DL8910428305	POLK, COUNTY OF, IA PH II.
PORTLAND, CITY OF	WPMW699, WPVJ264, WPXJ988, WQGU307, WQIK759, WQIP906.	DL8910428310	PORTLAND, CITY OF, ME PH II.
PORTSMOUTH, CITY OF	WNFV945, WQDZ868	DL8910428312	PORTSMOUTH, CITY OF, VA PH II.
Puerto Rico State Police	WPEM247, WQER853, WQEY620, WQFG484, WQFU672, WQJU730, WQJU731, WQJX789.	DL8910428329	Puerto Rico State Police, PR PH II.
PUERTO RICO, COMMONWEALTH OF	WPPX592	DL8910428323	PUERTO RICO, COMMONWEALTH OF PH II.
RADIO SERVICE COMPANY	WNXZ684, WNXZ686, WPBB209	DL8910447758	Radio Service Company Canadian Rebanding.
RANKIN, COUNTY OF	WPHY524, WQKK325	DL8904419287	RANKIN, COUNTY OF, MS.
RAPIDES, PARISH OF	WNKE392	DL8910428333	RAPIDES, PARISH OF, LA.
RENSSELAER, COUNTY OF	WPJS218, WPWY908	DL8910428341	RENSSELAER, COUNTY OF, NY PH II.
RIO GRANDE CITY C.I.S.D. POLICE DEPARTMENT	WPWE568	DL8910460147	Rio Grande Police Department.
RIO GRANDE, CITY OF	WPIR759, WPPF750, WPUN575	DL8910458327	Rio Grande, City of.
Roma I.S.D. Transportation Department	WQSH219	DL8910458329	Roma CISD Transportation Dept.
SAINT PETERSBURG, CITY OF	KNJU726	DL8910428295	PINELLAS, COUNTY OF, FL PH II.

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Licensee name	Call sign(s)	FRA ID	FRA name
SAN BENITO C.I.S.D. POLICE DEPARTMENT	WPWX324	DL8910428387	SAN BENITO C.I.S.D. POLICE DEPARTMENT, TX PH II.
San Diego Gas & Electric Company	WNKV831, WNKV832, WQBB624	DL8910458348	San Diego Gas & Electric Mexican Rebanding.
SANTA CLARA, CITY OF	WPCP221, WPDS577, WPGR698, WPRS440	DL8910428403	Santa Clara, City of, CA PH II.
SANTA FE, CITY OF	WQJQ630, WQLD772	DL8910440585	Santa Fe, City of, NM PH II.
SANTA MONICA, CITY OF	WNVF968	CERT048	SANTA MONICA, CITY OF.
Schull, Erik D	WPJU842	DL8910464387	Schull, Erik D.
Snohomish County Emergency Radio System (SERS)	WPUP506, WPWA883, WPWC441, WPYP801, WPYP950, WPYQ414, WPYQ910, WPYQ911, WPYQ915, WPYR857, WPYR879.	DL8910428437	Snohomish County Emergency Radio System, WA.
SOCORRO INDEPENDENT SCHOOL DISTRICT	WPLZ450	CERT054	Socorro Independent School District.
SOMERSET, COUNTY OF, MD PH II	N/A	DL8910428439	SOMERSET, COUNTY OF, MD PH II.
STARK, COUNTY OF	WPLP821, WPLP822, WQID747, WQJW792	DL8910428459	Stark, County of, OH.
STEEN, DIRK B	WPGY697	DL8910458167	Action Communications Inc.
SUFFOLK, CITY OF	WNMJ688, WPDS262	DL8910428469	SUFFOLK, CITY OF, VA PH II.
Telephone Connection, LLC	KNHA498, KRR904, KRT844, KWH855, WGI554, WNXG570, WNXG582, WNXG598, WNXG637, WPGZ423, WPZZ380, WYK281.	DL8910458393	Telephone Connection.
TENNESSEE, STATE OF	WPMI908, WPPW562, WQCL429, WQCL652, WQCN440, WQDA552, WQDA809, WQDB448, WQDB450, WQDB555, WQDK538, WQDK723, WQDK724, WQDK726, WQDK890, WQDK894.	DL8910428495	Tennessee, State of PH II (TEMA).
THE BOEING COMPANY	WNCE526, WNLH288, WNSC912, WNXG504, WNXU325, WPAV310, WPKB712, WPKB714, WPKB743, WPLS291, WPMV414, WQMJ390.	DL8910447790	The Boeing Company.
Third District Enterprises, LLC	KKV815, KNIV764, WNGC552, WNPP680, WNVQ272, WNWB345, WNWQ646, WNXS451, WPFP295, WPHU589, WQDA729, WQDA740, WYA205.	DL8910458407	Third District Enterprises.
TOHONO OODHAM NATION OF ARIZONA	WPLT955	DL8910458409	Tohono Oodham Nation of Arizona.
TORRANCE, CITY OF	WXD691	DL8910419361	TORRANCE, CITY OF, CA.
TRAVIS, COUNTY OF	WPQY686, WPVZ418, WPVZ419, WPVZ421, WPVZ422, WPVZ423, WPVZ424, WPVZ426, WPVZ427, WPVZ428, WPVZ429, WPVZ432, WPWJ533, WPWZ427, WPXX380, WPZW901, WPZW902, WQBC298, WQHQ562, WQHQ563, WQHX370, WQIC798.	DL8910428508	TRAVIS, COUNTY OF, TX PH II.
UNION CITY, CITY OF	WPWN762	DL8910428518	UNION CITY, CITY OF, NJ II.
Valley Communications	WQDN602	DL8910458416	Valley Communications.
VALLEY COMMUNICATIONS CENTER	WPDQ377, WQBH536, WQBH540, WQGP982, WQGP996, WQGR279, WQJZ866, WQLE636.	DL8910428532	Valley Communications Center, WA.
Valley Radio Center	WPWH823, WQEM728, WQFQ340	DL8910458416	Valley Communications.
VANDERBURGH, COUNTY OF	WNQP592	DL8910428535	VANDERBURGH, COUNTY OF, IN PH II.
VICKSBURG, CITY OF	KNNH519, WQDD646, WQDL328, WQPD352, WQPD353.	DL8910428539	VICKSBURG, CITY OF, MS PH II.
WARREN, CITY OF	WPKM221	DL8910428555	Warren, City of, OH.
WARREN, CITY OF	WNSM914	DL8910447799	Warren, City of, MI.
WARREN, COUNTY OF	WPLY800, WPQD288	DL8910428539	VICKSBURG, CITY OF, MS PH II.
WELD, COUNTY OF	WPRZ902, WPSF779, WPST269, WPST587, WQGZ431.	DL8910427769	Colorado, State of PH II.
WILLACY, COUNTY OF	WQOD855	DL8910458432	Willacy, County of.
WORCESTER, CITY OF	WPAR399	DL8904416193	Worcester, City of.
WORCESTER, COUNTY OF	WQCN429, WQCP396	DL8910428609	WORCESTER, COUNTY OF, MD PH II.
YSLETA DEL SUR PUEBLO	WPQA229, WQQE444	DL8910428620	YSLETA DEL SUR PUEBLO, TX PH II.

Appendix—Same Licensees—Listing by FRA Number

SAME LICENSEES LISTED BY FRA NUMBER THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT SUBMITTED TIMELY AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT

FRA ID	FRA name
DL8904416193	WORCESTER, CITY OF.
DL8904418967	BIBB, COUNTY OF, GA.
DL8904419062	DeKalb County Police Department, GA.
DL8904419125	HOOPER, STEVEN E.
DL8904419130	Hubbard Construction Company #3.
DL8904419147	JEFFERSON, PARISH OF, LA.
DL8904419190	Liberty Communications, Inc.
DL8904419251	ORLEANS PARISH SCHOOL BOARD, LA.
DL8904419269	PENSACOLA, CITY OF, FL.
DL8904419287	RANKIN, COUNTY OF, MS.
DL8904419804	DeLasaux Thomas.
DL8904426344	Boston, City of—Police (MA).
DL8910419021	COLTON UNIFIED SCHOOL DISTRICT.
DL8910419140	J. Paul Getty Trust.
DL8910419169	LAKE ELSINORE UNIFIED SCHOOL DISTRICT, CA.
DL8910419361	TORRANCE, CITY OF, CA.

SAME LICENSEES LISTED BY FRA NUMBER THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT SUBMITTED TIMELY AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT—Continued

FRA ID	FRA name
DL8910427603	BAYAMON, MUNICIPAL GOVERNMENT OF, PR PH II.
DL8910427609	BELL, COUNTY OF, TX PH II.
DL8910427624	BIRMINGHAM, CITY OF, AL PH II.
DL8910427637	BOSSIER, CITY OF, LA PH II.
DL8910427639	BOSTON, CITY OF, MA PH II.
DL8910427656	BROWNSVILLE, CITY OF, TX PH II.
DL8910427665	Boston Public Health Commission, City of, MA PH II.
DL8910427676	CAMDEN, CITY OF, NJ PH II.
DL8910427680	CAPITAL REGION AIRPORT COMMISSION, VA PH II.
DL8910427686	CARROLLTON, CITY OF, TX PH II.
DL8910427695	CHARLES, COUNTY OF, MD PH II.
DL8910427707	CHERRY HILL, TOWNSHIP OF, NJ PH II.
DL8910427743	COPPERAS COVE, CITY OF, TX PH II.
DL8910427769	Colorado, State of PH II.
DL8910427818	EASTSIDE PUBLIC SAFETY COMM AGY, WA PH II.
DL8910427820	EDINBURG CISD POLICE DEPARTMENT, TX PH II.
DL8910427822	EDMOND, CITY OF, OK PH II.
DL8910427826	ELGIN, CITY OF, IL PH II.
DL8910427849	FAYETTEVILLE, CITY OF, NC PH II.
DL8910427883	GILA RIVER INDIAN COMMUNITY, AZ PH II.
DL8910427891	GRAND PRAIRIE, CITY OF, TX PH II.
DL8910427903	GREENWICH, TOWN OF, CT PH II.
DL8910427915	HAMILTON, COUNTY OF, IN PH II.
DL8910427946	HOUSTON INDEPENDENT SCHOOL DISTRICT, TX PH II.
DL8910427953	HUNTSVILLE, CITY OF, AL PH II.
DL8910427974	IRVING, CITY OF, TX PH II.
DL8910428033	LAKE HAVASU CITY, CITY OF, AZ PH II.
DL8910428043	LAS CRUCES, CITY OF, NM PH II.
DL8910428061	LIVE OAK, CITY OF, TX PH II.
DL8910428070	LONGVIEW, CITY OF, TX PH II.
DL8910428078	LOWNDES, COUNTY OF, GA PH II.
DL8910428092	MANSFIELD, CITY OF, TX PH II.
DL8910428096	MARION, COUNTY OF, FL PH II.
DL8910428102	MARYLAND, STATE OF PH II.
DL8910428105	MASSACHUSETTS PORT AUTHORITY, MA PH II.
DL8910428114	MECKLENBURG, COUNTY OF, NC PH II.
DL8910428126	METRO WASHINGTON AIRPORTS AUTH (MWAA) PH II.
DL8910428179	Metropolitan Atlanta Rapid Transit Authority, GA PH II.
DL8910428185	NASSAU, COUNTY OF, NY PH II.
DL8910428196	NEW ORLEANS, CITY OF, LA PH II.
DL8910428206	NORFOLK, COUNTY OF, MA PH II.
DL8910428210	NORTH CAROLINA, STATE OF PH II.
DL8910428219	NORWALK, CITY OF, CT PH II.
DL8910428220	NOXUBEE, COUNTY OF, MS PH II.
DL8910428222	New Hanover, County of, NC PH II.
DL8910428244	ONSLOW COUNTY OF, NC PH II.
DL8910428250	ORANGE, CITY OF, TX PH II.
DL8910428295	PINELLAS, COUNTY OF, FL PH II.
DL8910428302	PLANTATION, CITY OF, FL PH II.
DL8910428305	POLK, COUNTY OF, IA PH II.
DL8910428310	PORTLAND, CITY OF, ME PH II.
DL8910428312	PORTSMOUTH, CITY OF, VA PH II.
DL8910428323	PUERTO RICO, COMMONWEALTH OF PH II.
DL8910428326	Parma Heights, City of, OH PH II.
DL8910428329	Puerto Rico State Police, PR PH II.
DL8910428333	RAPIDES, PARISH OF, LA PH II.
DL8910428341	RENSSELAER, COUNTY OF, NY PH II.
DL8910428350	RICHMOND, CITY OF, VA PH II.
DL8910428387	SAN BENITO C.I.S.D. POLICE DEPARTMENT, TX PH II.
DL8910428403	SANTA CLARA, CITY OF, CA PH II.
DL8910428437	SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM PH II.
DL8910428439	SOMERSET, COUNTY OF, MD PH II.
DL8910428459	STARK, COUNTY OF, OH PH II.
DL8910428469	SUFFOLK, CITY OF, VA PH II.
DL8910428495	TENNESSEE, STATE OF PH II.
DL8910428508	TRAVIS, COUNTY OF, TX PH II.
DL8910428518	UNION CITY, CITY OF, NJ PH II.
DL8910428532	VALLEY COMMUNICATIONS CENTER, WA PH II.
DL8910428535	VANDERBURGH, COUNTY OF, IN PH II.
DL8910428539	VICKSBURG, CITY OF, MS PH II.

SAME LICENSEES LISTED BY FRA NUMBER THAT HAVE COMPLETED PHYSICAL RECONFIGURATION, HAVE NOT SUBMITTED TIMELY AN ACCEPTABLE COMPLETION CERTIFICATION TO SPRINT, AND HAVE NOT ADVISED THE TA THAT THE LICENSEE HAS A DISPUTE WITH SPRINT—Continued

FRA ID	FRA name
DL8910428555	Warren, City of, OH.
DL8910428609	WORCESTER, COUNTY OF, MD PH II.
DL8910428620	YSLETA DEL SUR PUEBLO, TX PH II.
DL8910432845	BOSTON, CITY OF, MA PH II—POLICE.
DL8910433485	Green, City of OH.
DL8910434725	Illinois, State of, PH II Criminal Justice Auth.
DL8910434745	Chicago, City of, IL PH II Aviation.
DL8910435965	NEW ORLEANS, PORT OF PH II.
DL8910437765	BLANCO, COUNTY OF, TX PH II.
DL8910440585	Santa Fe, City of, NM PH II.
DL8910447621	ArcelorMittal Cleveland Inc.
DL8910447661	Continental Airlines, Inc.
DL8910447690	Geauga, County of, OH.
DL8910447758	Radio Service Company Canadian Rebanding.
DL8910447790	The Boeing Company.
DL8910447799	Warren, City of, MI.
DL8910458167	Action Communications Inc.
DL8910458168	Agnes Pennington.
DL8910458177	Cameron, County of, TX.
DL8910458228	CPC Arizona Holdings, Inc.
DL8910458248	Hidalgo, City of.
DL8910458272	La Mesa Spring Valley School District.
DL8910428620	YSLETA DEL SUR PUEBLO, TX PH II.
DL8910458291	McAllen Independent School District.
DL8910458298	Mobile Relay Partners Ltd.
DL8910458310	Pascua Yaqui Tribe.
DL8910458327	Rio Grande, City of.
DL8910458329	Roma CISD Transportation Dept.
DL8910458348	San Diego Gas & Electric Mexican Rebanding.
DL8910458393	Telephone Connection.
DL8910458407	Third District Enterprises.
DL8910458409	Tohono Oodham Nation of Arizona.
DL8910458416	Valley Communications.
DL8910458432	Willacy, County of.
DL8910459767	Northern Arizona University.
DL8910459907	Mobile Relay Associates Rebanding.
DL8910460127	3KFA, LLC.
DL8910460147	Rio Grande Police Department.
DL8910463987	Creative Communications—Interop Only.
DL8910464147	William Holland.
DL8910464387	Schull, Erik D.
CERT019	FALCON TRUCKING COMPANY.
CERT036	OXY USA INC.
CERT047	LOS ANGELES COUNTY OFFICE OF EDUCATION.
CERT048	SANTA MONICA, CITY OF.
CERT050	COMANCHE COMMUNICATIONS.
CERT054	SOCORRO INDEPENDENT SCHOOL DISTRICT.
CERT055	MEDCARE EMS INC.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–10163 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16731]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of establishment of a matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the State of Nevada, Department of Health and Human Services, Division of Welfare and Supportive Services (DWSS). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before June 12, 2020. This computer matching program will commence on June 12, 2020, unless written comments are received that require a contrary determination, and will conclude on December 13, 2021.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager,

Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers in Nevada are enrolled in the SNAP or Medicaid programs.

Participating Non-Federal Agency

Nevada Department of Health and Human Services, Division of Welfare and Supportive Services (DWSS).

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7.

Categories of Individuals

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the Lifeline applicant's Social Security Number, date of birth, and last name. The National Verifier will transfer these data elements to the Nevada DWSS, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program: the State of Nevada's SNAP and Medicaid data.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38,686 (Aug. 15, 2017) and became effective on September 14, 2017.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–10162 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0233, OMB 3060–0986; FRS 16733]

Information Collections 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 June 12, 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: 3060–0233.

Title: Part 54—Rate-of-Return Carrier Universal Service Reporting Requirements.

Form Number: FCC Form 507, FCC Form 508 and FCC Form 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,095 respondents; 4,044 responses.

Estimated Time per Response: 1–22 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, 218–220, 221(c), 254, and 303(r).

Total Annual Burden: 43,638 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR part 54. See 47 CFR 54.1305 and 54.5. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See 47 CFR 54.1307. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in section 51.5 of the Commission's rules. See 47 CFR 51.5.

In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See 47 CFR 54.903(a).

In December 2018, the Commission adopted the *December 2018 Rate-of-Return Reform Order* to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (*2018 Rate-of-Return Reform Order*). *See also* 47 CFR 54.313(f)(5).

The Commission therefore proposes to revise this information collection. We also propose to increase the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal government.

Number of Respondents and Responses: 2,034 respondents; 12,729 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 54,519 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017). The Commission has received OMB approval for most of the information collections required by these orders.

More recently, through several orders, the Commission has changed or modified reporting obligations for high-cost support. In the *CAF Phase II Auction Order,* the Commission adopted rules requiring Connect America Phase II auction support recipients to certify the networks they operated in the prior year meet the Commission's performance requirements, to identify the total amount of support, if any, that was used for capital expenditures in the previous calendar year, and to certify they have available funds for all project costs that will exceed the amount of support to be received from the authorization stemming from the Phase II auction for the next calendar year. *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*CAF Phase II Auction Order*).

In the *New York Waiver Order,* the Commission extended to New York carriers who receive Connect America Phase II support in conjunction with the state's New NY Broadband Program the same annual reporting requirements adopted for Phase II auction recipients, as well as the requirement for the state public service commission to certify annually that those carriers' high cost support ''was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017) (*New York Waiver Order*).

In the *December 2018 Rate-of-Return Order,* the Commission modified the reasonable request certification rule applicable to rate-of-return ETCs to (1) require Connect America Fund-Alternative Connect America Cost Model (CAF–ACAM) support recipients to certify that they are meeting the relevant reasonable request standard and (2) require rate-of-return ETCs receiving legacy high-cost support to certify that they are meeting a 25 Mbps/3 Mbps reasonable request standard. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18–176, at 19–20, para. 17 (Dec. 13, 2018) (*December 2018 Rate-of-Return Order*). *See also* 47 CFR 54.313(f)(1)(i).

In the *CAF Phase II Transitions Order,* the Commission adopted rules requiring price cap or fixed competitive eligible communications carriers receiving phase-down support to certify that the phase-down support they received in the previous year was used to provide voice service to high-cost and extremely high-cost census blocks where they continue to have federal obligation to provide such services. *Connect America Fund,* WC Docket 10–90, Report and Order, FCC 19–8, at 11, para. 25 (Feb. 15, 2019).

The Commission therefore proposes to revise this information collection, as well as Form 481 and its accompanying instructions, to reflect these new and revised requirements. We also propose to increase the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–10160 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16734]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VII will hold its fifth meeting via live internet link.

DATES: June 10, 2020.

ADDRESSES: The Meeting will be held via conference call and available to the public via WebEx at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, (202) 418–1916 (voice) or *CSRIC@fcc.gov* (email); or, Kurian Jacob, Deputy Designated Federal Officer, (202) 418–2040 (voice) or *CSRIC@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting on June 10, 2020, from 1:00 p.m. EDT to 5:00 p.m. EDT will be held electronically only and may be viewed live, by the public, at *http://www.fcc.gov/live.* Any questions that arise during the meeting should be sent to *CSRIC@fcc.gov* and will be answered at a later date. The meeting is being held in a wholly electronic format in light of travel and gathering restrictions related to COVID–19 in place in Washington, DC, and the larger U.S. which affects members of the CSRIC and the FCC.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC to improve the security, reliability, and interoperability of communications systems. On March 15, 2019, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through March 14, 2021. The meeting on June 10, 2020, will be the fifth meeting of CSRIC VII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Suzon Cameron, CSRIC Designated Federal Officer, by email *CSRIC@fcc.gov* or U.S. Postal Service Mail to Suzon Cameron, Senior Attorney, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW, Room 7–B458, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–10159 Filed 5–12–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 28, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John Hoeven, IV, Bismarck, North Dakota; Marcela Samson, Minot, North Dakota; Marcela Samson and Jack Hoeven Irrevocable Trust, Bismarck, North Dakota, First Western Bank & Trust, Minot, North Dakota, trustee; Matthew John Elder, Minot, North Dakota; Alesha M. Bailey, Lakeland, Georgia; Adam Duffis, Long Beach, California; and Austin James Duffis, Huntington Beach, California;* as members of the Hoeven Family Shareholder Group acting in concert to retain voting shares of Westbrand, Inc., and thereby indirectly retain voting shares of First Western Bank & Trust, both of Minot, North Dakota and BlackRidgeBANK, Fargo, North Dakota.

2. *Susan Sayer, Grand Forks, North Dakota;* to retain voting shares of Citizens Bank Holding Company and thereby indirectly retain voting shares of Citizens State Bank of Finley, both of Finley, North Dakota.

B. *Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Henry Southway S Corporation Family Trust, Izora L. Southway and Rock I. Southway, as co-trustees, all of Alamosa, Colorado;* as members of the Southway Family Group acting in concert to acquire voting shares of Alamosa Bancorporation, Ltd. and thereby indirectly acquire voting shares of Alamosa State Bank, both of Alamosa, Colorado. In addition, Rock I. Southway as a member of the Southway Family Group acting in concert to retain voting shares of Alamosa Bancorporation, Ltd. and thereby indirectly retain voting shares of Alamosa State Bank.

Board of Governors of the Federal Reserve System, May 8, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–10267 Filed 5–12–20; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

DATES: May 13, 2020, 10:00 a.m., Telephonic.

Open Session

Investment Policy Review.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: Dial-in (listen only) information: Number: 1–877–446–3914, Code: 3037482.

Dated: May 7, 2020.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–10242 Filed 5–12–20; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number: NIOSH 232]

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH) National Firefighter Registry Subcommittee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH) National Firefighter Registry Subcommittee; May 15, 2020, 11:15 a.m. to 12:00 p.m., EDT, in the original FRN.

The web conference access *https://niosh-connect.adobeconnect.com/nfrs/event/event_info.html* and the teleconference access (855) 644–0229, and participant pass code 9777483 which was published in the **Federal Register** on April 7, 2020, Volume 85, Number 67, page 19486, is being amended to announce the change in the URL to access the meeting of the BSC, NIOSH Subcommittee for the National Firefighter Registry. The notice should read as follows:

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH), National Firefighter Registry Subcommittee. This meeting is open to the public via webcast and by teleconference. If you wish to attend by webcast or teleconference, please register at the NIOSH website *https://www.cdc.gov/niosh/bsc/nfrs/registration.html* or call (513–841–4203) at least five business days in advance of the meeting. Adobe Connect webcast will be available at *https://odniosh.adobeconnect.com/nfrs/* for participants wanting to connect remotely, and teleconference is available toll-free at (855) 644–0229, Participant Pass Code 9777483. This meeting is open to the public, limited only by the number of adobe license seats available, which is 100. The public is welcome to participate during the public comment period, from 11:15 a.m. to 12:00 p.m., EDT, on May 15, 2020. Please note that the public comment period ends at the time indicated above.

DATES: The meeting will be held on May 15, 2020, from 10:00 a.m. to 5:00 p.m., EDT.

ADDRESSES: Adobe Connect webcast will be available at *https://odniosh.adobeconnect.com/nfrs/* for participants wanting to connect remotely, and teleconference is available toll-free at (855) 644–0229, Participant Pass Code 9777483.

The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Paul J. Middendorf, Ph.D., Executive Secretary, National Firefighter Registry Subcommittee of the NIOSH Board of Scientific Counselors, NIOSH, CDC, 2400 Century Parkway NE, MS V24–4, Atlanta, GA 30345, telephone (404) 498–6439, or email at *pmiddendorf@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–10283 Filed 5–12–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; 2020 Residential Energy Consumption Survey (RECS), Low Income Home Energy Assistance Program (LIHEAP) Administrative Data Matching (OMB #0970–0486)

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS) is requesting a reinstatement without change for the collection and reporting of administrative household recipient data from state LIHEAP grantees. OMB approved the original collection under #0970–0486. ACF published a **Federal Register** notice on July 30, 2019 soliciting 60 days of public comment on requiring state grantees to provide household-level recipient data for this effort. ACF received no comments on that notice.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent 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.

SUPPLEMENTARY INFORMATION:

Description: The Low Income Home Energy Assistance Program (LIHEAP) block grant (42 U.S.C. 8621 *et seq.*) was established under Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, as amended. The Office of Community Services (OCS), Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), administers LIHEAP at the federal level.

The LIHEAP statute requires HHS to report to Congress annually on program impacts on recipient and eligible households. The primary program goals, as articulated in the statute, are to ensure that benefits are targeted to those households where the greatest program impacts are expected, and to assure that timely resources are available to households experiencing home energy crises.

OCS is seeking a reinstatement without change to collect data from all state LIHEAP grantees and the District of Columbia that will allow OCS to identify LIHEAP recipients that respond to the Residential Energy Consumption Survey (RECS), which the U.S. Energy Information Administration (EIA) is planning to conduct in 2020. EIA conducts this survey to provide periodic national and regional data on residential energy use in the United States. OCS uses RECS data to furnish Congress and the Administration with important national and regional descriptive data on the energy needs of low-income

households. Specific data elements OCS is seeking to collect are detailed below.

In 2015, state LIHEAP grantees provided household-level data to identify LIHEAP recipients that participated in the 2015 RECS. ACF is requesting no changes in the type of data or the form of data collection for the 2020 reinstatement of the project. State LIHEAP grantees will be asked to furnish data for LIHEAP recipient households that reside in areas included in the RECS sample.

For each household, report the following:

- Name
- Address (including ZIP code)
- Gross Income
- Household Size
- Household or Client ID
- Heating assistance awarded
- Amount of heating assistance
- Date of heating assistance
- Cooling assistance awarded
- Amount of cooling assistance
- Date of cooling assistance
- Crisis assistance awarded
- Amount of crisis assistance
- Date of crisis assistance
- Other assistance awarded
- Amount of other assistance
- Date of other assistance
- Presence of children 5 or younger
- Presence of adult 60 or older
- Presence of disabled

The following are additional optional data items that grantees can provide if the data are available in your database:

- Tenancy (*i.e.,* own or rent)
- Type(s) of fuel used
- Heat included in rent

This data will help ACF to analyze specific information for the LIHEAP recipient population in accordance with 42 U.S.C. 8629(b)(2), including information related to benefits targeting, energy usage, and energy insecurity, and it will support analysis of LIHEAP data for the annual Report to Congress and the annual LIHEAP Home Energy Notebook. The collection of this data is authorized in 42 U.S.C. 8629(a).

Respondents: State Governments and the District of Columbia

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Action Transmittal Reinstatement without Change of the FY 2020 RECS LIHEAP Administrative Data Matching ..	51	1	24	1,224	408

Estimated Total Annual Burden Hours: 408.

As LIHEAP is a block grant, there is varying capacity to collect and report data among grantees. The estimated burden hours displayed above are for the average LIHEAP grantee. All LIHEAP grantees have existing data systems to collect, maintain, and analyze this data to complete annual reporting requirements.

Authority: 42 U.S.C. 8629(a).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–10230 Filed 5–12–20; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–2021]

Agency Information Collection Activities; Proposed Collection; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's guidance for industry entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations.''

DATES: Submit either electronic or written comments on the collection of information by July 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 July 13, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 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–2017–N–2021 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

OMB Control Number 0910–0562—Extension

The Food Quality Protection Act of 1996, which amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FD&C Act), established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under FIFRA) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FD&C Act). EPA may, for various reasons, *e.g.,* as part of a systematic review or in response to new information concerning the safety of a specific pesticide, reassess whether a tolerance for a pesticide residue continues to meet the safety standard in section 408 of the FD&C Act (21 U.S.C. 346a). When EPA determines that a pesticide's tolerance level does not meet that safety standard, the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities.

Under section 408(l)(2) of the FD&C Act, when the registration for a pesticide is canceled or modified due to, in whole or in part, dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the Agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture has responsibility for monitoring residue levels and enforcing pesticide tolerances

in meat, poultry, catfish, and certain egg products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. We would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an ''adulterated'' food. However, the channels of trade provision of the FD&C Act addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FD&C Act) states that food containing a residue of such a pesticide shall not be deemed ''adulterated'' by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA's satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner that were lawful under FIFRA.

In the **Federal Register** of May 18, 2005 (70 FR 28544), we announced the availability of a final guidance document entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations.'' The guidance represents FDA's current thinking on its planned enforcement approach to the channels of trade provision of the FD&C Act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA under dietary risk considerations. The guidance can be found at the following link: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-channels-trade-policy-commodities-residues-pesticide-chemicals.*

We anticipate that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If we encounter food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, we intend to address the situation in accordance with provisions of the guidance. In general, we anticipate that the party responsible for food found to contain pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, *e.g.,* packed or processed, during the acceptable timeframes cited in the guidance by providing appropriate documentation to FDA as discussed in the guidance document. We are not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, we are leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation that we anticipate will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations. Accordingly, under the PRA, we are requesting the extension of OMB approval for the information collection provisions in the guidance.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of documentation	1	1	1	3	3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

We expect the total number of pesticide tolerances that are revoked, suspended, or modified by EPA under dietary risk considerations in the next 3 years to remain at a low level, as there have been no changes to the safety standard for pesticide residues in food since 1996. Thus, we expect the number of submissions we receive under the guidance document to also remain at a low level. However, to avoid counting this burden as zero, we have estimated the burden at one respondent making one submission a year for a total of one annual submission.

We based our estimate of the hours per response on the assumption that the information requested in the guidance is readily available to the submitter. We expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for submission to FDA. The submitter will almost always merely need to copy existing documentation. We believe that this effort should take no longer than 3 hours per submission.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Develop documentation process	1	1	1	16	16

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In determining the estimated annual recordkeeping burden, we estimated that at least 90 percent of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms that may not be currently maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. In previous information collection requests, this recordkeeping burden was estimated to be 16 hours per record. We have retained our prior estimate of 16 hours per record for the recordkeeping burden. As shown in table 1 of this document, we estimate that one respondent will make one submission per year. Although we estimate that only 1 of 10 firms will not be currently maintaining the necessary documentation, to avoid counting the recordkeeping burden for the 1 submission per year as 1/10th of a recordkeeper, we estimate that 1 recordkeeper will take 16 hours to develop and maintain documentation recommended by the guidance.

Dated: April 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10272 Filed 5–12–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Questionnaire and Data Collection Testing, Evaluation, and Research for the Health Resources and Services Administration, OMB No. 0915–0379—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than June 12, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Questionnaire and Data Collection Testing, Evaluation, and Research for HRSA, OMB No. 0915–0379—Extension.

Abstract: The purpose of collections under this generic clearance is to obtain formative information from respondents to develop new questions, questionnaires and tools and to identify problems in instruments currently in use. This clearance request is limited to formative research activities emphasizing data collection, toolkit development, and estimation procedures and reports for internal decision-making and development purposes. This clearance request does not extend to the collection of data for public release or policy formation. It is anticipated that these studies will rely heavily on qualitative techniques to meet their objectives. In general, these activities are not designed to yield results that meet generally accepted standards of statistical rigor but are designed to obtain valuable formative information to develop more effective and efficient data collection tools that will yield more accurate results and decrease non-response.

A 60-day notice published in the **Federal Register** on March 2, 2020, vol. 85, No. 41, pp. 12307–09. There were no public comments.

Need and Proposed Use of the Information: HRSA conducts cognitive interviews, focus groups, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation as well as more basic research on response errors in surveys.

HRSA staff use various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing, Audio Computer-Assisted Self-Interviewing, and web-based questionnaires. Professionally recognized procedures are followed in each information collection activity to ensure high quality data. Examples of these procedures could include the following:

- Monitoring by supervisory staff of a certain percent of telephone interviews;
- Conducting cognitive interviewing techniques, including think-aloud techniques and debriefings;
- Data-entry from mail or paper-and-pencil surveys will be computerized through scannable forms or checked through double-key entry;
- Observers will monitor focus groups, and focus group proceedings will be recorded; and
- Data submitted through on-line surveys will be subjected to statistical validation techniques to ensure accuracy (such as disallowing out-of-range values).

Each request under this generic clearance will specify the procedures to be used. Participation will be fully voluntary, and non-participation will have not affect eligibility for, or receipt of, future HRSA health services research activities or grant awards, recruitment or participation. Specific testing and evaluation procedures will be described when we notify OMB about each new request. Appropriate consent procedures will be customized and used for each information collection activity and any collection of personal, privacy-protected information will be handled in accordance with all applicable requirements. If the encounter is to be recorded, the respondent's permission to record will be obtained before beginning the interview.

Screening—When screening is required (*e.g.,* quota sampling), the screening will be as brief as possible and the screening questionnaire will be provided as part of the submission to OMB. Collection methods—The particular information collection methods used will vary, but may include the following

- Individual in-depth interviews—In-depth interviews will commonly be used to ensure that the meaning of a questionnaire or strategy is understood by the respondent. When in-depth interviewing is used, the interview guide will be provided to OMB for review.
- Focus groups—Focus groups will be used to obtain insights into beliefs and

understandings of the target audience early in the development of a questionnaire or tool. When focus groups are used, the focus group discussion guide will be provided to OMB for review.

• Expert/Gatekeeper review of tools—In some instances, tools designed for patients may be reviewed in-depth by medical providers or other gatekeepers to provide feedback on the acceptability and usability of a particular tool. This would usually be in addition to pretesting of the tool by the actual patient or other user.

• Record abstractions—On occasion, the development of a tool or other information collection requires review and interaction with records rather than individuals.

• ''Dress rehearsal'' of a specific protocol—In some instances, the proposed pretesting will constitute a walkthrough of the intended data collection procedure. In these instances, the request will mirror what is expected to occur for the larger scale data collection.

Likely Respondents: Respondents will be recruited by means of advertisements in public venues or through techniques that replicate prospective data collection activities that are the focus of the project. For instance, a survey on physician communication, designed to be administered following an office visit, might be pretested using the same procedure. Each submission to OMB will specify the specific recruitment procedure to be used.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of information collection	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Mail/email [1]	1,000	1	1,000	0.26	260
Telephone	1,000	1	1,000	0.26	260
Web-based	1,000	1	1,000	0.25	250
Focus Groups	725	1	725	1.00	725
In-person	500	1	500	1.00	500
Automated [2]	500	1	500	1.00	500
Cognitive Testing	500	1	500	1.41	705
Total	5,225		5,225		3,200

[1] May include telephone non-response follow-up in which case the burden will not change.
[2] May include testing of database software, CAPI software, or other automated technologies.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–10247 Filed 5–12–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Dr. Shin-Hee Kim (Respondent), who was an Assistant Professor of Veterinary Medicine, University of Maryland (UMD). Dr. Kim engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grants R21 AI100195 and ZIA AI000938 and contract N01 AO60009. The administrative actions, including supervision for a period of three (3) years, were implemented beginning on March 27, 2020, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Dr. Shin-Hee Kim, University of Maryland: Based on an investigation conducted by UMD and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Shin-Hee Kim, former Assistant Professor of Veterinary Medicine, UMD, engaged in research misconduct in research supported by PHS funds, specifically NIAID, NIH, grants R21 AI100195 and ZIA AI000938 and contract N01 AO60009.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, and/or recklessly falsifying and/or fabricating data by altering, reusing, and relabeling same source Western blot images, microscopy fields, and data of viral titers and mouse immune response from non-correlated experiments to represent the results of different viral strains in the following seven (7) published papers and two (2) grant applications submitted to NIAID, NIH:

• Mutations in the fusion protein cleavage site of avian paramyxovirus serotype 4 confer increased replication and syncytium formation in vitro but not increased replication and pathogenicity in chickens and ducks. *PLoS One* 2013;8(1):e50598 (hereafter referred to as ''*PLoS One* 2013A'').

• Newcastle disease virus fusion protein is the major contributor to protective immunity of genotype-matched vaccine. *PLoS One* 2013;8(8):e74022 (hereafter referred to as ''*PLoS One* 2013B'').

• Role of C596 in the C-terminal extension of the haemagglutinin-neuraminidase protein in replication and pathogenicity of a highly virulent Indonesian strain of Newcastle disease virus. *J Gen Virol.* 2014;95(Pt 2):331–6

(hereafter referred to as ''*J Gen Virol.* 2014'').

• Newcastle disease virus vector producing human norovirus-like particles induces serum, cellular, and mucosal immune responses in mice. *J Virol.* 2014;88(17):9718–27 (hereafter referred to as ''*J Virol.* 2014'').

• Modified Newcastle disease virus vectors expressing the H5 hemagglutinin induce enhanced protection against highly pathogenic H5N1 avian influenza virus in chickens. *Vaccine* 2014;32(35):4428–35 (hereafter referred to as ''*Vaccine* 2014'').

• Immunogenicity of Newcastle disease virus vectors expressing Norwalk virus capsid protein in the presence or absence of VP2 protein. *Virology* 2015;484:163–9 (hereafter referred to as ''*Virology* 2015'').

• LaSota fusion (F) cleavage motif-mediated fusion activity is affected by other regions of the F protein from different genotype Newcastle disease virus in a chimeric virus: Implication for virulence attenuation. *J Gen Virol.* 2016;97(6):1297–1303 (hereafter referred to as ''*J Gen Virol.* 2016'').

• R01 AI118879–01, ''Avian paramyxovirus vectored vaccines for Norovirus infection,'' submitted to NIAID, NIH, on October 3, 2014.

• R01 AI118879–01A1, ''Avian paramyxovirus vectored vaccines for Norovirus infection,'' submitted to NIAID, NIH, on November 5, 2015.

Specifically, ORI finds that Respondent knowingly, intentionally, and/or recklessly falsified and/or fabricated:

• Western blot images in four (4) figures of three (3) published papers by reusing and relabeling images from non-correlated blots and using blank backgrounds as blot images with negative expression of proteins. Specifically:

—The blot that was used for Figure 3A, first blot of the second band, in *Vaccine* 2014, representing the negative expression of HA_0 protein of the rLaSota virus in DF1 cells after 24 hour infection at Multiplicity of Infection (MOI) of 1, was fabricated by using the blank background from an uncorrelated original film

—the six (6) blots that were used for Figure 3A, bottom band, in *Vaccine* 2014, representing the expression of Newcastle Disease Virus (NDV) haemagglutinin-neuraminidase (HN) proteins in DF1 cells after 24 hour infection with six modified rNDV virus strains at MOI of 1, also were used in Figure 1B, bottom band, in *J Gen Virol.* 2014 to represent the expression of HN proteins of six different virus strains evaluated in infected DF1 cells at MOI of 0.1 in the presence of trypsin

—the four (4) blots that were used for Figure 1B, upper band, in *J Virol.* 2014, Figure 1B in grant application R01 AI118879–01, and Figure 1A in grant application R01 AI118879–01A1, representing the expression of VP1 proteins of four modified NDV strains in DF1 cells after 24 hour infection at MOI of 1, were fabricated by using blots from an uncorrelated film: The first two blots were from the blank background and the last two blots were from samples labeled with a different viral name—BC/NV101

—the four (4) blots that were used for Figure 3A, third band, in *J Virol.* 2014, representing the VP1 protein expression of the modified rNDV virus strain in DF1 cells at four time points, were fabricated by using four blots labeled with a different viral name (BC/NV101) from the same uncorrelated film of the last hyphen bullet

• nine (9) microscopy fields presented in four (4) figures of four (4) published papers by reusing and relabeling same source images to representing different results. Specifically:

—The microscope field that was used for Figure 1B in *J Gen Virol.* 2016, representing the cytopathic effect of rLaSota virus infection with allantoic fluid in DF1 cells, also was used in Figure 1B in *J Gen Virol.* 2016 to represent the cytopathic effect of rBC/AKO-F virus infection with allantoic fluid in DF1 cells

—the microscope field that was used for Figure 1B in *J Gen Virol.* 2016, representing the cytopathic effect of rBC/Las-Fc-AKO-F virus infection without allantoic fluid in DF1 cells, also was used in a PowerPoint presentation on Respondent's laptop to represent the cytopathic effect of rBan 010 Las Fc virus and rBan 010 Las Fc/D403N virus

—the microscope field that was used for Figure 1B in *J Gen Virol.* 2016, representing the cytopathic effect of rLaSota virus infection without allantoic fluid in DF1 cells, also was used in a PowerPoint presentation on Respondent's laptop to represent the cytopathic effect of rAPMV-2/BC F virus

—the microscope field that was used for Figure 1B in *J Gen Virol.* 2016, representing the cytopathic effect of rBC/Las-Fc virus infection without allantoic fluid in DF1 cells, also was used in a PowerPoint presentation on Respondent's laptop to represent the cytopathic effect of mock infected sample

—the two images that were used for Figure 2B in *Virology* 2015, representing rLaSota-NV (the middle one) and rBCm-NV (the right one) expressed VLP in allantoic fluid of chicken eggs, were fabricated by splitting a microscopy field into two parts

—the image that was used for Figure 3A in *PLoS One* 2013A, representing a mock control in the experiment in which DF1 cells were infected by a group of viruses at MOI of 0.1 for 72 hours, also was used in Figure 2A of *PLoS One* 2013B to represent a mock control in a different experiment in which DF1 cells were infected by a different group of viruses at MOI of 0.01 for 72 hours

• data of viral titers and mouse immune responses to viral immunization presented in five (5) figures of one (1) published paper by altering, reusing, and relabeling data from non-correlated experiments or by fabricating data that did not exist. Specifically:

—The data that were used for Figure 2 in *J Virol.* 2014, representing titers of four virus strains, also were used to represent titers of another group of four different virus strains in Respondent's research records

—the data that were used for Figures 5, 6, 7, and 8 in *J Virol.* 2014, representing the results of mouse immune responses to the immunization of rLaSota-VP1, Modified rNDV-VP1, and VLP viruses, also were used to represent the results of mouse responses to the immunization of different virus strains in Respondent's research records

—the data that were used for Figures 5, 6, 7, and 8 in *J Virol.* 2014, representing the results of mouse immune responses to PBS injection as negative controls, were fabricated as the data did not exist

Dr. Kim entered into an Agreement and agreed to the following:

(1) Respondent agreed to have her research supervised for a period of three (3) years beginning on March 27, 2020. Respondent agreed that prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of

Respondent's research contribution. Respondent agreed that she shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for three (3) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals, setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication is supported by the research record.

(3) Respondent agreed that for a period of three (3) years beginning on March 27, 2020, any institution employing her shall submit, in conjunction with each application of PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI at the conclusion of the supervision period that she has not engaged in, applied for, or had her name included on any application, proposal, or other request for PHS funds without prior notification to ORI.

(5) Respondent agreed to exclude herself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on March 27, 2020.

(6) As a condition of the Agreement, Respondent will request that the following papers be corrected or retracted in accordance with 42 CFR 93.407(a)(1):

- *PLoS One* 2013;8(1):e50598
- *PLoS One* 2013;8(8):e74022
- *J Gen Virol.* 2014;95(Pt 2):331–6
- *J Virol.* 2014;88(17):9718–27
- *Vaccine* 2014;32(35):4428–35
- *Virology* 2015;484:163–9
- *J Gen Virol.* 2016;97(6):1297–1303

Respondent will copy ORI and the Research Integrity Officer at UMD on the correspondence.

Dated: May 8, 2020.

Elisabeth A. Handley,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2020–10253 Filed 5–12–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Biodefense Science Board (NBSB) is authorized under Section 319M of the Public PHS Act, as added by Section 402 of the Pandemic and All-Hazards Preparedness Act of 2006 and amended by Section 404 of the Pandemic and All-Hazards Preparedness Reauthorization Act. The Board is governed by the Federal Advisory Committee, which sets forth standards for the formation and use of advisory committees. The NBSB provides expert advice and guidance on scientific, technical, and other matters of special interest to the Department regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate.

Background: The May 13, 2020, NBSB public teleconference is dedicated to the discussion of recommendations on two topics: (1) NBSB Rapid medical countermeasures (MCM) for Disease X and (2) Integrating Clinical Disaster Response Training with Community and State Based Emergency Planning. We will post modifications to the agenda and/or topics on the NBSB meeting website, which is located at *https://www.phe.gov/nbsb.*

Availability of Materials: We will post all teleconference materials prior to the teleconference on May 13, 2020, on the website located at *https://www.phe.gov/nbsb.*

Procedures for Providing Public Input: Members of the public may attend the public teleconference via a toll-free call-in phone number, which is available on the NBSB website at *https://www.phe.gov/nbsb.*

FOR FURTHER INFORMATION CONTACT: Maxine Kellman, DVM, Ph.D., PMP, Alternate Designated Federal Official for National Advisory Committees, Washington, DC, Office (202) 260–0447 or email *maxine.kellman@hhs.gov.*

SUPPLEMENTARY INFORMATION: We encourage members of the public to provide written comments that are relevant to the NBSB public teleconference prior to May 13, 2020. Send written comments by email to *nbsb@hhs.gov* with ''NBSB Public Comment'' in the subject line. The NBSB Chair will respond to comments received by May 13, 2020, via email and/or during the public teleconference. Due to the Coronavirus Disease 2019 (COVID–19) pandemic response, there was an administrative delay with the posting of this **Federal Register** notice to announce the National Biodefense Science Board (NBSB) May 13, 2020 Public Teleconference.

Robert P. Kadlec,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2020–10156 Filed 5–12–20; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below. Individuals who plan to attend virtually and will need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory Environmental Health Sciences Council.

Date: June 2, 2020.

Closed: 10:00 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Open: 11:00 a.m. to 3:30 p.m.

Agenda: Discussion of program policies and issues.

Place: 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Virtual Access: https://www.niehs.nih.gov/ and *https://www.niehs.nih.gov/news/webcasts.*

Contact Person: Patrick Mastin, Ph.D., Chief Cellular, Organs, and Systems Pathobiology Branch, Division of Extramural Research and Training, National Institute of Environmental, Health Sciences, Research Triangle Park, NC 27709, 984–287–3285 *mastin@niehs.nih.gov.*

The open session will be live streamed through the NIEHS YouTube Live channel but hosted directly for attendees on the public NIEHS website: *https://www.niehs.nih.gov/news/webcasts.* Please note, the link to the meeting will be posted the day of the meeting but won't start until open session begins.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.niehs.nih.gov/about/boards/naehsc/agenda/index.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(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: May 8, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10271 Filed 5–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases DDK–B Subcommittee.

Date: June 10–11, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy, 6707 Democracy Boulevard Bethesda, MD 20892 (Video Meeting).

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7347, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *charlene.repique@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10270 Filed 5–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 15, 2020, 12:00 p.m. to May 15, 2020, 07:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 16, 2020, 85 FR 21255.

This notice is being amended to change the meeting date from May 15, 2020 to May 14, 2020 and the start time from 12:00 p.m. to 3:00 p.m. The meeting is closed to the public.

Dated: May 8, 2020.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10281 Filed 5–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0185]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0102

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0102, National Response Resource Inventory; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 13, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0185] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and

request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0185], and must be received by July 13, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: National Response Resource Inventory.

OMB Control Number: 1625–0102.

Summary: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill removal equipment in a response resource inventory (RRI). This collection helps fulfill that requirement.

Forms: None.

Respondents: Oil spill removal organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 1,378 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: May 8, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–10266 Filed 5–12–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4516–DR; Docket ID FEMA–2020–0001]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4516–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of New Hampshire (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10188 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4523–DR; Docket ID FEMA–2020–0001]

Nevada; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA–4523–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nevada is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Nevada (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10192 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4531–DR; Docket ID FEMA–2020–0001]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4531–DR), dated April 7, 2020, and related determinations.

DATES: This amendment was issued May 4, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 7, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Minnesota (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10200 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4534–DR; Docket ID FEMA–2020–0001]

Idaho; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Idaho (FEMA–4534–DR), dated April 9, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Idaho is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Idaho (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10202 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4498–DR; Docket ID FEMA–2020–0001]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4498–DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Colorado (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10175 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4528–DR; Docket ID FEMA–2020–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4528–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Mississippi (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10197 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4530–DR; Docket ID FEMA–2020–0001]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4530–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued May 4, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Oklahoma (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10199 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4506–DR; Docket ID FEMA–2020–0001]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4506–DR), dated March 30, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 30, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the Commonwealth of Pennsylvania (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10182 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4514–DR; Docket ID FEMA–2020–0001]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4514–DR), dated April 2, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Tennessee (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10186 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4497–DR; Docket ID FEMA–2020–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4497–DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued May 4, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the Commonwealth of Kentucky (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10174 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4512–DR; Docket ID FEMA–2020–0001]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4512–DR), dated April 2, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the Commonwealth of Virginia (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10185 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4515–DR; Docket ID FEMA–2020–0001]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4515–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Indiana (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10187 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4491–DR; Docket ID FEMA–2020–0001]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–4491–DR), dated March 26, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Maryland (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10172 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4505–DR; Docket ID FEMA–2020–0001]

Rhode Island; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–4505–DR), dated March 30, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Rhode Island is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 30, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Rhode Island (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10181 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4524–DR; Docket ID FEMA–2020–0001]

Arizona; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona (FEMA–4524–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Arizona (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10193 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4487–DR; Docket ID FEMA–2020–0001]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4487–DR), dated March 25, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of North Carolina (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10170 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4483–DR; Docket ID FEMA–2020–0001]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4483–DR), dated March 23, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 23, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Iowa (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10169 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4518–DR; Docket ID FEMA–2020–0001]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–4518–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Arkansas (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10189 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4501–DR; Docket ID FEMA–2020–0001]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4501–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Georgia (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10177 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4529–DR; Docket ID FEMA–2020–0001]

New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4529–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of New Mexico (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10198 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4490–DR; Docket ID FEMA–2020–0001]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4490–DR), dated March 26, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Missouri (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10171 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4503–DR; Docket ID FEMA–2020–0001]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4503–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Alabama (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10179 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4492–DR; Docket ID FEMA–2020–0001]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Carolina (FEMA–4492–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of South Carolina (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10173 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4500–DR; Docket ID FEMA–2020–0001]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4500–DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Connecticut (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10176 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4504–DR; Docket ID FEMA–2020–0001]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–4504–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Kansas (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10180 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4507–DR; Docket ID FEMA–2020–0001]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–4507–DR), dated March 31, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Ohio (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10183 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4527–DR; Docket ID FEMA–2020–0001]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–4527–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of South Dakota (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10196 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4521–DR; Docket ID FEMA–2020–0001]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4521–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Nebraska (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10191 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4502–DR; Docket ID FEMA–2020–0001]

District of Columbia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–4502–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the District of Columbia is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the District of Columbia (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant..

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10178 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4526–DR; Docket ID FEMA–2020–0001]

Delaware; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA–4526–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Delaware is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Delaware (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10195 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4520–DR; Docket ID FEMA–2020–0001]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–4520–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Wisconsin (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10190 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4509–DR; Docket ID FEMA–2020–0001]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–4509–DR), dated April 1, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 1, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of North Dakota (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10184 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4532–DR; Docket ID FEMA–2020–0001]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4532–DR), dated April 8, 2020, and related determinations.

DATES: This amendment was issued April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 8, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Vermont (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–10201 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–23–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; correction.

SUMMARY: The Acting Secretary of Homeland Security determined, pursuant to law, that it was 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 San Diego County, California, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas. The notice of determination was published in the **Federal Register** on February 20, 2020. 85 FR 9794. The description of one project area within the United States Border Patrol's Tucson Sector was inadvertently omitted from the February 20, 2020, publication. For clarification purposes, this document is a republication of the February 20, 2020, document including the omitted description of one project area within the United States Border Patrol's Tucson Sector.

DATES: This determination takes effect on May 13, 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 San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors are areas of high illegal entry. In fiscal year 2019, the United States Border Patrol (''Border Patrol'') apprehended over 58,000 illegal aliens attempting to enter the United States between border crossings in the San Diego Sector. There were also over 300 drug-related events between border crossings in the San Diego Sector, through which Border Patrol seized over 3,300 pounds of marijuana, over 1,280 pounds of cocaine, over 293 pounds of heroin, over 3,985 pounds of methamphetamine, and over 107 pounds of fentanyl. In fiscal year 2019, Border Patrol apprehended over 35,000 illegal aliens attempting to enter the United States between border crossings in the El Centro Sector. There were also approximately 180 drug-related events between border crossings in the El Centro Sector, through which Border Patrol seized over 100 pounds of marijuana, over 60 pounds of cocaine, over 100 pounds of heroin, and over 2,600 pounds of methamphetamine. In fiscal year 2019, the Border Patrol apprehended over 68,000 illegal aliens attempting to enter the United States between border crossings in the Yuma Sector. There were also over 800 drug-related events between border crossings in the Yuma Sector, through which Border Patrol seized over 3,000 pounds of marijuana, over 33 pounds of heroin, over 1,186 pounds of methamphetamine, and over 50 pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 63,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. There were also over 1,200 drug-related events between border crossings in the Tucson Sector, through which Border Patrol seized over 59,000 pounds of marijuana, over 150 pounds of cocaine, over 155 pounds of heroin, over 2,700 pounds of methamphetamine, and over 12 pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 182,000 illegal aliens attempting to enter the United States between border crossings in the El Paso Sector. There were also over 400 drug-related events between border crossings in the El Paso Sector, through which the Border Patrol seized over 11,000 pounds of marijuana, over 137 pounds of cocaine, over 35 pounds of heroin, over 340 pounds of methamphetamine, and over two pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 57,000 illegal aliens attempting to enter the United States between border crossings in the Del Rio Sector. There were also over 146 drug-related events between border crossings in the Del Rio Sector, through which Border Patrol seized over 40 pounds of marijuana, over 15 pounds of cocaine, over 24 pounds of heroin, and over 195 pounds of methamphetamine. Additionally, San Diego County, California, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas, which are located in the Border Patrol Sectors identified above, have been identified as High Intensity Drug Trafficking Areas by the Office of National Drug Control Policy.

Due to the high levels of illegal entry of people and drugs within the Border Patrol Sectors identified above, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in such Sectors. Therefore, DHS will take immediate action to construct new pedestrian and secondary fencing and replace existing vehicle barriers and primary pedestrian and secondary fencing in the Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors. The segments within which such construction will occur are referred to herein as the ''project areas'' and are more specifically described in Section 2 below.

To support DHS's action under section 102 of IIRIRA, I requested that the Secretary of Defense, pursuant to 10 U.S.C. 284(b)(7), assist by constructing fence, roads, and lighting within the Border Patrol Sectors identified above in order to block drug smuggling corridors across the international boundary between the United States and Mexico. The Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. 284(b)(7) and that the Department of Defense will provide such support in the project areas described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sector are areas of high illegal entry (the ''project areas'')—

Within the San Diego Sector:

- Starting approximately one and one-half (1.5) miles east of Border Monument 243 and extending east to the San Diego—Imperial County line;

Within the El Centro Sector:

- Starting at the San Diego—Imperial County line and extending east approximately 11 miles;

Within the Yuma Sector:

- Starting approximately three-quarters (.75) of a mile west of the Andrade Port of Entry and extending east to the Colorado River;
- Starting approximately five and one-half miles (5.5) miles south of the

Morelos Dam and extending south and generally following the Colorado River for approximately seven and one-half (7.5) miles;

• Starting at the point where the Colorado River crosses the international border between the United States and Mexico and extending east to approximately Border Monument 201;

Within the Tucson Sector:

• Starting two (2) miles north and west of Border Monument 140 and extending south and east to approximately one and one-half (1.5) miles east of Border Monument 124;

• Starting approximately one-half (.5) of a mile west of Border Monument 118 and continuing east to approximately one-half (.5) of a mile east of Border Monument 118;

• Starting approximately one (1) mile west of Border Monument 116 and extending east to approximately one mile (1) east of Border Monument 100;

• Starting at approximately Border Monument 98 and extending east for approximately 10 miles;

• Starting approximately one-half (0.5) of a mile west of the Naco Port of Entry and extending east to approximately Border Monument 92;

• Starting approximately one-half (0.5) of a mile west of Border Monument 91 and extending east for approximately 16 miles;

• Starting approximately one-half (0.5) of a mile east of Border Monument 83 and extending west for two (2) miles;

• Starting approximately one-half (0.5) of a mile west of Border Monument 74 and extending east to the Arizona—New Mexico state line;

Within the El Paso Sector:

• Starting at approximately Border Monument 33 and extending east for approximately three (3) miles;

• Starting at approximately Border Monument 24 and extending east to approximately Border Monument 20;

• Starting approximately two and one-half (2.5) miles west of Border Monument 4 and extending east to approximately one-half (0.5) of a mile east of Border Monument 3;

• Starting approximately one and one-quarter (1.25) miles east of Border Monument 3 and extending east to approximately Border Monument 2;

• Starting at approximately the New Mexico—Texas state line and generally following the International Boundary and Water Commission levee south and east for approximately two (2) miles;

• Starting approximately one-half (0.5) of a mile north and west of the Paso Del Norte Port of Entry and generally following the International Boundary and Water Commission levee east to approximately one-half (0.5) of a mile south and east of the Bridge of the Americas Port of Entry;

• Starting approximately one and one-half (1.5) miles south and east of the Bridge of the Americas Port of Entry and generally following the International Boundary and Water Commission levee south and east to approximately nine (9) miles south and east of the Tornillo Port of Entry;

Within the Del Rio Sector:

• Starting approximately two and one-half (2.5) miles north and west of the Del Rio Port of Entry and extending south and east for approximately three and one-half (3.5) miles; and

• Starting approximately one-half (0.5) mile south of the Eagle Pass II Port of Entry and extending north for approximately three (3) miles.

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 all contracting actions associated with 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 and regulations, including any legal requirements of, deriving from, or related to the subject of, the following statutes and regulations: 10 U.S.C. 2304; 10 U.S.C. 2304c; 10 U.S.C. 2306a; 10 U.S.C. 2305(a)–(c), (e)–(f); Section 813 of Public Law 114–328, as amended by Section 822 of Public Law 115–91; 15 U.S.C. 657q; 48 CFR 17.205; 48 CFR 17.207; 10 U.S.C. 2305a(b)–(e); 48 CFR 22.404–5; and 48 CFR 28.102–1(c).

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 Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel.

[FR Doc. 2020–10113 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–14–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; correction.

SUMMARY: The Acting Secretary of Homeland Security determined, pursuant to law, that it was 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 Pima County, Arizona, Santa Cruz County, Arizona, and Cochise County, Arizona. The notice of determination was published in the **Federal Register** on March 16, 2020. 85 FR 14961. The description of one project area was inadvertently omitted from the March 16, 2020, publication. For clarification purposes, this document is a republication of the March 16, 2020, document including the omitted description of the one project area within the United States Border Patrol's Tucson Sector.

DATES: This determination takes effect on May 13, 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 Tucson Sector is an area of high illegal entry. In fiscal year 2019, the United States Border Patrol (''Border Patrol'') apprehended over 63,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. Also in fiscal year 2019, there were over 1,200 drug-related events between border crossings in the Tucson Sector, through which Border Patrol seized over 59,000 pounds of marijuana, over 150 pounds of cocaine, over 155 pounds of heroin, over 2,700 pounds of methamphetamine, and over 12 pounds of fentanyl. Additionally, Pima County, Arizona, Santa Cruz County, Arizona, and Cochise County, Arizona, which are located in the Tucson Sector, have been identified as a High Intensity Drug Trafficking Area by the Office of National Drug Control Policy.

Due to the high levels of illegal entry of people and drugs within the Tucson Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Tucson Sector. Therefore, DHS will take immediate action to construct new primary and secondary fencing and replace existing pedestrian and secondary fencing in the Tucson Sector. The segments within which such construction will occur are referred to herein as the ''project areas'' and are more specifically described in Section 2 below.

The lack of adequate barriers, either due to a complete absence of barrier or ineffective primary or secondary fencing that no longer meet Border Patrol's operational needs, continues to be particularly problematic as it pertains to the trafficking of illegal narcotics in the Tucson Sector. The replacement of outmoded primary and secondary fencing and the construction of new primary pedestrian fencing will add much needed infrastructure in the Tucson Sector. The added impedance capability will slow or stop illegal activity, afford Border Patrol more time to respond, and increase the likelihood of interdiction. Within the project areas roads will also be constructed or improved and lighting will be installed.

To support DHS's action under section 102 of IIRIRA, I requested that the Secretary of Defense, pursuant to 10 U.S.C. 284(b)(7), assist by constructing fence, roads, and lighting within the Tucson Sector in order to block drug smuggling corridors across the international boundary between the United States and Mexico. The Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. 284(b)(7) and that the Department of Defense will provide such support in the project areas described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of Arizona within the United States Border Patrol's Tucson Sector, are areas of high illegal entry (the ''project areas''):

- Starting two (2) miles north and west of Border Monument 140 and extending south and east to approximately one and one-half (1.5) miles east of Border Monument 124;
- Starting approximately one-half (.5) of a mile west of Border Monument 118 and continuing east to approximately one-half (.5) of a mile east of Border Monument 118;
- Starting approximately one (1) mile west of Border Monument 116 and extending east to approximately one mile (1) east of Border Monument 100;
- Starting at approximately Border Monument 98 and extending east for approximately 10 miles;
- Starting approximately one-half (0.5) of a mile west of the Naco Port of Entry and extending east to approximately Border Monument 92;
- Starting approximately one-half (0.5) of a mile west of Border Monument 91 and extending east for approximately 16 miles;
- Starting approximately one-half (0.5) of a mile east of Border Monument 83 and extending west for two (2) miles; and
- Starting approximately one-half (0.5) of a mile west of Border Monument 74 and extending east to the Arizona—New Mexico state line.

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); Wild and Scenic Rivers Act (Pub. L. 90–542, 82 Stat. 906 (Oct. 2, 1968) (16 U.S.C. 1271 *et seq.*)); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Federal Land Policy and Management Act (Pub L. 94–579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 *et seq.*)); the Wilderness Act (Pub. L. 88–577, 78 Stat. 890 (Sept. 3, 1964) (16 U.S.C. 1131 *et seq.*)); sections 101(a)(14), 101(a)(17), and 101(b) of Title I of the Arizona Wilderness Act of 1984 (Pub. L. 98–406, 98 Stat. 1486 (August 28, 1984)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669 (16 U.S.C. 668dd–668ee)); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 70 Stat. 1119 (Aug. 8, 1956) (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 Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the National Park Service Organic Act and the National Park Service General Authorities Act (Pub. L. 64–235, 39 Stat. 535 (Aug. 25, 1916) and Pub. L. 91–383, 84 Stat. 825 (Aug. 18, 1970) as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 1, 2–4 and 16 U.S.C. 1a–1 *et seq.,* now codified at 54 U.S.C. 100101—100102, 54 U.S.C. 100301–100303, 54 U.S.C. 100501–100507, 54 U.S.C. 100701–100707, 54 U.S.C. 100721–100725, 54 U.S.C. 100751–100755, 54 U.S.C. 100901–100906, 54 U.S.C. 102101–102102)); Arizona-Idaho Conservation Act of 1988 (Pub. L. 100–696, 102 Stat. 4571 (Nov. 18, 1988) (16 U.S.C. 460xx)); 16 U.S.C. 450y (Pub. L. 77–216, 55 Stat. 630 (Aug. 18, 1941), as amended by Pub. L. 82–478, 66 Stat. 510 (July 9, 1952)); 67 Stat. c18 (Nov. 5, 1952); National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); Multiple-Use and Sustained-Yield Act of 1960 (16 U.S.C. 528–531); 16 U.S.C. 472; 16 U.S.C. 551; 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 Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel.

[FR Doc. 2020–10112 Filed 5–12–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30243; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 25, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 28, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 25, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

CONNECTICUT

Hartford County

Neiditz Building, 111 Pearl St., Hartford, SG100005238

FLORIDA

Escambia County

Boy Scout Building, (Florida's New Deal Resources MPS), 1601 East La Rua St., Pensacola, MP100005239

Gadsden County

Chattahoochee Historic District, North Bolivar and Decatur Sts., East Washington St., and South McDonald Ave., East Chattahoochee St., Chattahoochee, SG100005240

Highlands County

Highway Park Cemetery, 202, 204, and 206 Crestmore Dr., Lake Placid vicinity, SG100005241

Holmes County

Downtown Bonifay Historic District, Nebraska Ave; Oklahoma Ave.; Evans Ave.; Martin St., and Etheridge St., Bonifay, SG100005242

Volusia County

Green Mound, 4400 South Peninsula Dr., Ponce Inlet, SG100005243

GEORGIA

Fulton County

First Presbyterian Church of Atlanta, 1328 Peachtree St. NE, Atlanta, SG100005252

Manuel's Tavern, 602 North Highland Ave. NE, Atlanta, SG100005253

Westview Cemetery, 1680 Ralph David Abernathy Blvd. SW, Atlanta, SG100005254

MINNESOTA

Blue Earth County

Old Main, Mankato State Teachers College (Boundary Decrease), 301 South Fifth St., Mankato, BC100005244

Hennepin County

Laurel Apartments, 15 North Fifteenth St., Minneapolis, SG100005245

Zinsmaster Baking Company Building, 2900 Park Ave., Minneapolis, SG100005246

Pennington County

Thief River Falls Auditorium and Municipal Building, 123 Main Ave. North, Thief River Falls, SG100005247

Ramsey County

Farmers Union Grain Terminal Association Headquarters, 1667 Snelling Ave. North, Falcon Heights, SG100005248

St. Louis County

Olson, Sigurd F., Writing Shack, 106 East Wilson St., Ely, SG100005249

Winona County

Winona Commercial Historic District (Boundary Increase), 102 Walnut St. and 159 East Second St., and alley behind buildings to the south, Winona, BC100005250

NORTH DAKOTA

Grand Forks County

Ben Franklin Elementary School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 1016 South 20th St., Grand Forks, MP100005260

Lewis and Clark Elementary School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 1100 13th Ave. South, Grand Forks, MP100005261

Valley Junior High School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 2100 5th Ave. North, Grand Forks, MP100005262

Viking Elementary School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 809 22nd Ave. South, Grand Forks, MP100005263

West Elementary School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 615 North 25th St., Grand Forks, MP100005264

Wilder Elementary School, (Mid-Century Schools in Grand Forks, North Dakota, 1949–1965 MPS), 1009 North 3rd St., Grand Forks, MP100005265

WISCONSIN

Milwaukee County

20th Street School, 2442 North 20th St., Milwaukee, SG100005256

Additional documentation has been received for the following resource:

IOWA

Scott County

Ambrose Hall (Additional Documentation), 518 West Locust St., Davenport, AD77000553

Authority: Section 60.13 of 36 CFR part 60

Dated: April 27, 2020.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–10274 Filed 5–12–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1229–1230 (Review)]

Monosodium Glutamate From China and Indonesia; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on monosodium glutamate from China and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Beth Jones (202–205–8147), Supervisory Investigator, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 6, 2020, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (85 FR 3421, January 21, 2020); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office

of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on August 10, 2020, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Tuesday, August 25, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 17, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on August 19, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to these reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 17, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 2, 2020. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 2, 2020. On September 24, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 29, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 8, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10244 Filed 5–12–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection; Application for Restoration of Firearms Privileges—ATF Form 3210.1

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. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until July 13, 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: Laura O'Lena, NCETR/Explosives Enforcement and Training Division, Explosives Enforcement Branch either by mail at 3750 Corporal Road, Huntsville, Alabama 35898, by email at *EROD@atf.gov,* or by telephone at 256–261–7640.

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*): Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Restoration of Firearms Privileges.

3. *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number (if applicable): ATF Form 3210.1.

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: Business or other For-profit.

Other (if applicable): None.

Abstract: The information requested on the Application for Restoration of Firearms Privileges—ATF Form 3210.1, fulfills the requirements of 18 U.S.C. Chapter 44. Specifically, individuals prohibited from purchasing, possessing, receiving, or transporting firearms, are permitted to apply for the restoration of their firearms privileges, using ATF Form 3210.1. Currently, only corporations may apply for relief, since Congress has not appropriated funds for individuals who are prohibited.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes 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 five (5) hours, which is equal to 10 (# of respondents) * 1 (# of responses per respondent) * .5 (30 minutes or the time to complete each response).

7. *An Explanation of the Change in Estimates:* Due to a congressional restriction, use of this IC is currently limited to corporations and not individuals. As such, the total respondents has reduced by 240, since the last renewal in 2017. Although postage costs increased from .49 per respondent during the 2017 to $0.55 currently, the total public cost burden reduced by $117.50.

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: May 7, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10214 Filed 5–12–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health; Meeting

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of meeting.

SUMMARY: This notice announces the telephonic meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

DATES: The Advisory Board will meet June 16, 2020, via teleconference, from 12:00 p.m. to 5:00 p.m. Eastern time.

ADDRESSES: Submissions of comments and materials for the record, and requests for special accommodations: You must submit (postmark, send, transmit) comments, materials, and requests for special accommodations for the meetings by June 9, 2020, by any of the following methods:

• *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, ''Advisory Board Meeting June 16, 2020'').

• *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (June 16, 2020). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: You may contact Michael Chance, Designated Federal Officer, at *chance.michael@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S.

Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (512) 396–6652; email *mcginnis.laura@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet telephonically on Tuesday, June 16, 2020, from 12:00 p.m. to 5:00 p.m. Eastern time. Advisory Board members will attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Discuss any recommendation responses provided by the program and status of outstanding recommendations;
- Discuss data provided by the program at the request of the Board;
- Discuss cases provided by the program at the request of the Board;
- Working group reports and follow up items from the Board's previous meetings;
- Discuss recent program changes; and
- Administrative issues raised by Advisory Board functions and future Advisory Board activities.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP will post the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions, and Access to the Public Record

All Advisory Board meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's website no later than 72 hours prior to the meeting, at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Submission of written comments for the record: You may submit written comments using one of the methods listed in the **SUMMARY** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (June 16, 2020). OWCP will post your comments on the Advisory Board website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Signed at Washington, DC.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2020–10269 Filed 5–12–20; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Foreign Branching

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before July 13, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the email address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0167.

Title: Foreign Branching, 12 CFR 741.11.

Type of Review: Extension of a currently approved collection.

Abstract: Pursuant section 741.11, an insured credit union that wishes to establish a branch office outside the United States (other than branches located on United States military installations or embassies) must apply for and receive approval from the NCUA regional director before establishing that branch. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, including conservatorship and liquidation actions.

This information is necessary to evaluate the safety and soundness of the decision to open the branch and to protect the interests of the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 1.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 4.

Estimated Hours per Response: 8.25.

Estimated Total Annual Burden Hours: 33.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The

public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on May 8, 2020.

Dated: May 8, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–10249 Filed 5–12–20; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0107]

Information Collection: Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request Online Forms

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget (OMB) for emergency processing; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) recently submitted a request for emergency processing to OMB for approval. OMB approved the information collection under approval number 3150–0018. The U.S. Nuclear Regulatory Commission (NRC) invites public comment on our request for emergency review for and OMB approval of the information collection that is summarized below. The information collection is entitled, ''Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request Online Forms.''

DATES: Submit comments by July 13, 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 *https://www.regulations.gov/* and search for Docket ID NRC–2020–0107. 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–2020–0107 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–2020–0107. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0107 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 Nos. ML20126G469 and ML20126G490. The supporting statement is available in ADAMS under Accession No. ML20126G464.
- *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–2020–0107 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

We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to OMB the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations under section 1320.13 of title 5 of the *Code of Federal Regulations* (CFR). We cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred, as stated in 5 CFR 1320.13(a)(2)(ii). This information collection only addresses the incremental burden change to an existing clearance and not the total burden for the clearance.

1. *The title of the information collection:* Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request Online Forms.
2. *OMB approval number:* 3150–0018.
3. *Type of submission:* Revision.

4. *The form number, if applicable:* There is no form number for the online submission form.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the requalification requirements specified in 10 CFR 55.59 as allowed by 10 CFR 55.11, ''Specific Exemptions.''

7. *The estimated number of annual responses:* 60.

8. *The estimated number of annual respondents:* 60.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 120.

10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control No. 3150–0018 for a period of 6 months. The purpose of this information collection is to introduce the online forms for 10 CFR part 55 Exemption Request and 10 CFR part 55 Research and Test Reactor Exemption Request, which would simplify the process for filing the exemption requests because the existing system may be too burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0018, licensees are already able to seek exemptions from the requirements of 10 CFR part 55, Operators' Licenses. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR part 55 contains specific requirements for the licensing of utilization facility operators and senior operators. Due to the impacts of the COVID–19 Public Health Emergency (PHE), the NRC will also consider exemption requests for operators and senior operators from the requirements in 10 CFR 55.59(a)(1) (requiring the operators and senior operators to successfully complete the Commission-approved requalification program) and in 10 CFR 55.59(a)(2) (requiring the operators and senior operators to pass a comprehensive requalification written examination and an annual operating test); these exemptions would allow delay of these requalification program requirements during the COVID–19 PHE as allowed by 10 CFR 55.11, ''Specific Exemptions.''

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: May 7, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–10164 Filed 5–12–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Market Test of Experimental Product: "Commercial PO Box Redirect Service"

AGENCY: Postal Service™.

ACTION: Notice of market test.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: May 13, 2020.

FOR FURTHER INFORMATION CONTACT: Kara C. Marcello, 202–268–4031.

SUPPLEMENTARY INFORMATION: The United States Postal Service hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it plans to begin a market test of its ''Commercial PO Box Redirect Service'' experimental product on June 8, 2020. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641, and describing the nature and scope of the market test. Documents are available at *www.prc.gov,* Docket No. MT2020–1.

Joshua J. Hofer

Attorney, Federal Compliance.

[FR Doc. 2020–10168 Filed 5–12–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–17, OMB Control No. 3235–0018]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15b6–1 and Form BDW

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15b6–1 (17 CFR 240.15b6–1), under the Securities Exchange Act of 1934 (15 U.S.C 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6–1. The Commission estimates that approximately 317 broker-dealers withdraw from Commission registration annually [1] and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 317 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 317 hours.[2]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

[1] This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. This estimate is based on the numbers of forms filed; therefore, the number may include multiple forms per broker-dealer if the broker-dealer's initial filing was incomplete. In fiscal year (from 10/1 through 9/30) 2017, 328 broker-dealers withdrew from registration. In fiscal year 2018, 328 broker-dealers withdrew from registration. In fiscal year 2019, 296 broker-dealers withdrew from registration. (328 + 328 + 296)/3 = 317 (rounded down from 317.33).

[2] (317 × 1 hour) = 317 hours.

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10275 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0310, SEC File No. 270–275]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 22d–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Paperwork Reduction Act'') (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22d–1 under the Investment Company Act of 1940 (the ''1940 Act'') (17 CFR 270.22d–1) provides registered investment companies that issue redeemable securities (''funds'') an exemption from section 22(d) of the 1940 Act (15 U.S.C. 80a–22(d)) to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 4,098 series of funds that might rely on the rule is estimated to be 1024.5 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is based on communications with industry representatives, and is not derived from a comprehensive or even a representative survey or study. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10277 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88836; File No. SR–CBOE–2020–044]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

May 7, 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 May 1, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its fees schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective May 1, 2020.

Compression Transaction

The Exchange first proposes to amend its Fees Schedule with respect to compression transactions. By way of background, the Exchange currently waives transaction fees (and applicable surcharges) incurred as a result of transactions that compress or reduce certain open positions in SPX and SPXW.[3] The Exchange adopted fee and surcharge waivers as compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. In order to receive a waiver of transaction fees, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression rebates.[4] As these orders are not subject to any transaction fees or surcharges, the Exchange wishes to also exclude such volume from any volume thresholds calculated by the Exchange. More specifically, the Exchange proposes to not count SPX and SPXW orders marked as compression towards any volume thresholds for the following programs: (1) SPX Liquidity Provider Sliding Scale, (2) Clearing Trading Permit Holder Proprietary Products Sliding Scale, (3) Select Customer Options Reduction (''SCORe'') Program, (4) SPX/SPXW Market-Maker Tier Appointment Fees, (5) SPX/SPXW Floor Broker Trading Surcharge, (6) Floor Broker ADV Discount, (7) Floor Brokerage Fees Discount, and (8) Frequent Trader Program. The Exchange proposes to amend Footnotes 12 and 41 to make clear that identified compression transactions (*i.e.,* those properly marked in a manner and form determined by the Exchange) shall not count towards any volume threshold.[5]

Registration Fees

The Exchange next proposes to add clarifying language to Footnote 12 of the Fees Schedule, which governs pricing changes in the event the Exchange trading floor becomes inoperable. In the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable. Particularly, the Exchange proposes to amend Footnote 12 to clarify that certain registration fees are not applicable when the trading floor is inoperable.

First, by way of background, every TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or Market-Maker Floor Trading Permit in all matters relating to the Exchange.[6] An ''inactive nominee'' of a TPH organization is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor Trading Permit which the organization holds.[7] Only active nominees are permitted to act as a Market-Maker or Floor Broker on the trading floor. In order for an inactive nominee to act as a Market-Maker or Floor Broker on the trading floor, the TPH organization it is associated with must purchase an additional Floor Trading Permit or must swap places with an active nominee on a Trading Permit, which nominee would then become inactive. The Exchange currently assesses a monthly fee of $300 for any nominee that retains inactive status (*i.e.,* ''Inactive Nominee Status Fee (Parking Space)''). The Exchange also assesses $100 each time an inactive nominee swaps places with a nominee on a Trading Permit. The Exchange notes that the Fees Schedule currently provides that when the trading floor is inoperable, floor Market-Makers and Floor Brokers will be entitled to act in their registered capacities electronically, provided that any Floor Broker TPH that did not have an Electronic Access Permit (''EAP'') prior to the closure of the trading floor will be charged for one EAP per TPH organization and any floor Market-Maker that did not have a Market Maker EAP will be charged for one Market Maker EAP per TPH organization (*i.e.,* floor TPHs will not be assessed per permit fees for floor Trading Permits).[8] As TPH organizations do not purchase additional floor Trading Permits while the trading floor is inoperable, the Inactive Nominee Status fee and Inactive Nominee Status Change fee would also not apply and the Exchange wishes to make this clear in the Fees Schedule to provide additional transparency in the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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 Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to not count volume executed and marked as a compression transaction towards volume thresholds for any applicable incentive program is reasonable, as such transactions already do not incur any fees or surcharges for such volume. The Exchange also believes it's reasonable to exclude such volume from the volume thresholds for the SPX/SPXW Market-Maker Tier Appointment Fee and SPX/SPXW Floor Broker Trading Surcharge because the Exchange does not want to discourage such transactions. As discussed, the Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all market participants that

[3] *See* CBOE Fees Schedule, Footnote 41 and Footnote 12.

[4] *Id.*

[5] The Exchange proposes to also append Footnotes 12 and 41 to affected programs, as applicable.

[6] *See* Cboe Options Rule 3.9(b).

[7] *See* Cboe Options Rule 3.9(e).

[8] *See* Cboe Options Fees Schedule, Footnote 41.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

identify eligible orders in the form and manner determined by the Exchange.

The Exchange believes the proposed clarifications regarding inactive nominee fees is reasonable as such clarifications provide additional transparency in the Fees Schedule and alleviate potential confusion, thereby reducing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange also notes not assessing these fees is reasonable, equitable and not unfairly discriminatory as TPHs would not be subject to such fees and it would apply uniformly to all nominees and inactive nominees.

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 that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address a fee change it believes is reasonable in the event the trading floor becomes inoperable, thereby only permitting electronic participation on the Exchange. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–044. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–044, and should be submitted on or before June 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10217 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88837; File Nos. SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Exchanges' Co-Location Services To Offer Co-Location Users Access to the NMS Network

May 7, 2020.

I. Introduction

On August 22, 2019, New York Stock Exchange LLC, NYSE National, Inc., and NYSE Arca, Inc. each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (i) Amend their co-location services to offer co-location Users access to the ''NMS Network''—a new alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP''); and (ii) establish associated fees. NYSE American LLC filed with the Commission a substantively identical filing on August 23, 2019.[3] The proposed rule changes were published for comment in the **Federal Register** on September 10,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE American, LLC are collectively referred to herein as ''NYSE'' or the ''Exchanges.''

2019.[4] On October 24, 2019, the Commission extended the time period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Original Proposal, to December 9, 2019.[5] The Commission received one comment letter on the Original Proposal, a response from the Exchanges, and a second letter from the original commenter.[6] On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the Original Proposal.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the Original Proposal. Amendment No. 1, which superseded and replaced the Original Proposal in its entirety, was published for comment in the **Federal Register** on January 15, 2020.[8] The Commission received one comment letter on the Amended Proposal and a response from the Exchanges.[9] The Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

A. Background

The Exchanges' affiliate, SIAC, is currently engaged as the exclusive SIP for three National Market System Plans: (1) The Consolidated Trade Association (''CTA'') Plan; (2) the Consolidated Quotation (''CQ'') Plan; and (3) the Options Price Reporting Authority (''OPRA'') Plan.[10] SIAC operates in the same data center (''Data Center'') in Mahwah, New Jersey from which the Exchanges operate and offer co-location services to co-location ''Users.''[11] A co-location ''User'' is any market participant that requests to receive co-location services directly from the Exchange for fees set forth on price lists filed with the Commission.[12]

Currently, Users can connect to the CTA Plan, CQ Plan, and OPRA Plan data feeds (the ''NMS Feeds'') disseminated by the SIP using either of the co-location local area networks in the Data Center, which include the Liquidity Center Network (''LCN'') and IP network.[13] Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access the LCN and/or IP network and connect to the NMS feeds.[14] Users do not pay an additional or separate charge to connect to the NMS Feeds via the LCN or IP network, but rather pay for the bandwidth they determine will meet their needs in co-location.[15]

B. Original Proposal and Order Instituting Proceedings

As more fully set forth in the Original Notice, the Exchanges initially proposed to offer access to the new NMS Network and establish associated fees. The NMS Network would be an alternate, dedicated network from which co-location Users could access and connect to the NMS Feeds. The NMS Network would have an anticipated benefit of a one-way reduction in latency, as compared to the IP network and/or LCN, of over 140 microseconds. The Exchanges explained that SIAC continually assesses the services it provides and had been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements for the SIP, including one that would address concerns that access to the NMS Feeds (required to traverse over the IP network), were subject to an additional layer of latency because the IP network was not designed as a low-latency network.[16]

Under the Original Proposal, a User would have been permitted to connect to the NMS Feeds via the newly established NMS Network at no additional charge subject to certain conditions. Specifically, if a User purchased 10Gb or 40Gb access to the LCN or IP network and requested a connection to the NMS Network, that User and its Affiliates,[17] taken together, would not have been charged for up to eight corresponding NMS Network connections (each a ''No Additional Fee NMS Network Connection''), if:

(i) Such User, together with its Affiliates, designated no more than four No Additional Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

(ii) such User, together with its Affiliates, designated no more than four

[4] *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (SR–NYSE–2019–46); 86869 (September 4, 2019), 84 FR 47600 (SR–NYSENAT–2019–19); 86868 (September 4, 2019), 84 FR 47610 (SR–NYSEArca–2019–61); 86867 (September 4, 2019), 84 FR 47563 (SR–NYSEAMER–2019–34) (collectively the ''Original Notice'' or ''Original Proposal''). Page citations to the Original Notice refer to the Notice for SR–NYSE–2019–46 as published in the **Federal Register**.

[5] *See* Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019) (SR–NYSE–2019–46); 87402, 84 FR 58187 (October 30, 2019) (SR–NYSENAT–2019–19); 87400, 84 FR 58189 (October 30, 2019) (SR–NYSEArca–2019–61); 87401, 84 FR 58188 (October 30, 2019) (SR–NYSEAMER–2019–34).

[6] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm.* NYSE filed a comment letter on behalf of all of the Exchanges.

[7] *See* Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSE–2019–46; SR–NYSENAT–2019–19; SR–NYSEArca–2019–61; SR–NYSEAMER–2019–34) (''Order Instituting Proceedings'' or ''OIP'').

[8] *See* Securities Exchange Act Releases No. 87927 (January 9, 2020), 85 FR 2468 (SR–NYSE–2019–46); 87930 (January 9, 2020), 85 FR 2459 (SR–NYSENAT–2019–19); 87929 (January 9, 2020), 85 FR 2453 (SR–NYSEAMER–2019–34); and 87928 (January 9, 2020), 85 FR 2447 (SR–NYSE–2019–61) (collectively, ''Amendment No. 1'' or the ''Amended Proposal''). The Amended Proposal also is available at *https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946-6584636-201247.pdf.* Page citations to the Amended Proposal refer to Amendment No. 1 for SR–NYSE–2019–46 as published in the **Federal Register**.

[9] *See,* respectively, letter dated February 5, 2020 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter III'') and letter dated February 25, 2020 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter II''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm.* NYSE filed a comment letter on behalf of all of the Exchanges.

[10] *See* Amended Proposal, *supra* note 8, at n. 16.

[11] *See* Amended Proposal, *supra* note 8, 85 FR at 2469.

[12] *See* Amended Proposal, *supra* note 8, at n. 10. As stated in the price list of each of the Exchanges, a User that incurs co-location fees for a particular co-location service is not subject to co-location fees for the same co-location service charged by another of the Exchanges. *See id.*

[13] *See id,* 85 FR at 2469.

[14] *Id.*

[15] Currently, a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the Exchanges, and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity; as well as connectivity to market data products that a User selects from a list of Included Data Products, subject to technical provisioning requirements and authorization from the provider of the data feed. The Included Data Products are the NMS Feeds and the proprietary feeds of the Exchanges and its affiliate, NYSE Chicago. *Id.*

[16] *See* Original Notice, *supra* note 4, 84 FR at 47594.

[17] *See* Original Notice, *supra* note 4, at n. 17, noting that ''Affiliate'' of a User is defined in the price list as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User;'' that a ''Hosted Customer'' is a customer of a Hosting User that is hosted in a Hosting User's co-location space; and a ''Hosting User'' is a User of colocation services that hosts a Hosted Customer in the User's co-location space. Hosting Users are subject to Hosting fees.

No Additional Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

(iii) such User, together with its Affiliates, did not use the LCN or IP network connections that correspond to the No Additional Fee NMS Network Connections to access the NMS Feeds; [18] and

(iv) each of the No Additional Fee NMS Network Connections was of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[19]

In contrast, a User that did not satisfy these conditions would have been subject to an additional or separate charge to access the NMS Network.[20] Those seeking an NMS Network connection that did not qualify as a No Additional Fee NMS Network Connection would have been assessed: (i) $10,000 per connection initial charge and $11,000/month for a 10 Gb connection; or (ii) $10,000 per connection initial charge and $18,000/month for a 40 Gb connection (the same fee assessed for the same-sized 10 Gb or 40 Gb IP network connection).[21]

The Commission received one comment letter on the Original Proposal from Nasdaq, a response from the Exchanges, and a second letter from Nasdaq.[22] In its initial comment letter, Nasdaq observed that the Exchanges' proposal would permit market participants who separately pay the Exchanges to connect to their trading venue(s) to receive up to eight free connections to the faster NMS Network; whereas market participants who elect a stand-alone connection to the NMS Feeds would be charged.[23] Nasdaq expressed concern that the ''commingling,'' or bundling, of pricing for NMS Network connectivity with connectivity to the NYSE venues, including access to NYSE proprietary data feeds, would create a burden on intermarket competition and hinder potential providers from competing to serve as network processor in place of SIAC.[24] In Nasdaq's view, ''[a]ny change to the current processor would increase costs to market participants that would purchase a subset of NMS Network Connections from the new provider and continue to pay the bundled price to NYSE to connect and transact business on NYSE.'' [25] Nasdaq also believed that NYSE's failure to offer market participants the opportunity to acquire NMS Network connections individually hindered competition.[26] Finally, Nasdaq took the position that the Exchanges' proposal would burden intermarket competition because other exchanges would be unable to couple their pricing for connectivity to their trading venues with NMS Network connections.[27]

The Exchanges responded by noting that Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[28] With respect to Nasdaq's first argument, the Exchanges took the position that the bidding process to be the exclusive SIP for an NMS Plan is a commercial competition that is not intermarket competition as contemplated by the Exchange Act, and that how (and how much) a bidder chose to charge for connectivity to its SIP would be part of its bid.[29] The Exchanges characterized Nasdaq's second argument as ''baseless'' because market participants would in fact be able to purchase a stand-alone NMS Network connection.[30] The Exchanges expressed the view that Nasdaq's final argument was unfounded because there inherently is no competition to provide connectivity to an exclusive SIP.[31] The Exchanges further stated that while the NMS Network would be offered at no additional cost to current Users, the only way to address Nasdaq's concerns would be to increase fees currently charged to Users to connect to the Exchanges.[32] In this regard, the Exchanges observed that Nasdaq's approach to managing its own fees for connectivity to the UTP SIP Feed (defined below) is similar to the approach proposed by the Exchanges in that both parties seek to leverage their existing exchange connectivity fees to keep costs down for providing connectivity to the relevant SIPs.[33]

In a second comment letter, Nasdaq stated its general support for the proposed NMS Network, but reiterated its view that the Exchanges' proposed fee structure would hamper competitors from bidding to replace SIAC as the SIP.[34] According to Nasdaq, if another exchange or third party became the SIP for one of the three NMS Feeds, market participants would need to separately connect to two separate environments to obtain all three NMS Feeds, at increased costs.[35] Nasdaq urged that NMS Network connectivity should be priced separately from exchange connectivity, and offered examples of how this could be accomplished without an increase in NYSE's fees.[36]

The Commission issued an Order Instituting Proceedings, requesting comment on the NMS Network fee structure set forth in the Original Proposal.[37] The Commission highlighted that the Exchanges proposed to make the NMS Network available at no additional charge to Users that satisfied certain conditions (as described above) and to impose a substantial charge on Users seeking access to the NMS Network that did not satisfy the proposed conditions.[38] In particular, the Commission questioned the basis for the level of the proposed fee for a charged NMS connection ($10,000 initially and $11,000 or $18,000 monthly for a 10 Gb or 40 Gb connection, respectively), as well as whether it was reasonable, equitable, and not unfairly discriminatory for only certain Users to receive NMS Network Connections at no additional charge.[39] The Commission also solicited comment on whether the revised fee structure for the NMS Network set forth in the Original Proposal would impose an

[18] Users would still have had the option to connect to the NMS Feeds using their LCN or IP network connections, but would have been charged the proposed fee for the NMS Network connection.

[19] *See* Original Notice, *supra* note 4, 84 FR at 47594. Accordingly, a User's access to a 1 Gb connection would not entitle a User to a No Additional Fee NMS Network Connection.

[20] *See id.* at 47595. According to the Exchanges, Users would typically be charged separately for access to the NMS Network in circumstances where they (i) would like to purchase access to the NMS Network and have not purchased a 10 Gb or 40 Gb LCN or IP network connection; (ii) have purchased an LCN or IP connection but would like NMS Network connections in excess of permitted number of corresponding No Additional Fee NMS Network Connections; and/or (iii) would like to use their LCN and IP connections to continue to access the NMS Feeds.

[21] *See id.*

[22] *See* Nasdaq Letter, NYSE Response Letter, and Second Nasdaq Letter, *supra* note 6.

[23] *See* Nasdaq Letter at 1.

[24] *Id.* at 1–2.

[25] *Id.* at 2.

[26] *Id.*

[27] *Id.*

[28] *See* NYSE Response Letter, *supra* note 6, at 3. They added that NYSE sought and received approval from both the CTA Operating Committee and OPRA Management Committee (both of which include Nasdaq as a member) on the Original Proposal. *Id.*

[29] *Id.* at 4.

[30] *Id.* at 5.

[31] *Id.*

[32] *Id.* at 5–7.

[33] *Id.* In making this statement, the Exchanges also acknowledge that the specific way in which Nasdaq seeks to effect this outcome is different from what the Exchanges propose (*i.e.,* Nasdaq offers UTP NMS Plan customers two free connections and additional connections for $100 per month).

[34] *See* Second Nasdaq Letter, *supra* note 6, at 1–2.

[35] *Id.* at 2.

[36] More specifically, Nasdaq suggested that the Exchanges could: (i) Separately price NMS Network connectivity and NYSE connectivity; (ii) price each NMS Feed connection separately; or (iii) separate OPRA NMS Feed connectivity from CTA and CQ NMS Feed connectivity. *See id.* at 3.

[37] *See* OIP, *supra* note 7.

[38] *Id.*

[39] *Id.*

undue burden on competition that is not necessary or appropriate under the Act.[40]

C. Amendment No. 1

Following the OIP, the Exchanges filed Amendment No. 1. As more fully set forth in Amendment No. 1, the Exchanges propose to eliminate the fee changes associated with the proposed new NMS Network service.[41] In lieu of establishing conditions for No Additional Fee NMS Network Connections and proposing separate charged NMS Network connections, the Exchanges instead propose to offer co-location Users access to the NMS Network as a new service with no associated fee changes. To effect this change, the Exchanges propose to amend the services available to co-location Users to provide that if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size.[42] For co-location Users, the option of receiving connectivity to the NMS Feeds in co-location would therefore continue to be included when a User purchases a 10 Gb or 40 Gb network IP or LCN circuit.[43] Access to the NMS Network would thus be offered as a service upgrade, designed to provide co-location Users a one-way reduction in latency for the NMS Feeds of over 140 microseconds, as compared to the IP network and LCN, at no additional cost.[44]

III. Summary of Comments on Amendment No. 1 and Exchanges' Response

Nasdaq submitted a comment letter on Amendment No. 1, objecting that the Amended Proposal continues to integrate access to the Exchanges' proprietary products with access to the NMS Feeds in an improper manner that would impose a burden on competition that is neither necessary nor appropriate under the Act.[45] According to Nasdaq, market participants currently paying for connectivity to NYSE proprietary data feeds can receive NMS Network connectivity at no additional cost, but are forced to pay for this connectivity within the bundled price, and new market participants that only want to receive NMS Feeds are effectively forced to pay the bundled fees.[46] In addition, Nasdaq took the position that, because the OPRA feed is so large, the bundling with OPRA has the effect of steering all market participants to consume larger bandwidths at higher cost.[47]

In response, the Exchanges state that they do not propose to change any fee or the availability of any current connectivity option; rather they propose only to add NMS Network connectivity as a service provided to co-location Users.[48] They further state that Nasdaq focuses on whether existing fees for connectivity to the NMS Feeds are a burden on competition, but note that that issue is not before the Commission.[49] Instead, in the Exchanges' view, their proposal would simply add a new service and provide more choice to Users, allowing them to opt to use the low-latency NMS Network to connect to NMS feeds.[50] In addition, the Exchanges take the position that Nasdaq's claim that such Users are forced to purchase larger bandwidth has no basis, as there are multiple reasons why a User would purchase a larger connection, and the additional capacity provided by the NMS Network should reduce demand for those larger connections.[51]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[52] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Act,[53] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.[54]

In the Amended Proposal, the Exchanges propose to augment how co-location Users may connect to the NMS Feeds in the Data Center by offering them access to the ''NMS Network,'' an upgraded alternative local area network, and to do so without the associated fee changes that were part of the Original Proposal. As discussed above, Nasdaq takes the position that, because the Exchanges' proposal does not separate pricing for connectivity to the NMS Feeds from pricing for connectivity to the Exchanges' proprietary products, the proposal imposes an unnecessary or inappropriate burden on competition that is inconsistent with the Act. The Exchanges respond that they simply propose to offer a new connectivity option for co-location Users without any fee change and that, regardless, Nasdaq's arguments that the existing fee structure burdens competition in a manner inconsistent with the Act are without merit.

The Commission believes that the Amended Proposal is responsive to the issues identified in the Order Instituting Proceedings, and that the Amended Proposal is consistent with the Act. Under the Amended Proposal, the Exchanges remove the proposed limits on No Additional Fee NMS Network Connections. Accordingly, under the Amended Proposal, the Exchanges would provide co-location Users the option to access consolidated market

[40] *Id.*

[41] *See* Amended Proposal, *supra* note 8.

[42] *See* Amended Proposal, *supra* note 8, 85 FR at 2470.

[43] *Id.* More specifically, the Exchanges propose to amend the sections of the price lists that set forth the services offering the 10 Gb and 40 Gb LCN connection and the 10 Gb and 40 Gb IP connection and their prices to include an NMS Network connection as part of each service and to include a note for each service stating that the connection offered as part of the service and the NMS Network connection are together considered to be one connection, so Users are not subject to two initial or two monthly charges. *Id.*

[44] *Id.*

[45] *See* Nasdaq Letter III, *supra* note 9, at 1.

[46] *Id.* at 2. The Exchanges responded that all direct recipients of the NMS Feeds in co-location also connect to one or more of the Exchanges for trading purposes. *See* NYSE Response Letter II, *supra* note 9, at 3.

[47] *Id.* at 3.

[48] *See* NYSE Response Letter II, *supra* note 9, at 2.

[49] *Id.* at 2–3. The Exchanges further note that Nasdaq's objections to the Exchanges bundled fee structure would not be resolved by approval or disapproval of the Amended Proposal.

[50] *Id.* at 3.

[51] *Id.* at 3. Specifically, the Exchanges state that the additional capacity provided by the NMS Network will reduce demand for 40 Gb connections and permit some Users to instead consume NYSE Exchanges' data over a 10 Gb local area network connection and NMS Feeds over the complementary 10 Gb NMS Network connection. *Id.* at n. 5.

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78f(b)(8).

[54] In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See* discussion below in this Section IV stating the reasons why the Commission believes that the Amended Proposal, to provide co-location Users access to the new NMS Network without associated fee changes, does not impose a burden on competition that is not necessary or appropriate in furtherance of the Act.

data more efficiently through the NMS Network, a new dedicated low-latency connectivity service, at no additional charge. The Commission believes that providing market participants the ability to obtain consolidated market data in a more timely manner in these circumstances would enhance the utility of this critical component of the national market system for the benefit of market participants and investors that rely upon access to consolidated market data to effectuate trades and otherwise have confidence in the efficiency and integrity of that system. Thus, the Commission finds the proposal would protect investors and the public interest and otherwise is consistent with Section 6(b)(5) of the Act.[55]

With regard to competition, Nasdaq takes the position that the Amended Proposal inappropriately burdens competition because the Exchanges would bundle fees for connectivity to the NMS Feeds with fees for connectivity to the Exchanges' proprietary products for co-location Users. In Nasdaq's view, this pricing structure for co-location services hinders potential competitors from replacing SIAC as processor for the NMS Feeds, and inappropriately burdens market participants that may seek connectivity only to the NMS Feeds or to the Exchanges' proprietary products, or to some subset thereof, in the Exchanges' co-location facilities. Nasdaq also states that there are alternative ways the Exchanges could structure the proposal such that connectivity to the NMS Feeds could be priced separately from exchange connectivity, and offered examples of how this could be accomplished without an increase in NYSE's fees.[56]

As an initial matter, the Commission notes that the proposed rule change under consideration would not modify the existing fees of the Exchanges; instead the Exchanges are proposing to offer co-location Users an enhanced connectivity option for consolidated market data through the NMS Feeds at no additional charge. Nonetheless, with respect to Nasdaq's position that the Exchanges' existing pricing structure hinders potential competitors from replacing SIAC as processor for the NMS Feeds, and is therefore a burden on intermarket competition, the Commission does not believe in these circumstances that potential competitors who are also exchanges, such as Nasdaq, are inappropriately constrained from offering connectivity to the NMS Feeds to co-location Users at prices competitive with the Exchanges. As noted above, Nasdaq, like the Exchanges, provides connectivity to a consolidated market data feed (the ''UTP SIP Feed''),[57] as well as its own proprietary products, at its co-location facility. Whether connectivity services at co-location facilities are offered for multiple products or a single product, co-location customers generally are charged for connectivity by the Exchanges and Nasdaq based on the number of connections received and the bandwidth thereof.[58] Thus, the Commission believes that Nasdaq could propose a comparable pricing structure that would allow it to compete with the Exchanges.[59] For the same reasons, the Commission is also not persuaded that the Exchanges choosing not to propose the alternative pricing approaches suggested by Nasdaq renders the proposed rule change an inappropriate or unnecessary burden on intermarket competition and thus inconsistent with the Act. Further, the Commission does not believe that Nasdaq's argument is persuasive with respect to an entity that may not be an exchange but that wishes to compete for the exclusive SIP contracts currently held by SIAC. While it is possible that the changes proposed by the Exchanges could place greater pressure on these would-be competitors, it does not appear that any such pressure would force users to pay higher prices than they currently do or that there would be a loss of desirable alternative bidders for the exclusive SIP contract. In sum, the Commission does not believe that any such competitive pressure creates an inappropriate or unnecessary burden on the competitive landscape in the context of this proposal.

The Commission also does not believe that the Exchanges' existing pricing structure inappropriately burdens either those market participants that may seek connectivity only to a subset of market data products, or those that would otherwise be forced into using the NMS Network connectivity to access OPRA. This is because co-location Users that desire a small number of market data products are likely to require fewer connections or less bandwidth, and therefore pay lower connectivity fees, whereas those that require more connections or more bandwidth are likely to pay comparatively higher connectivity fees, and the Exchanges are not proposing to charge an additional fee for access to the new NMS Network. For all of the foregoing reasons, the Commission finds that the Amended Proposal, to provide co-location Users access to the new NMS Network without associated fee changes, is consistent with Section 6(b)(8) of the Act, which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[60] that the proposed rule change (SR–NYSE–2019–46, SR–NYSENAT–2019–19, SR–NYSEArca–2019–61, SR–NYSEAMER–2019–34), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

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[55] The Commission also believes that the proposed enhancements to the provision of consolidated market data are consistent with past Commission statements that the widespread availability of timely market information promotes fair and efficient markets. *See, e.g.,* Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613, 70614 (Dec. 17, 1999) (Market Information Concept Release); Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593, 3600 (Jan. 21, 2010) (Equity Market Structure Concept Release).

[56] *See* note 36 *supra.*

[57] The UTP SIP Feed is comprised of a UTP Quote Data Feed (''UQDF'') and a UTP Trade Data Feed (''UTDF''). The UQDF provides continuous quotations from all market centers trading Nasdaq-listed securities. The UTDF provides continuous last sale information from all market centers trading Nasdaq-listed securities. See *http://www.utpplan.com/.*

[58] *See e.g.,* NYSE Price List and Nasdaq Price Lists, available, respectively, at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* and *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-general-8.*

[59] Nasdaq today offers its co-location customers two free connections to the UTP SIP Feed and additional connections for a nominal fee. *See https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-general-8.*

[60] *See id.*

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–40, OMB Control No. 3235–0313]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 203–2 and Form ADV–W

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration or pending registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 802 respondents annually filing for full withdrawal and approximately 454 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 715 hours ((802 respondents × .75 hours) + (454 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the documentation of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 8, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10239 Filed 5–12–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88833; File No. SR–NYSEARCA–2020–39]

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

May 7, 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 May 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 (1) adopt a new pricing tier, Step Up Tier 5; (2) modify the requirements associated with the Step Up Tier 4 pricing tier; (3) increase the per share credit applicable to Retail Orders; (4) adopt an alternative requirement to qualify for the Tape B Tier 2 pricing tier; and (5) adopt an incremental per share credit payable under the Cross-Asset Tier 2 pricing tier. The Exchange proposes to implement the fee changes effective May 1, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) adopt a new pricing tier, Step Up Tier 5; (2) modify the requirements associated with the Step Up Tier 4 pricing tier; (3) increase the per share credit applicable to Retail Orders; (4) adopt an alternative requirement to qualify for the Tape B Tier 2 pricing tier; and (5) adopt an incremental per share credit payable under the Cross-Asset Tier 2 pricing tier.

The proposed changes respond 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 [4] to send additional displayed liquidity to the Exchange.

[4] All references to ETP Holders in connection with this proposed fee change include Market Makers.

The Exchange proposes to implement the fee changes effective May 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.'' [5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] numerous alternative trading systems,[8] 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).[9] 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.[10]

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-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

Step Up Tier 5

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive an enhanced rebate by executing more of their orders on the Exchange. The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

In this competitive environment, the Exchange has already established Step Up Tiers 1–4, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for providing displayed liquidity
Step Up Tier ..	$0.0030 (Tape A). 0.0023 (Tape B). 0.0031 (Tape C).
Step Up Tier 2	0.0028 (Tape A and C). 0.0022 (Tape B).
Step Up Tier 3	0.0025 (Tape A and C). 0.0022 (Tape B).
Step Up Tier 4	0.0033 (Tape A and C). 0.0034 (Tape B).

The Exchange proposes to amend the Fee Schedule to introduce a new pricing tier—Step Up Tier 5—for securities with a per share price of $1.00 or above.

As proposed, ETP Holders would qualify for the new Step Up Tier 5 if they directly execute providing ADV per month that is at least 0.20% of US CADV [11] and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holder's providing ADV in April 2020 as a percentage of US CADV. ETP Holders that qualify for Step Up Tier 5 would receive a credit of $0.0032 per share for orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities.

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

For example, assume an ETP Holder has an adding ADV of 0.10% of US CADV in all securities in the baseline month of April 2020. Assume further that the same ETP Holder has an adding ADV of 0.20% of US CADV in all securities in the billing month. The ETP Holder in the above example would qualify for the proposed Step Up Tier 5 with an adding ADV step up of 0.10% of US CADV (*i.e.,* 0.20% US CADV) and an adding ADV that is at least two times the ETP Holder's April 2020 Baseline of 0.10%. If instead, the ETP holder had an adding ADV of 0.12% of US CADV in the baseline month of April 2020, that ETP Holder would then need an adding ADV of at least 0.24%, which is two times the 0.12% adding ADV in the baseline month. ETP Holders with less than 0.10% in the baseline month would need to add 0.20% of US CADV, as that is more than two times any adding ADV baseline under 0.10%.

The goal of the proposed Step Up Tier 5 pricing tier is to incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

While the proposed pricing tier would pay a credit that is lower than that available to ETP Holders under Step Up Tier 4, the proposed pricing tier also adopts lower volume thresholds than that required to qualify for Step Up Tier 4. The proposed pricing tier, however, pays a credit that is higher than the Step Up Tier, Step Up Tier 2 and Step Up Tier 3. While the Adding ADV of 0.20% requirement in proposed Step Up Tier 5 is less than the adding ADV requirement in Step Up Tier (0.50% of US CADV and an adding ADV step up of 0.10% US CADV) and Step Up Tier 2 (0.22% of US CADV and an adding ADV step up of 0.06%), proposed Step Up Tier 5 has the

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[7] *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.*

[8] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] US CADV means the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

additional higher requirement for ETP Holders to double their adding ADV as a percent of US CADV. An ETP Holder that has 0.40% US CADV can increase their adding ADV by 0.10% to reach the 0.50% CADV requirement to qualify for Step Up Tier, which is only an increase of 25% over the ETP Holder's 0.40% baseline.

Step Up Tier 4

As described in greater detail below, the Exchange proposes to modify the volume requirements applicable to ETP Holders to qualify for the Step Up Tier 4 pricing tier by lowering the percentage threshold that an ETP Holder must meet.[12]

Under Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in September 2019, it is eligible to earn higher credits for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4 pricing tier, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.55% of US CADV for that month over the ETP Holder's providing ADV in September 2019, taken as a percentage of US CADV. Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities.[13]

With this proposed rule change, the Exchange proposes to modify the volume requirements applicable to ETP Holders to qualify for the Step Up Tier 4 by lowering the percentage threshold that an ETP Holder must meet, from a minimum of 0.55% of US CADV for the billing month to a minimum of 0.40% of US CADV for the billing month.

The purpose of the proposed rule change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that, if it reduces the requirement to qualify for a tiered credit, more ETP Holders will choose to route their liquidity-providing orders to the Exchange to qualify for the credit.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. While the Step Up Tier 4 pricing tier is available to all ETP Holders, to date, two ETP Holder have qualified for it.[14] Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any more ETP Holders qualifying for the Step Up Tier 4 credit. The Exchange cannot predict with certainty how many ETP Holders 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 Exchange is not proposing to amend any of the credits payable under the Step Up Tier 4.

Additionally, in a recent filing related to the Step Up Tier 4 pricing tier, the Exchange adopted a cap applicable to the Step Up Tier 4 credit in Tape B securities and noted in such filing that ETP Holders that qualify for Step Up Tier 4 would not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities.[15] The Fee Schedule currently states that ''ETP Holders and Market Makers that qualify for Step Up Tier 4 shall not receive any additional incremental Tape B Tier credits for providing displayed liquidity.'' The Exchange proposes to clarify the applicability of the cap by adding ''including any incremental credits associated with Less Active ETP Securities'' at the end of the sentence. The Exchange believes codifying the cap language into the Fee Schedule will provide clarity to the Fee Schedule and avoid investor confusion.

Retail Orders

As noted above, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [16] The competition for Retail Order flow is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from two prominent retail brokerages: E-Trade and TD Ameritrade. For securities listed on the New York Stock Exchange LLC in the fourth quarter of 2019, TD Ameritrade routed 95% of its limit orders to off-exchange venues.[17] Similarly, E-Trade Financial routed more than 73% of its limit orders to off-exchange venues.[18]

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 13 other exchange venues for that Retail Order flow that is not directed off-exchange. This competition is particularly acute for non-marketable Retail Orders, *i.e.,* Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide displayed liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange currently provides credits to ETP Holders who enter Retail Orders [19] on the Exchange. The Exchange has multiple levels of such credits that are based on an ETP Holder's trading volume of Retail Orders on the Exchange.[20] ETP Holders that do not qualify for tiered pricing currently receive, under the Basic Rates section of the Fee Schedule, a credit of $0.0030 per share for Retail Orders in Tape A, Tape B and Tape C securities that provide liquidity to the Book. With this proposed rule change, the Exchange proposes to increase the base credit from $0.0030 per share to $0.0032 per share.

The proposed change would reduce the difference in credits available to Retail Orders that provide displayed

[12] *See* Securities Exchange Act Release Nos. 85311 (March 14, 2019), 84 FR 10348 (March 20, 2019) (SR–NYSEArca–2019–10); and 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR–NYSEArca–2019–70).

[13] *See* Securities Exchange Act Release No. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR–NYSEArca–2019–43).

[14] As of April 27, 2020, there is one ETP Holder on the Exchange that qualifies for the Exchange's Step Up Tier 4 pricing tier.

[15] *See* Securities Exchange Act Release No. 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR–NYSEArca–2020–21).

[16] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[17] *See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.*

[18] *See https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf.*

[19] A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

[20] *See* Retail Order Tier, Retail Order Step-Up Tier 1 and Retail Order Step-Up Tier 2 on the Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

liquidity on the Exchange from ETP Holders qualifying for the base credit versus the tiered credits available to Retail Orders that provide displayed liquidity on the Exchange. The Exchange believes that by increasing the base credit, it would be more closely align with the credits available for other Retail Orders that provide liquidity on the Exchange.

Tape B Tier 2

Currently, under the Tape B Tier 2 pricing tier, an ETP Holder could qualify for a credit of $0.0028 per share [21] if such ETP Holders, on a daily basis, measured monthly, directly executes providing volume in Tape B Securities during the billing month (''Tape B Adding ADV'') that is either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.20% of the US Tape B CADV for the billing month over the ETP Holder's Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV. The Exchange proposes to introduce a third method of qualifying for Tape B Tier 2 credits.

As proposed, ETP Holders could qualify for the Tape B Tier 2 credit of $0.0028 per share for providing liquidity to the Book in Tape B Securities if such ETP Holder, on a daily basis, measured monthly, directly executes Tape B Adding ADV that is equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange believes that, by providing for an additional method of qualifying for Tape B Tier 2, this proposed change will provide a greater incentive to attract additional liquidity from additional ETP Holders in Tape B Securities so as to qualify for the Tape B Tier 2 credit.

The Exchange is not proposing any change to the level of Tape B Tier 2 credits.

Cross-Asset Tier 2

The Exchange proposes to adopt an incremental credit under a current pricing tier, Cross-Asset Tier 2, that would provide an additional incentive for all ETP Holders to provide liquidity in Tapes A, B and C Securities.

The purpose of this proposed rule change is to introduce a new incremental credit of $0.0001 per share under Cross-Asset Tier 2 if an ETP Holder meets both the existing Cross-Asset Tier 2 requirements [22] and executes a designated percentage of volume of its US CADV, as described below.

The Exchange currently offers tiered pricing that provides ETP Holders opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for ETP Holders to strive for higher tier levels, which provides increasingly higher discounts for satisfying more stringent criteria. More specifically, the Exchange currently has multiple levels of credits designed to incentivize ETP Holders to achieve certain levels of participation on both the Exchange's equities and options platform (''NYSE Arca Options''). Under Cross-Asset Tier 1, ETP Holders can currently receive the following credits for orders that provide liquidity, *i.e.,* resting limit orders available for execution on the Exchange, in Tapes A, B and C Securities: $0.0031 per share in Tape A Securities; $0.0030 per share in Tape B Securities; and $0.0032 per share in Tape C Securities.[23] Additionally, under Cross-Asset Tier 2, ETP Holders can currently receive a credit of $0.0030 per share for orders that provide liquidity.

The Exchange proposes to provide an increased incentive for ETP Holders that otherwise qualify for the current Cross-Asset Tier 2 to send liquidity-providing orders to the Exchange in Tapes A, B and C Securities. As proposed, if an ETP Holder meets the requirements of Cross-Asset Tier 2 and increases adding and removing liquidity in Tape A, Tape B and Tape C Securities combined during the billing month equal to at least 0.40% of US CADV above its adding and removing liquidity in Tape A, Tape B and Tape C Securities combined of US CADV in Q1 2020 would be eligible for an incremental credit of $0.0001 per share for orders that provide liquidity to the Book in Tape A, Tape B, and Tape C Securities.

For example, if an ETP Holder that qualifies for Cross-Asset Tier 2 has an adding ADV of 18 million shares and a removing ADV of 12 million shares, or 30 million shares combined ADV in Q1 2020. If US CADV for Q1 2020 was 6 billion shares, the ETP Holder would have an adding and removing ADV of 0.50% of US CADV in the baseline period. If the same ETP Holder had an adding and removing ADV of 54 million shares combined in a month where US CADV was also 6 billion shares, for an adding and removing ADV of 0.90% of US CADV, that ETP Holder would meet the additional requirement because the ETP Holder would have a step up of 0.40% of adding and removing ADV over its baseline month. The ETP Holder would then qualify for an incremental credit of $0.0001 per share for providing liquidity, for a combined credit of $0.0031 per share.

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an additional opportunity to receive an enhanced rebate by executing more of their orders on the Exchange.

The Exchange proposes to increase the credits available under the Cross-Asset Tier 2 pricing tier to provide an incentive for ETP Holders to send increased order flow. If an ETP Holder qualifies for Cross-Asset Tier 2 and meets the additional proposed requirement, that ETP Holder would be eligible for an incremental credit as compared to the current credit for qualifying for Cross-Asset Tier 2, which is $0.0030 per share credit for orders that provide liquidity in Tapes A, B and C Securities.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. No ETP Holder currently qualifies for the credit under the current Cross-Asset Tier 1 pricing tier and one ETP Holder currently qualifies for the credits under the current Cross-Asset Tier 2 pricing tier.[24] However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the incremental credit. The Exchange believes the proposed increased credit for Cross-Asset Tier 2 would provide an incentive for ETP Holders to submit additional liquidity-providing orders to the Exchange to qualify for the incremental credit.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of

[21] Under the Basic Rate, ETP Holders receive a credit of $0.0020 per share for Tape B orders that provide liquidity to the Book.

[22] To qualify for credits under Cross-Asset Tier 2, ETP Holders are required to (a) provide liquidity of 0.30% or more of the US CADV per month, and (b) have an affiliation with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.80% of total Customer equity and ETF option ADV as reported by OCC, of which at least 0.20% of total Customer equity and ETF option ADV as reported by OCC is from Customer and Professional Customer executions in non-Penny Pilot issues on NYSE Arca Options. *See* Fee Schedule, Cross-Asset Tier 2.

[23] *See* Fee Schedule, Cross-Asset Tier 1.

[24] As of April 14, 2020, there are 53 firms that are both ETP Holders and OTP Holders.

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,[25] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[26] 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 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.'' [27]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [28] Indeed, equity trading is currently dispersed across 13 exchanges,[29] 31 alternative trading systems,[30] and numerous 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).[31] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, as noted earlier, the Exchange currently has less than 12% market share of executed volume of equities trading.[32]

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, 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.

Step Up Tier 5

The Exchange believes the proposal to adopt the Step Up Tier 5 pricing tier is reasonable as it would serve as an incentive to market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed pricing tier, which adopts a lower threshold, is reasonable and equitable because it would allow ETP Holders to receive increased credits from those currently available under Step Up Tiers 1, 2 and 3. Moreover, the addition of the Step Up Tier 5 pricing tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Further, the Exchange believes the proposed pricing tier is reasonable as it requires ETP Holders to double their adding ADV as a percent of US CADV in addition to meeting the 0.20% adding ADV requirement to qualify for the proposed credit. A firm with an adding ADV of 0.25% of US CADV would need to increase it to 0.50% to qualify.

Step Up Tier 4

The Exchange believes the proposed change to lower the volume requirements under the Step Up Tier 4 pricing tier is reasonable because it would allow ETP Holders an additional opportunity to meet the requirement of the pricing tier to receive per share credits payable under the Step Up Tier 4, thereby encouraging the submission of additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Because only two ETP Holders to date have qualified for the Step Up Tier 4, the Exchange believes the proposed lower volume requirements are reasonable as they would provide an additional incentive for more ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[33] including the Exchange,[34] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

The Exchange believes its proposal to amend the Fee Schedule to codify the fee cap applicable to the Step Up Tier 4 pricing tier is reasonable as it would add clarity and result in a more transparent Fee Schedule. The Exchange believes the proposed change would allow ETP Holders to more easily validate the bills that they receive from the Exchange, thus alleviating potential confusion.

Retail Orders

The Exchange believes that the proposed change is reasonable because the increased credit for Retail Orders would continue to encourage ETP

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) and (5).

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[28] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[29] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[30] *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.*

[31] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[32] *See id.*

[33] *See e.g.,* Cboe BZX U.S. Equities Exchange (''BZX'') Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0033 per share for displayed orders where BZX members meet certain volume thresholds.

[34] *See e.g.,* Fee Schedule, Step Up Tier, Step Up Tier 2, Step Up Tier 3 and Step Up Tier 4, which provide enhanced rebates between $0.0025 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0025 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

Holders to send Retail Orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide an increased credit for Retail Orders that provide displayed liquidity. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

Tape B Tier 2

The Exchange believes the proposed change to the Tape B Tier 2 pricing tier is reasonable because it would apply to ETP Holders that provide liquidity to the Exchange and is designed to incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange believes that the proposed new threshold for qualifying for Tape B Tier 2 is reasonable because it is designed to encourage increased trading activity on the NYSE Arca equity market. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the Tape B Tier 2 credit. Further, the proposed change is reasonable as it would allow ETP Holders an additional method to qualify for the credit payable under the pricing tier if ETP Holders are unable to meet either of the two existing requirements. Additionally, ETP Holders that cannot meet the higher threshold for the Tape B Tier 1 credits would be able to qualify for the Tape B Tier 2 credit, which while providing for a lower credit, also has lower requirements to qualify for such credit.

Cross-Asset Tier 2

The Exchange believes the proposed increased credit is reasonable as it would provide an additional incentive for ETP Holders to qualify for the new incremental credit and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the depth and market quality on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for orders that provide liquidity if an ETP Holder meets the heightened volume requirements to qualify for the new incremental credit.

Because the proposed amendment to the Cross-Asset Tier 2 pricing tier would be new with a requirement to increase liquidity providing orders, no ETP Holder currently qualifies for the proposed new incremental credit.

As noted above, volume-based incentives and discounts have been widely adopted by exchanges, and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

As noted previously, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1 and Cross-Asset Tier 2 pricing tiers and if these firms were to submit more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the new incremental credit. The Exchange believes the proposed incremental credit would provide an incentive for ETP Holders to submit additional adding and removing liquidity to qualify for the additional credit.

The Exchange believes that the proposed new credit for liquidity providing orders in Tapes A, B and C Securities under the current Cross-Asset Tier 2 pricing tier is reasonable because it provides an incentive for ETP Holders to route additional liquidity-providing and removing order flow to the Exchange, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed pricing is structured similarly to the incremental credit the Exchange currently provides under current Cross-Asset Tier 2, which likewise provides ETP Holders an incremental credit of $0.0004 per share (above the tiered rate of $0.0030 per share) if the ETP Holder meets the qualifying requirements.[35] The Exchange believes that the proposed change to the Cross-Asset Tier 2 pricing tier is reasonable because an ETP Holder that otherwise qualifies for the tier would still be eligible for the current per share credit of $0.0030 per share for orders that provide liquidity. The proposed additional credit is designed to provide an incentive for such ETP Holder to route additional providing and removing liquidity to the Exchange, which would be eligible for the higher credit.

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 its proposal equitably allocates its fees among its market participants.

Step Up Tier 5

The Exchange believes the proposed pricing tier is equitable because it would allow ETP Holders to receive increased credits from those currently available under Step Up Tiers 1, 2 and 3. Moreover, the addition of the Step Up Tier 5 pricing tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Given that Step Up Tier 5 would be a new pricing tier, no ETP Holder currently qualifies for the proposed credit. And without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for this tier. However, the Exchange believes the proposed lower volume requirements would provide an incentive for ETP Holders to continue to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed change would thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

Step Up Tier 4

First, the Exchange is not proposing to adjust the amount of the Step Up Tier 4 credits, which will remain at the

[35] *See* Fee Schedule, Cross-Asset Tier 2. *See also* Securities and Exchange Act Release No. 80920 (June 14, 2017), 82 FR 28106 (June 20, 2017) (SR–NYSEArca–2017–64).

current level for all ETP Holders. Rather, the proposal would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that, for the reasons discussed above, lowering the requirements would make it easier for liquidity providers to qualify for the Step Up Tier 4 credit, thereby encouraging submission of additional liquidity by more ETP Holders to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

As noted above, only one ETP Holder currently qualifies for the Step Up Tier 4 pricing tier. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders qualifying for this tier. However, the Exchange believes the proposed lower volume requirements would provide an incentive for ETP Holders to continue to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with Step Up pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the requirements for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally.

Since only one ETP Holder presently qualifies for the credits associated with Step Up Tier 4, the proposal will not adversely impact such ETP Holder's existing pricing or its ability to qualify for other credits provided by the Exchange.

Finally, the Exchange believes its proposal to amend the Fee Schedule to codify the fee cap applicable to the Step Up Tier 4 pricing tier is equitable as it would add clarity and result in a more transparent Fee Schedule. The Exchange believes the proposed change would allow ETP Holders to more easily validate the bills that they receive from the Exchange, thus alleviating potential confusion.

Retail Orders

The Exchange believes it is an equitable allocation of reasonable fees to increase the credit that would be available for Retail Orders because it would reduce the difference in credits available for Retail Orders that provide liquidity, while still providing increased credits under the Retail Order Tiers to provide an incentive for ETP Holders to route displayed liquidity to the Exchange.

Further, given the competitive market for attracting Retail Order flow, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC (''Nasdaq'') provides its members with a non-tier credit of $0.00325 per share for Retail Orders that provide liquidity on that market,[36] while BZX provides its members with a credit of $0.0032 per share for retail orders that add liquidity to that market.[37]

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange's market quality associated with higher volume in Retail Orders. The Exchange notes that currently only 11 firms submit Retail Orders that add liquidity on the Exchange and of those 11 firms, 9 qualify for the base Retail Order credit, while the other 2 qualify for higher tiered Retail Order credits. More firms could receive the base Retail Order credit of $0.0032 if those firms directed their Retail Orders to the Exchange.

Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, $0.0032 per share, would be $0.0003, or 9%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Therefore, the Exchange believes the proposed change to the base credit for Retail Orders is equitable, as it would provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes associated with the submission of Retail Orders to the Exchange.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Tape B Tier 2

The Exchange believes the proposed change to the Tape B Tier 2 pricing tier is equitably allocated because it would apply to ETP Holders that provide liquidity to the Exchange and is designed to incentivize these market participants to increase the orders sent directly to the Exchange and therefore, provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange believes the Tape B Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provide a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the Tape B Tier 2 credit. Further, the proposed change is equitable as it would allow ETP Holders an additional method to qualify for the credit payable under the pricing tier if

[36] *See* Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[37] *See* BZX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

ETP Holders are unable to meet either of the two existing requirements.

The Exchange believes the Tape B Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a credit that is reasonably related to the value of an exchange's market quality associated with higher volumes.

Cross-Asset Tier 2

The Exchange believes that the proposed increased credit under the Cross-Asset Tier 2 pricing tier is equitable because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C Securities that range between $0.0022 per share and $0.0034 per share under Step Up Tier, Step Up Tier 2, Step Up Tier 3, Step Up Tier 4, and proposed Step Up Tier 5.

With respect to credits paid by the Exchange's competitors, BZX provides a credit of $0.0031 per share in Tape B Securities under that market's Cross-Asset pricing tier.[38]

The Exchange believes that the proposed new incremental credit for liquidity providing orders in Tapes A, B and C Securities under current Cross-Asset Tier 2 is also equitable because the proposal would continue to encourage ETP Holders to route liquidity-providing orders to the Exchange in Tapes A, B and C Securities, thereby contributing to robust levels of liquidity, which benefits all market participants.

As noted above, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1 and Cross-Asset Tier 2 pricing tiers and if these firms were to submit more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed new incremental credit would provide an incentive for market participants to increase liquidity in order to qualify for the proposed new incremental credit, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with Cross-Asset pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally. As to those market participants that do not presently qualify for the credits associated with Cross-Asset Tier 2, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Step Up Tier 5

The Exchange believes that the proposed new Step Up Tier 5 pricing tier is not unfairly discriminatory because it is open to all ETP Holders, on an equal basis, that meet the requirements to qualify for the tier. The proposed pricing tier would also serve as an incentive to ETP Holders and Market Makers that do not currently meet the requirement of other pricing tiers on the Exchange to increase the level of orders sent directly to NYSE Arca in order to qualify for, and receive the higher credits associated with proposed Step Up Tier 5. The proposed pricing tier would apply equally to all ETP Holders as each would be required to execute providing ADV per month that is at least 0.20% of US CADV and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holders and Market Makers providing ADV in April 2020 as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Step Up Tier 4

The proposal to lower the volume requirement under Step Up Tier 4 neither targets or will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange believes it is not unfairly discriminatory to adopt lower volume requirements for ETP Holders to qualify for the Step Up Tier 4 pricing tier and adopt clarifying language with respect to the cap currently applicable for ETP Holders that qualify for the Step Up Tier 4 pricing tier as the proposed change would apply on an equal basis to all ETP Holders. Further, the Exchange believes the proposed lower volume requirements would incentivize ETP Holders to execute more of their liquidity-providers orders on the Exchange to qualify for the increased credits payable under Step Up Tier 4. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed lower volume requirements would apply equally to all ETP Holders as each would be required to execute providing volume in Tapes A, B and C Securities during the billing month that is at least 0.40% of US CADV over its providing ADV in September 2019, taken as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Retail Orders

The Exchange believes that the proposed change is not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange further 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 in Retail Orders. Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, $0.0032 per share,

[38] *See* BZX Fee Schedule, Cross-Asset Tape B Tier, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*.

would be $0.0003, or 9%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Therefore, the Exchange believes the proposed change to the base credit for Retail Orders is not unfairly discriminatory, as it would continue to provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes under the current Retail Order tiers.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would be eligible to qualify for the credit. Furthermore, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard.

Tape B Tier 2

The Exchange believes that the proposed new method of qualifying for the Tape B Tier 2 credit is not unfairly discriminatory because it would be available to all ETP Holders on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders that do not meet the proposed alternative method would continue to have the opportunity to qualify for the Tape B Tier 2 credit by satisfying either of the two existing requirements, which would not change as a result of this proposal.

Further, the Exchange believes the proposed additional method to qualify for the Tape B Tier 2 credit would incentivize ETP Holders that do not meet the current requirements to execute more of their liquidity-providers orders on the Exchange to qualify under the proposed method. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed additional method to qualify for the Tape B Tier 2 credit would apply equally to all ETP Holders as each would be required to meet the new criteria regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Cross-Asset Tier 2

The Exchange believes it is not unfairly discriminatory to provide an incremental per share credit as the proposed increased credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the increased volume requirements under the Cross-Asset Tier 2 pricing tier. Further, the Exchange believes the proposed incremental per share credit would incentivize ETP Holders that meet the current Cross-Asset Tier 2 pricing tier requirements to execute more of their liquidity-providers orders on the Exchange to qualify for the proposed incremental credit. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed incremental per share credit would apply equally to all ETP Holders as each would be required to meet the additional criteria regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Similarly, the Exchange believes it is not unfairly discriminatory to provide an incremental credit for liquidity providing orders in Tapes A, B and C Securities under the current Cross-Asset Tier 2 pricing tier because the proposed credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the proposed new volume requirements.

Finally, the submission of orders to the Exchange is optional for 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,[39] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance 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 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.'' [40]

Intramarket Competition. The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed lower volume requirements and alternative criteria to qualify for existing pricing tiers would continue to incentivize market participants to direct providing displayed order flow to the Exchange. The Exchange's proposal to adopt an increased credit for Retail Orders would also continue to incentivize ETP Holders to direct more of their Retail Orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders, to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. Moreover, the proposal to modify the Fee Schedule to make clear the applicability of the cap under the Step Up Tier 4 pricing tier would not pose an undue burden on competition but would instead add clarity and transparency to the Fee Schedule regarding the amount of credit payable under the Step Up Tier 4 pricing tier.

[39] 15 U.S.C. 78f(b)(8).

[40] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

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 market share of intraday trading (*i.e.,* excluding auctions) is currently 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) [41] of the Act and subparagraph (f)(2) of Rule 19b–4 [42] 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) [43] 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–2020–39 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–2020–39. 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–2020–39, and should be submitted on or before June 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10219 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(2).

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0049, SEC File No. 270–39]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form ADV

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form ADV under the Investment Advisers Act of 1940.'' Form ADV is a three-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by the Securities and Exchange Commission (the ''Commission'') staff and Part 2 is the client brochure. Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary. The Commission uses the information on Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use the information required in Form ADV to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs.

This collection of information is found at 17 CFR 279.1, 17 CFR 275.203–1, 17 CFR 275.204–1 and 17 CFR 275.204–4 and is mandatory. The Commission's examination staff use the information to determine eligibility for registration with us and to manage our

regulatory, examination, and enforcement programs; it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 13,520 advisers registered with the Commission as of January 30, 2020. The Commission has estimated that Form ADV imposes an annual burden of approximately 26.19 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 466,505 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to David Bottom, Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10276 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88842; File No. 265–30]

Fixed Income Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on Monday, June 1, 2020, by remote means. The meeting will begin at 9:30 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The meeting will include panel discussions and potential recommendations from the subcommittees, including potential recommendations concerning internal fund crosses and credit ratings, as well as a panel discussing the role of bond pricing services.

DATES: The public meeting will be held on June 1, 2020. Written statements should be received on or before May 26, 2020.

PLACES: The meeting will be held by remote means and webcast on *www.sec.gov.* Written statements may be submitted by any of the following methods. To help us process and review your statement more efficiently, please use only one method. At this time, electronic statements are preferred.

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–30 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Vanessa A. Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–30. This file number should be included on the subject line if email is used. The Commission will post all statements on the Commission's internet website at *http://www.sec.gov/comments/265-30/265-30.shtml.*

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. For up-to-date information on the availability of the Public Reference Room, please refer to *https://www.sec.gov/fast-answers/answerspublicdocshtm.html* or call (202) 551–5450.

All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: David Dimitrious, Senior Special Counsel, at (202) 551–5131, or Arisa Kettig, Special Counsel, at (202) 551–5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Brett Redfearn, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: May 8, 2020.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2020–10262 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88834; File No. SR–NYSEAMER–2020–34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule

May 7, 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 May 1, 2020, NYSE American LLC (''NYSE American'' 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-

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Professional Step-Up Incentive program and rebates for initiating a Customer Best Execution Auction. The Exchange proposes to implement the fee change effective May 1, 2020. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding the Professional Step-Up Incentive program and rebates for initiating a Customer Best Execution (''CUBE'') auction, in both Single-Leg and Complex CUBE transactions.

In brief, the proposed changes are designed to encourage ATP Holders to increase their Electronic volume in the ''Professional'' range as well as to submit initiating CUBE Orders.[4] Specifically, the Exchange proposes to modify the Professional Step-Up Incentive, which offers discounted rates on monthly Professional volume, and to expand the type of volume on which a rebate on initiating CUBE volume would apply (from Customer only to all account types).

The Exchange proposes to implement the rule changes on May 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.'' [5]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.

In response to this competitive environment, the Exchange has established various pricing incentives designed to encourage increased Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (''ACE'') Program and the Professional Step-Up Incentive Program. The Exchange also offers an ACE Initiating Participant Rebate to participants in the ACE Program that initiate CUBE Auctions as well as an alternative to the ACE Initiating Participant Rebate—the Alternative Initiating Participant Rebate—that enables non-ACE Program participants to qualify for a rebate on certain initiating CUBE Orders provided they meet certain Professional volume requirements and increase their initiating CUBE volume. The Exchange is proposing to (1) modify the Professional Step-Up Incentive Program to continue to encourage Professional volume and (2) expand the type of volumes to which the ''CUBE Initiating Participant Rebates'' are applied to encourage participants to increase their initiating CUBE volume.[8] To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

Professional Step-Up Incentive

Section I.H. of the Fee Schedule sets forth the Professional Step-Up Incentive program (the ''Professional Incentive''), which is comprised of Tiers A, B, and C, and offers discounted rates on monthly Professional volume for ATP Holders that increase their Professional volume by specified percentages of Total Industry Customer equity and ETF option average daily volume (''TCADV'') over their August 2019 volume—or, for new ATP Holders that increase such volume by a specified percentages of TCADV above 10,000 contracts ADV (the ''Qualifying Volume'').[9] Under the current Fee Schedule, ATP Holders that qualify for Tier C of the Professional Incentive are also eligible to receive ACE Program, Tier 1 credits.[10]

The Exchange proposes to introduce an additional incentive tier—new Tier D—for ATP Holders that increase (or ''step up'') their Qualifying Volume by 0.15% of TCADV. ATP Holders that execute sufficient volume to qualify for proposed Tier D would receive the more favorable per-contract rate of $0.20 for Penny Pilot issues and $0.50 for non-

[4] For purposes of this filing, ''Professional'' Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm (the ''Professional volume'').

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[6] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[7] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

[8] As described herein, the ''CUBE Initiating Participant Rebates'' include both the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate.

[9] *See* Fee Schedule, Section I.H., Professional Step-Up Incentive, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. See also* Fee Schedule, Key Terms and Definitions, TCADV (defining TCADV as ''Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options'').

[10] *See id.,* Section I.H. *See also* Fee Schedule, Section I.E. (describing the ACE Program and associated credits).

Penny Pilot issues[11] and would also be eligible to have ACE Program, Tier 1 credits applied to Customer executions.[12] The Exchange also proposes to amend the per contract rate for non-Penny Pilot Issues under Tier C to be $0.55 per contract. In addition, the Exchange proposes an additional incentive for ATP Holders that meet the Tier D requirements and increase Qualifying Volume by 0.20% of TCADV and execute posted Professional volume (*i.e.,* that adds liquidity) of at least 0.10% of TCADV (the ''additional incentive''). Specifically, ATP Holders that qualify for the proposed additional incentive would receive a three-cent ($0.03) per contract discount off of the Tier D rates.[13] Based on the proposed Tier D rates (of $0.20 and $0.50 for Penny and non-Penny issues, respectively), an ATP Holder that qualifies would be charged $0.17 and $0.47 for each such contract.

The Exchange cannot predict with certainty whether any ATP Holders would qualify for these additional incentives;, however, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for Tier D, and that qualification for the additional $0.03 reduction is achievable.

CUBE Auction Fees & Credits: CUBE Initiating Participant Rebates

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions. To encourage participants to utilize CUBE Auctions, the Exchange offers rebates on certain initiating CUBE volume in the Customer range. The ACE Initiating Participant Rebate is available to ATP Holders that qualify for Tiers 1–5 of the ACE Program and applies to the each of the first 5,000 Customer contracts per Singe-Leg CUBE Order executed or to each of the first 1,000 Customer contracts per leg of a Complex CUBE Order executed.[14] The Exchange also offers an Alternative Initiating Participant Rebate, which similarly applies to the each of the first 5,000 Customer contracts per Singe-Leg CUBE Order for those participants that do not qualify for the ACE Program.[15] To qualify for the Alternative Initiating Participant Rebate, an ATP Holder must execute a minimum of 10,000 contracts ADV in the Professional range and increase their Initiating CUBE Orders by the greater of 20% over their August 2019 volume or 10,000 contracts ADV.[16] An ATP Holder that qualifies for both the ACE Initiating Participant Rebate (which is ($0.12)) and the Alternative Initiating Participant Rebate (which is ($0.10)) would be entitled only to the greater of the two rebates (*i.e.,* the ACE Initiating Participant Rebate).[17]

The Exchange proposes to modify the ACE Initiating Participant Rebate and Alternative Initiating Participant Rebate (collectively, the ''CUBE Initiating Rebates''; each a ''Rebate'') to remove the limitation of application to ''Customer'' contracts. As proposed, the CUBE Initiating Rebates would apply to the same number of executed CUBE Order contracts regardless of account type.[18] The Exchange is not proposing to alter the qualifying standards for, or the amount of, either Rebate at this time. This proposed change is designed to encourage a variety of account types to use the CUBE Auctions and to incent an increase in order flow.

The Exchange cannot predict with certainty whether any ATP Holders would qualify for the CUBE Initiating Rebates; however, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for expanded CUBE Initiating Rebates.

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar incentive programs.[19] Thus, ATP Holders have a choice of where they direct their order flow. The proposed modifications to the Professional Incentive program is designed to encourage ATP Holders to increase the amount of Professional volume directed to and executed on the Exchange. In addition, the proposed expansion of the application of the CUBE Initiating Rebates are designed to encourage the submission of CUBE Orders from all account types, which should maximize price improvement opportunities. Because the CUBE Initiating Rebates are tied to Customer (ACE) and Professional (Alternative) order flow, the Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[21] 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 Rule Change Is Reasonable

The Exchange operates in a highly competitive market. 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.'' [22]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more

[11] *See* Fee Schedule, Section I. A., *supra* note 9 (setting forth options transactions rates for Electronic Professional volume of $0.50 and $0.75 for Penny and Non-Penny issues respectively; except that Firm execution in Penny issues are charged $0.47 per contract).

[12] *See* proposed Fee Schedule, Section I.H., Professional Step-Up Incentive. The Exchange also proposes to remove an errant open parentheses from the preamble of this section, which would add clarity and transparency to the Fee Schedule. *See id.*

[13] *See id.,* note 1.

[14] *See* Fee Schedule, *see supra* note 9, Section I.G., CUBE Auction Fees & Credits, note 2 to each table (the ACE Initiating Participant Rebate is ($0.12) and ($0.10) for Single- Leg and Complex CUBE Auctions, respectively).

[15] *See id.* (the Alternative Initiating Participant Rebate is ($0.10) per contract).

[16] *See id.*

[17] *See id.*

[18] *See* proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits, note 2 to each table. The Exchange also proposes to correct a typographical error (*i.e.,* $(0.45)) that appears in note 1 to the Complex CUBE Auction pricing table to the correct ($0.45), which would add clarity and transparency to the Fee Schedule. *See* proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits, note 1.

[19] *See e.g.,* MIAX Options fee schedule, Section 1.a.iv, Professional Rebate Program, *available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf* (setting forth per contract credits on volume submitted for the account of Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker Dealers, and Firms (collectively, Professional for purposes of MIAX program), provided the Member achieves certain Professional volume increase percentage thresholds (set forth in the schedule) in the month relative to the fourth quarter of 2015).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[23] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[24]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modifications to the Tier C of Professional Incentive is reasonable because, although the proposed associated fees for non-Penny Pilot contracts would increase, the rates would still be discounted and, as such, would continue to be designed to incent ATP Holders to increase the amount of Professional order flow directed to the Exchange. In addition, that rate would continue to be available under the proposed new Tier D. The Exchange believes that new Tier D as well as the additional incentive are reasonable because they are designed to incent ATP Holders to continue to increase the amount of order flow directed to the Exchange. The Exchange further believes that expanding the application of the CUBE Initiating Rebates may encourage greater use of the CUBE Auctions, which may lead to greater opportunities to trade—and for price improvement—for all participants.

The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants that do not participant in (or qualify for) the Professional Incentive (or the ACE) program.

The Exchange believes the proposed technical changes (see supra notes 12 and 18) would add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend to the benefit of all market participants.

The Exchange cannot predict with certainty whether any participants would qualify for these additional incentives; however, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for the new Tier D, and that qualification for the additional $0.03 reduction is achievable; and that between two and four firms may qualify for the expanded CUBE Initiating Rebates.

Finally, to the extent the proposed changes attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule changes are designed to incent ATP Holders to direct liquidity to the Exchange in Electronic executions, similar to other exchange programs with competitive pricing programs, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.[25]

The Proposed Rule Change Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of these incentives or not. Moreover, the proposals are designed to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Professional or CUBE volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis. Regarding the changes to Professional Incentive Tier C, ATP Holders would continue to have the option of availing themselves of the still-reduced rates available under that Tier and new Tier D, and the additional incentive, would increase opportunities to achieve further discounted fees. The Exchange's proposed expansion of the CUBE Initiating Rebates is designed to encourage greater use of the CUBE Auctions, which may lead to greater opportunities to trade—and for price improvement—for all participants.

The proposals are based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve either of the incentive pricing options. Rather, the proposals are designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic volume sent to the Exchange. To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, 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.

[23] *See supra* note 6.

[24] Based on OCC data, *see supra* note 7, the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

[25] *See, e.g., supra* note 19 (regarding MIAX Professional Rebate Program).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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 all market participants. As a result, the Exchange believes that the proposed changes further 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.'' [26]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange by offering competitive rates and rebates (via the Professional Incentive program and the CUBE Initiating Rebates) based on increased volumes on the Exchange, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[27] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[28]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed changes are designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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) [29] of the Act and subparagraph (f)(2) of Rule 19b–4 [30] 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) [31] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–34, and should be submitted on or before June 3, 2020.

[26] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

[27] *See supra* note 6.

[28] Based on OCC data, *supra* note 7, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January, 2020.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(2).

[31] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10216 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11110]

60-Day Notice of Proposed Information Collection: Repatriation/Emergency Medical and Dietary Assistance Loan Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to July 13, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2020–0019'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: OliphantCE@state.gov*.
- *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/MSU, SA–17, 10th Floor, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Clifton Oliphant at SA–17, 10th Floor, Washington, DC 20522–1710, who may be reached at *OliphantCE@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Repatriation/Emergency Medical and Dietary Assistance Loan Application.
- *OMB Control Number:* 1405–0150.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–3072.
- *Respondents:* U.S. Citizens applying for emergency loan assistance.
- *Estimated Number of Respondents:* 1,459.
- *Estimated Number of Responses:* 1,459.
- *Average Time per Response:* 20 minutes.
- *Total Estimated Burden Time:* 486 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–3072 is an application for an emergency loan for a destitute U.S. citizen and/or eligible family member to return to the United States or for a loan for a destitute U.S. citizen and/or eligible family member abroad to receive emergency medical and dietary assistance.

Methodology

The Bureau of Consular Affairs will post this form on Department of State websites to give respondents the opportunity to print the form and fill it out manually and submit the form in person or by fax or mail.

Zachary Parker,

Director.

[FR Doc. 2020–10259 Filed 5–12–20; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusion amendments.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $16 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. In July, September, and October 2019, and February 2020, the U.S. Trade Representative issued determinations to grant certain exclusion requests on a rolling basis. This notice announces the U.S. Trade Representative's determination to make certain technical amendments to previously granted exclusions.

DATES: The technical amendments announced in this notice are retroactive to the date the original exclusions were published and do not further extend the period for the original exclusions. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52553 (October 2, 2019), 84 FR 69011 (December 17, 2019), and 85 FR 10808 (February 25, 2020).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $16 billion. *See* 83 FR 40823. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $16 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 47236 (the September 18 notice).

Under the September 18 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $16 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The September 18 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the $16 billion action no later than December 18, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019, and February 2020. *See* 84 FR 49600, 84 FR 52553, 85 FR 10808.

B. Technical Amendments to Exclusions

Subparagraph A of the Annex makes four technical amendments to U.S. notes 20(v)(2), 20(v)(8), 20(v)(78), and 20(y)(83) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes of the notice published at 84 FR 49600 (September 20, 2019) and 84 FR 52553 (October 2, 2019).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018:

1. U.S. note 20(v)(2) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''valued at $5.40 to $5.60 per kg'' and inserting ''valued at $4.00 to $7.00 per kg'' in lieu thereof.
2. U.S. note (20)(v)(8) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''20 cm or more in length'' and inserting ''18 cm or more in length'' in lieu thereof.
3. U.S. note 20(v)(78) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 8541.10.0080)'' and inserting ''(described in statistical reporting number 8541.10.0050)'' in lieu thereof.
4. U.S. note 20(y)(83) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''storing downloadable readings'' and inserting ''storing downloadable readings or storing temperature parameters'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–10231 Filed 5–12–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusion amendments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. In December 2018, March, April, May, June, July, September, October, and December 2019, and February 2020 the U.S. Trade Representative issued determinations to grant exclusion requests on a rolling basis. This notice announces the U.S. Trade Representative's determination to make certain technical amendments to previously granted exclusions.

DATES: The technical amendments announced in this notice are retroactive to the date the original exclusions were published and do not further extend the period for the original exclusions. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 49564 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 69016 (December 17, 2019), and 85 FR 7816 (February 11, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $34 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and, specifically, whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The July 11 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In December 2018, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The U.S. Trade Representative granted additional exclusions in March, April, May, June, July, September, October, and December 2019, and February 2020. *See* 84 FR 49600; 84 FR 52553; 85 FR 10808; 84 FR 11152; 84 FR 16310; 84 FR 21389; 84 FR 25895; 84 FR 32821; 84 FR 49564; 84 FR 52567; 84 FR 69016; and 85 FR 7816.

B. Technical Amendments to Exclusions

Subparagraph A of the Annex makes two technical amendments to U.S. notes 20(q)(184), and 20(q)(228) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 49564 (September 20, 2019).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018:

1. U.S. note 20(q)(184) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''AC motors, multi-phase, of an output exceeding 37.5 W but not exceeding 74.6 W, each fitted with a timing belt (described in statistical reporting number 8501.51.4040)'' and inserting ''AC motors, 3 phase, fitted with a timing belt and of an output no less than 90 W but not exceeding 135 W (described in statistical reporting number 8501.51.4040)'' in lieu thereof.

2. U.S. note 20(q)(228) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''each valued not over $18'' and inserting ''each valued not over $39'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–10232 Filed 5–12–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 percent to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 percent to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and corrects a technical error in a previously announced exclusion. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of September 1, 2019, the effective date of List 1 of the $300 billion action, and will extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or

Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), and 85 FR 17936 (March 31, 2020).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20, 2019) (the August 20 notice). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $300 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative announced three sets of exclusions. *See* 85 FR 13970, 85 FR 15244, and 85 FR 17936. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017.*

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the October 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in three 10-digit HTSUS subheadings and five specially prepared product descriptions, which together respond to 27 separate exclusion requests.

In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

Paragraph B, subparagraph (1) makes a technical correction to U.S. note 20(uu)(9), published at 85 FR 15244 (March 17, 2020).

As stated in the October 24 notice, the exclusions will apply from September 1, 2019, the effective date of List 1 of the $300 billion action, and will extend for one year to September 1, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.47 in numerical

sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1—General'', respectively:

Heading/sub-heading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.47	Articles the product of China, as provided for in U.S. note 20(zz) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading''.		

2. by inserting the following new U.S. note 20(zz) to subchapter III of chapter 99 in numerical sequence:

''(zz) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019) and 85 FR 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

(1) 3306.20.0000
(2) 6506.10.6030
(3) 8512.10.4000
(4) Tumblers or disposable graduated liners for pitchers, of plastics, of a kind used in healthcare facilities (described in statistical reporting number 3924.10.4000)
(5) Disposable identification wristbands of plastics, designed to be worn by patients during medical procedures, each consisting of a plastics strip with an integrated window for inserting paper with relevant patient identification information, such bracelets measuring 0.95 cm or more but not more than 3.2 cm in width and having a secure closure (described in statistical reporting number 3926.90.9990)
(6) Manually operated pill or tablet crushers of plastics, presented with attachable pouches of plastics for capturing and storing the resulting powders (described in statistical reporting number 8479.82.0080)
(7) Tracking devices, each device measuring not more than 86 mm on a side (if rectangular) or 28 mm in diameter (if circular) and not more than 7.5 mm in thickness, not weighing more than 15 g, designed to be attached to another article and to establish a Bluetooth connection with another device for the purposes of providing relative location information (described in statistical reporting number 8517.62.0090)
(8) Wireless communication apparatus capable of receiving audio data to be distributed to wireless speakers (described in statistical reporting number 8517.62.0090)''

3. by amending the last sentence of the first paragraph of U.S. note 20(r):

a. By deleting ''or (3)'' and by inserting ''(3)'' in lieu thereof; and

b. by inserting ''; or (4) heading 9903.88.47 and U.S. note 20(zz) to subchapter III of chapter 99'' after ''U.S. note 20(ww) to subchapter III of chapter 99''.

4. by amending the article description of heading 9903.88.15:

a. By deleting ''9903.88.42 or'' and by inserting ''9903.88.42,'' in lieu thereof; and

b. by inserting ''or 9903.88.47'' after ''9903.88.44''.

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019:

1. U.S. note 20(uu)(9) to subchapter III of chapter 99 of the Harmonized Tariff schedule of the United States is modified by deleting '', single use'' and inserting ''and particulate facepiece respirators'' in lieu thereof.

[FR Doc. 2020–10235 Filed 5–12–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0020]

Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of review and request for comments.

SUMMARY: The Office of the U.S. Trade Representative (USTR) is announcing the initiation of the annual review of the eligibility of the sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The AGOA Implementation Subcommittee of the Trade Policy Staff Committee (AGOA Subcommittee) is developing recommendations for the President on AGOA country eligibility for calendar year 2021. The AGOA Subcommittee requests comments for this review. Due to COVID–19, the AGOA Subcommittee will foster public participation via written submissions rather than an in-person hearing. This notice includes the schedule for submission of comments and responses to questions from the AGOA Subcommittee related to this review.

DATES:

June 24, 2020 at 11:59 p.m. EDT: Deadline for submission of written comments on the eligibility of sub-Saharan African countries to receive the benefits of AGOA.

July 7, 2020 at 11:59 p.m. EDT: Deadline for the AGOA Subcommittee to pose any questions on written comments.

July 16, 2020 at 11:59 p.m. EDT: Deadline for submission of commenters' responses to questions from the AGOA Subcommittee.

July 25, 2020 at 11:59 p.m. EDT: Deadline for replies from other interested parties to the written comments and responses to questions.

August 4, 2020 at 11:59 p.m. EDT: Deadline for the AGOA Subcommittee to pose any additional questions on written comments.

August 13, 2020 at 11:59 p.m. EDT: Deadline for submission of responses to any additional questions from the AGOA Subcommittee.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov (Regulations.gov)*, using Docket Number USTR–2020–0020. Follow the instructions for submitting comments in ''Requirements

for Submissions'' below. For alternatives to on-line submissions, please contact Bennett Harman, Deputy Assistant U.S. Trade Representative for Africa, in advance of the relevant deadline at *bharman@ustr.eop.gov* or (202) 395–9612.

FOR FURTHER INFORMATION CONTACT: Please contact Bennett Harman, Deputy Assistant U.S. Trade Representative for Africa, at *bharman@ustr.eop.gov* or (202) 395–9612.

SUPPLEMENTARY INFORMATION:

I. Background

AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 2466a *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiaries eligible for duty-free treatment for certain additional products not included for duty-free treatment under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (1974 Act), as well as for the preferential treatment for certain textile and apparel articles. The President may designate a country as a beneficiary sub-Saharan African country eligible for AGOA benefits if he determines that the country meets the eligibility criteria set forth in section 104 of AGOA (19 U.S.C. 3703) and section 502 of the 1974 Act (19 U.S.C. 2462).

Section 104 of AGOA includes requirements that the country has established or is making continual progress toward establishing, among other things:

- A market-based economy
- the rule of law
- political pluralism
- the right to due process
- the elimination of barriers to U.S. trade and investment
- economic policies to reduce poverty
- a system to combat corruption and bribery
- protection of internationally recognized worker rights

In addition, the country may not engage in activities that undermine U.S. national security or foreign policy interests or engage in gross violations of internationally recognized human rights. Section 502 of the 1974 Act provides for country eligibility criteria under GSP. For a complete list of the AGOA eligibility criteria and more information on the GSP criteria, see section 104 of the AGOA and section 502 of the 1974 Act.

Section 506A of the 1974 Act requires the President to monitor and annually review the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine if a beneficiary sub-Saharan African country should continue to be eligible, and if a sub-Saharan African country that currently is not a beneficiary, should be designated as a beneficiary. If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, the President must terminate the designation of the country as a beneficiary sub-Saharan African country. The President also may withdraw, suspend, or limit the application of duty-free treatment with respect to specific articles from a country if he determines that it would be more effective in promoting compliance with AGOA eligibility requirements than terminating the designation of the country as a beneficiary sub-Saharan African country.

For 2020, the President designated the following 38 countries as beneficiary sub-Saharan African countries:

1. Angola
2. Benin
3. Botswana
4. Burkina Faso
5. Cabo Verde
6. Central African Republic
7. Chad
8. Comoros
9. Republic of Congo
10. Cote d'Ivoire
11. Djibouti
12. Eswatini
13. Ethiopia
14. Gabon
15. The Gambia
16. Ghana
17. Guinea
18. Guinea-Bissau
19. Kenya
20. Lesotho
21. Liberia
22. Madagascar
23. Malawi
24. Mali
25. Mauritius
26. Mozambique
27. Namibia
28. Niger
29. Nigeria
30. Rwanda (AGOA apparel benefits suspended effective July 31, 2018)
31. Sao Tome & Principe
32. Senegal
33. Sierra Leone
34. South Africa
35. Tanzania
36. Togo
37. Uganda
38. Zambia

The President did not designate the following sub-Saharan African countries as beneficiary sub-Saharan African countries for 2020:

1. Burundi
2. Cameroon
3. Democratic Republic of Congo
4. Equatorial Guinea (graduated from GSP)
5. Eritrea
6. Mauritania
7. Seychelles (graduated from GSP)
8. Somalia
9. South Sudan
10. Sudan
11. Zimbabwe

The AGOA Subcommittee is seeking public comments to develop recommendations to the President in connection with the annual review of sub-Saharan African countries' eligibility for AGOA benefits. The Secretary of Labor may consider comments related to the child labor criteria to prepare the U.S. Department of Labor's report on child labor as required under section 504 of the 1974 Act.

II. Public Participation

Due to COVID–19, the AGOA Subcommittee will foster public participation via written submissions rather than an in-person hearing for the 2020 AGOA Eligibility Review. USTR invites public comment according to the schedule set out in the Dates section above. The AGOA Subcommittee will review comments and replies to comments, if any, and may ask clarifying questions to commenters according to the schedule set out above. The AGOA Subcommittee will post the questions it asks on the public docket, other than questions that include properly designated business confidential information (BCI). Any questions that include properly designated BCI will not be posted on the docket for public viewing, but rather will be sent via email to the relevant commenters. Replies to these questions that also contain BCI must follow procedures laid out in section IV.

III. Requirements for Submissions

You must submit comments and answers to questions from the AGOA Subcommittee by the applicable deadlines set forth in this notice. You must make all submissions in English via *Regulations.gov*, using Docket Number USTR–2012–0020. USTR will not accept hand-delivered submissions. To make a submission using *Regulations.gov*, enter Docket Number USTR–2012–0020 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents

associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' The *Regulations.gov* website offers the option of providing comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. The AGOA Subcommittee prefers that you provide submissions in an attached document and note 'see attached' in the 'type comment' field on the online submission form. At the beginning of the submission, or on the first page (if an attachment) include the following text (in bold and underlined): (1) ''2020 AGOA Eligibility Review''; (2) the relevant country or countries; and (3) whether the document is a comment, a reply to a comment, or an answer to an AGOA Subcommittee question. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received the submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*. USTR may not consider documents you do not submit in accordance with these instructions. If you are unable to provide submissions as requested, please contact Bennett Harman, Deputy Assistant U.S. Trade Representative for Africa, at *bharman@ustr.eop.gov* or (202) 395–9612, in advance of the relevant deadline to arrange for an alternative method of transmission. General information concerning USTR is available at *www.ustr.gov.*

IV. Business Confidential Submissions

If you ask USTR to treat information you submitted as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. You must clearly designate BCI by marking the submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must include 'Business Confidential' in the 'type comment' field. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.,* not as part of the same submission with the confidential version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket and it will be open to public inspection.

V. Public Viewing of Review Submissions

USTR will make public versions of all documents relating to these reviews available for public viewing pursuant to 15 CFR 2017.4, in Docket Number USTR–2020–0020 on *Regulations.gov*, upon completion of processing, usually within two weeks of the relevant due date or date of the submission.

VI. Petitions

At any time, any interested party may submit a petition to USTR with respect to whether a beneficiary sub-Saharan African country is meeting the AGOA eligibility requirements. An interested party may file a petition through *www.regulations.gov,* under docket number USTR–2020–0020.

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2020–10218 Filed 5–12–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Return for Publicly Offered Original Issue Discount Instructions.

DATES: Written comments should be received on or before July 13, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicly Offered Original Issue Discount Instructions.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicity offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time per Response: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 3,060 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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.

Approved: May 4, 2020.

Martha Brinson,

Tax Analyst.

[FR Doc. 2020–10237 Filed 5–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before July 13, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this notice should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 97–34.

Abstract: This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Responses: 5,000.

Estimated Time per Response: 45 mins.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency'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 of information on 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.

Approved: May 4, 2020.

Martha Brinson,

Tax Analyst.

[FR Doc. 2020–10236 Filed 5–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2020

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2020 under sections 45(e)(2)(A) (26 U.S.C. 45(e)(2)(A)), 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and 45(e)(10)(B) (26 U.S.C. 45(e)(10)(B)) of the Internal Revenue Code.

SUMMARY: The 2020 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2020 inflation adjustment factors and reference prices apply to calendar year 2020 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2020 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2020 for qualified energy resources and refined coal is 1.6687. The inflation adjustment factor for calendar year 2020 for Indian coal is 1.2851.

Reference Prices: The reference price for calendar year 2020 for facilities producing electricity from wind is 4.16 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $48.58 per ton for calendar year 2020. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2020.

Phaseout Calculation: Because the 2020 reference price for electricity produced from wind (4.16 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor (1.6687), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2020. Because the 2020 reference price of fuel used as feedstock for refined coal ($48.58) does not exceed $90.49 (which is the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.6687) and 1.7), the phaseout of the credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2020. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2020.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1) and the $4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2020 under section 45(a) is 2.5 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.3 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2020 under section 45(e)(8)(A) is $7.301 per ton on the sale of qualified refined coal. As required by section 45(e)(10)(B)(ii), the $2.00 amount in section 45(e)(10)(B)(i) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year. Under the calculation required by section 45(e)(10)(B)(ii), the credit for Indian coal production for calendar year 2020 under section 45(e)(10)(B) is $2.570 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Charles Hyde, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, (202) 317–6853 (not a toll-free number).

Christopher T. Kelley,

Special Counsel to the Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 2020–10273 Filed 5–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activity: Compliance Inspection Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: 30-Day notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0041.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov*. Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Compliance Inspection Report (VA Form 26–1839).

OMB Control Number: 2900–0041.

Type of Review: Extension of an approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation is in compliance with the plans and specifications for which a specially adapted housing grant is based.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published March 6, 2020 at 85 FR 13237, pages 13237–13238.

Affected Public: Individuals or households.

Estimated Annual Burden: 900 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–10222 Filed 5–12–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet by teleconference on Tuesday July 7, 2020. The open session will convene at 11:00 a.m. (EST) and end at 3:30 p.m. (EST). The open session will be available to the public by dialing the toll-free telephone number for audio (800) 767–1750; access code 56978# and connecting to Adobe Connect URL for visual: *http://va-eerc-ees.adobeconnect.com/racgwvi-july2020/.*

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses, current events, and updates on relevant scientific research published since the last Committee meeting. Presentations will include updates on the VA Gulf War Research Program and presentations from subject matter experts in the areas of health effects of serving in the Gulf War.

The meeting will include time reserved for public comments 30 minutes before the meeting closes. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may submit written statements for the Committee's review or seek additional information by contacting Dr. Karen Block, Designated Federal Officer, at (202) 443–5600, or by email at *karen.block@va.gov.*

Dated: May 7, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–10155 Filed 5–12–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88827; File No. 4–757]

Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data

May 6, 2020.

Notice is hereby given that, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Act''),[1] the Securities and Exchange Commission (''Commission'') orders the Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Cboe Exchange, Inc. (''Cboe''), Investors Exchange LLC (''IEX''), Long Term Stock Exchange, Inc. (''LTSE''), MEMX LLC, Nasdaq BX, Inc. (''BX''), Nasdaq ISE, LLC (''ISE''), Nasdaq PHLX LLC (''PHLX''), Nasdaq Stock Market LLC (''Nasdaq''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), NYSE National, Inc. (''NYSE National''), and Financial Industry Regulatory Authority, Inc. (''FINRA'') (each a ''Participant'' or a ''Self-Regulatory Organization'' (''SRO'') and, collectively, the ''Participants'' or ''the SROs'') to act jointly in developing and filing with the Commission a proposed new single national market system plan (the ''New Consolidated Data Plan''). This new plan will replace the three existing national market system plans (the ''Equity Data Plans'' or ''Plans'') that govern the public dissemination of real-time, consolidated equity market data for national market system stocks (''NMS stocks'').[2] The New Consolidated Data Plan shall be filed with the Commission pursuant to Rule 608 of Regulation NMS[3] no later than August 11, 2020.

I. Introduction

On January 8, 2020, the Commission issued for comment a Notice of Proposed Order Directing the Exchanges and FINRA to Submit a New National Market System Plan Regarding Consolidated Equity Market Data (''Proposed Order'').[4] As the Commission explained in the Proposed Order, in Section 11A of the Act, Congress directed the Commission to facilitate the establishment of a national market system for securities. The public dissemination of consolidated information about quotes and trade activity is a fundamental component of that system. Pursuant to its statutory responsibility, therefore, the Commission has authorized the Equity Data Plans to facilitate the required collection and dissemination of core data[5] so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the day.''[6] In adopting Regulation NMS in 2005,[7] in order to improve the transparency and effective operations of the Plans, the Commission established advisory committees of non-SRO market participants to advise the Equity Data Plans.[8] The Commission stated that it was a useful first step toward improving the responsiveness of Plan participants to broader non-SRO market participants' concerns and the efficiency of Plan operations.[9] The Commission also stated that it would continue to monitor and evaluate Plan developments to determine whether any further action is warranted.[10]

Since that time, developments in technology and changes in the equities markets have heightened an inherent conflict of interest between the Participants' collective responsibilities in overseeing the Equity Data Plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants. This conflict of interest, combined with the concentration of voting power in the Equity Data Plans among a few large ''exchange groups''—multiple exchanges operating under one corporate umbrella—has contributed to significant concerns regarding whether the consolidated feeds meet the purposes for them set out by Congress and by the Commission in adopting the national market system. Additionally, the Commission believes that the continued existence of three separate NMS plans for equity market data creates inefficiencies and unnecessarily burdens ongoing improvements in the provision of equity market data to market participants. Addressing the issues with the current governance structure of the Equity Data Plans discussed in this Order is a key step in responding to broader concerns about the consolidated data feeds.[11]

To that end, in the Proposed Order, the Commission proposed to direct the exchanges and FINRA to jointly develop and file with the Commission, as an NMS plan pursuant to Rule 608(a) of Regulation NMS,[12] a single New Consolidated Data Plan that consolidates the three current Equity Data Plans and that includes certain changes to the governance structure of the Equity Data Plans.[13]

II. Discussion

A. Background

In 1975, Congress, through the enactment of Section 11A of the Act,[14] directed the Commission to facilitate the establishment of a national market system for the trading of securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Act.[15] Among the findings and objectives of Section 11A(a)(1) are that new data processing and communications techniques create the opportunity for more efficient and effective market operations,[16] and that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the availability of information with respect to quotations for and transactions in securities.[17]

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[1] 15 U.S.C. 78k–1(a)(3)(B).

[2] Generally, NMS stocks include any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(47).

[3] 17 CFR 242.608.

[4] Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2164 (Jan. 14, 2020) (File No. 4–757). Comments received in response to the Proposed Order are available at *https://www.sec.gov/comments/4-757/4-757.htm.*

[5] *See, e.g.,* Section 11A(b) of the Act and Rule 603(b) of Regulation NMS.

[6] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593, 3600 (Jan. 21, 2010) (''Equity Market Structure Concept Release'').

[7] Regulation NMS, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495 (June 29, 2005) (''Regulation NMS Release'').

[8] *See id.* at 37503.

[9] *See id.* at 37561.

[10] *Id.*

[11] *See* Proposed Order, *supra* note 4, 85 FR at 2166, 2168–74 (discussing broader concerns about the Equity Data Plans and the consolidated data feeds).

[12] 17 CFR 242.608(a). The New Consolidated Data Plan, or any amendment thereto, must comply with the requirements of Rule 608 of Regulation NMS, including the requirement in Rule 608(a) to include an analysis of the impact on competition. 17 CFR 242.608(a).

[13] One commenter suggests that the governance structure in the Proposed Order be extended to apply to all NMS plans. *See* Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, SIFMA (Feb. 28, 2020), at 6 (''SIFMA Letter''). The Commission is taking an incremental approach to addressing governance issues related to NMS plans and is at this time addressing only the governance of the Equity Data Plans. The Commission may in the future consider the governance of other NMS plans.

[14] 15 U.S.C. 78k–1.

[15] 15 U.S.C. 78k–1(a)(1).

[16] *See* 15 U.S.C. 78k–1(a)(1)(B). *See also* H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 93 (1975) (House Report noting that the systems for collecting and distributing consolidated market data would ''form the heart of the national market system.'').

[17] *See* 15 U.S.C. 78k–1(a)(1)(C).

Congress authorized the Commission to prescribe rules to ensure the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' [18] In furtherance of these purposes, the Commission has sought through its rules and regulations to help ensure that certain ''core data'' [19] is widely available for reasonable fees.[20] The Commission has recognized that investors must have this core data ''to participate in the U.S. equity markets.'' [21]

Section 11A of the Act also authorizes the Commission, by rule or order, to authorize or require the SROs to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.[22] Pursuant to this authority, the Commission adopted Regulation NMS.[23] Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission a national market system plan (''NMS plan'') or a proposed amendment to an effective NMS plan.[24] And Rule 603 of Regulation NMS requires the SROs to act jointly pursuant to NMS plans to ''disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks.'' [25] The purpose of the Equity Data Plans, adopted pursuant to Regulation NMS, is to facilitate the collection and dissemination of core data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [26] Widespread availability of timely market data promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.[27]

Under Regulation NMS and the Equity Data Plans, the SROs are required to provide certain quotation [28] and transaction data [29] for each NMS stock to an exclusive securities information processor (''SIP''),[30] which consolidates this market data and makes it available to market participants on the consolidated tapes, as described below. For each NMS stock, the Equity Data Plans provide for the dissemination of top-of-book (''TOB'') data, generally defining consolidated market information (or ''core data'') as consisting of: (1) The price, size, and exchange of the last sale; (2) each exchange's current highest bid and lowest offer, and the shares available at those prices; and (3) the national best bid and offer (''NBBO'') (*i.e.,* the highest bid and lowest offer currently available on any exchange).[31] In addition to disseminating core data, the SIPs collect, calculate, and disseminate certain regulatory data—including information required by the National Market System Plan to Address Extraordinary Market Volatility (''LULD Plan''),[32] information relating to regulatory halts and market-wide circuit breakers, and information regarding the short-sale price test pursuant to Rule 201 of Regulation SHO.[33] They also collect and disseminate other NMS stock data and disseminate certain administrative messages. Together with core data, the Commission refers to this broader set of data for purposes of this Order as ''SIP data.''

The three Equity Data Plans that currently govern the collection, consolidation, processing, and dissemination of SIP data are (1) the Consolidated Tape Association Plan (''CTA Plan''), (2) the Consolidated Quotation Plan (''CQ Plan''), and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'').[34] Pursuant to the Equity Data Plans, three separate networks disseminate consolidated data for equity securities: (1) Tape A for securities listed on the NYSE; (2) Tape B for securities listed on exchanges other than NYSE and Nasdaq; and (3) Tape C for securities listed on Nasdaq. The CTA Plan governs the collection, consolidation, processing, and dissemination of last sale information for Tape A and Tape B securities. The CQ Plan governs the collection, consolidation, processing, and dissemination of quotation information for Tape A and Tape B securities. And the UTP Plan governs the collection, consolidation, processing, and dissemination of last sale and quotation information for Tape C securities.

B. The Need for Changes in the Governance Structure of the Equity Data Plans

As described in the Proposed Order, the Commission believes that the current governance structure of the three existing Equity Data Plans is inadequate to respond to changes in the market and in the ownership of exchanges, and to the evolving needs of investors and other market

[18] 15 U.S.C. 78k–1(c)(1)(B).

[19] *See infra* note 31 and accompanying text (defining ''core data'').

[20] *See* 17 CFR 242.603; *see also, e.g.,* Regulation NMS Release, *supra* note 7, 70 FR at 37560 (stating that ''[i]n the Proposing Release, the Commission emphasized that one of its primary goals with respect to market data is to assure reasonable fees that promote the wide public availability of consolidated market data.'').

[21] *Id.* at 37560.

[22] *See* 15 U.S.C. 78k–1(a)(3)(B).

[23] 17 CFR 242.600–612; *see also* Regulation NMS Release, *supra* note 7, 70 FR at 37560.

[24] *See* 17 CFR 242.608.

[25] 17 CFR 242.603(b).

[26] Equity Market Structure Concept Release, *supra* note 6, 75 FR at 3600.

[27] *See* In the Matter of the Application of Bloomberg L.P., Securities Exchange Act Release No. 83755 at 3 (July 31, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-83755.pdf* (''Bloomberg Order''); SEC Concept Release: Regulation of Market Information Fees and Revenues, Securities Exchange Act Release No. 44208 (Dec. 9, 1999), 64 FR 70613, 70615 (Dec. 17, 1999) (stating that the distribution of core data ''is the principal tool for enhancing the transparency of the buying and selling interest in a security, for addressing the fragmentation of buying and selling interest among different market centers, and for facilitating the best execution of customers' orders by their broker-dealers'').

[28] *See* 17 CFR 242.602.

[29] *See* 17 CFR 242.601.

[30] *See* 15 U.S.C. 78c(22)(A) (defining securities information processor). Rule 603(b) of Regulation NMS requires that every national securities exchange on which an NMS stock is traded and national securities association act jointly pursuant to one or more effective NMS plans to disseminate consolidated information on quotations for and transactions in NMS stocks, and that such plan or plans provide for the dissemination of all consolidated information for an individual NMS stock through a single SIP. *See* 17 CFR 242.603(b).

[31] *See* Bloomberg Order, *supra* note 27, at 3; *see also* Rescission of Effective-Upon-Filing Procedures for NMS Plan Fee Amendments, Securities Exchange Act Release No. 87193 (Oct. 1, 2019), 84 FR 54794, 54795 (Oct. 11, 2019) (''Effective-Upon-Filing Proposing Release'').

[32] The LULD Plan is available at *http://www.luldplan.com.*

[33] 17 CFR 242.201(b)(3).

[34] Each of the Equity Data Plans is an NMS plan under Rule 608 of Regulation NMS. 17 CFR 242.608; *see also* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (order temporarily approving CQ Plan); 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (order permanently approving CQ Plan); and 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving UTP Plan). The Commission notes that the options exchanges are participants in the Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), an NMS plan under Rule 608 of Regulation NMS, which governs the collection, consolidation, processing, and dissemination of last sale and quotation information for listed options. *See* Securities Exchange Act Release Nos. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981); 61367 (Jan. 15, 2010), 75 FR 3765 (Jan. 22, 2010).

participants.[35] Below, the Commission explains the basis for its action in ordering the Participants to file the New Consolidated Data Plan, the reasons the Commission believes that the Order reasonably addresses concerns identified by the Commission, the relationship between the Commission's Order to create the New Consolidated Data Plan and the Commission's Infrastructure Proposal,[36] and the need for a new, single plan.

1. The Basis of the Commission's Order

The Equity Data Plans' governance model was established in the 1970s, at a time when trading volume in any given stock was concentrated on its listing market and when the U.S. equity exchanges were member owned, not-for-profit organizations. Since then, the markets have changed dramatically, and technology has fundamentally changed market operations. Exchanges have demutualized, and they or their parent companies now trade as public companies on exchanges. In addition, the three Equity Data Plans are effectively governed by the same operating committee and the same advisors, yet there are still three separate NMS plans for equity market data. The Plans—which, despite changes in the market, still provide sole voting power to the exchanges and FINRA as members of the operating committee—control the operations of the SIPs that produce and disseminate core data, as well as the data products offered and their prices, while most of the exchanges also offer proprietary data products for sale.

As discussed in the Proposed Order, the Commission believes that the demutualization of the exchanges and the proliferation of proprietary exchange data products have heightened the conflicts between the SROs' business interests in proprietary data offerings and their obligations as SROs under the national market system to ensure prompt, accurate, reliable, and fair dissemination of core data through the jointly administered Equity Data Plans.[37] And these conflicts bear on the exchanges' incentives to meaningfully improve the provision of core data.[38] For certain proprietary data products in particular, exchanges have deployed cutting edge technology to reduce latency and made other enhancements to improve content. For example, the exchanges have developed depth-of-book (''DOB'') products that, relative to the SIPs, provide greater content at lower latencies. For another segment of the data market that is less sensitive to latency, exchanges have also developed proprietary TOB products that provide data that is generally limited to the highest bid, lowest ask, and last sale price information at a lower cost to subscribers. Despite the Equity Data Plans' improvements to certain aspects of the SIPs and related infrastructure,[39] these improvements have not been sufficient to meet the needs of equity market participants, and the SIPs have continued to meaningfully lag behind the proprietary data products and their related infrastructure with respect to content and speed.[40]

Input received from a diverse array of market participants supports the Commission's view that the differentials between SIP data and DOB data feeds has reduced the usefulness of the form and content of SIP data.[41] One commenter on the Proposed Order asserts that ''few market participants can rely on the SIP for order routing because the necessary improvements to the SIPs have not been made under the current governance structure.'' [42] Another commenter similarly states that it has ''significant concerns regarding whether the consolidated feeds meet the purposes set out by Congress and by the Commission . . . '' [43] And a third commenter asserts that the SIPs are ''facially inadequate for investors' or brokers' trading strategies—or for operating a competitive trading venue.'' [44]

Certain commenters, however, challenge the need for the Commission's Proposed Order. One commenter states that the Commission's assertions that the exchanges have failed to invest in improvements to the dissemination of data through the Equity Data Plans, and that the Equity Data Plans have not kept pace with the exchanges' proprietary data products, are ''unsubstantiated,'' ''demonstrably false,'' and ''cannot provide a basis for agency action under the APA [Administrative Procedure Act].'' [45] This commenter states that SIP performance is defined by three factors—availability, latency, and message throughput—and provides statistics that, it contends, demonstrate that investments by the Equity Data Plans have ''significantly increased'' the performance of the SIPs with respect to these three factors.[46] This commenter further asserts that the Commission has implied that the exchanges have intentionally slowed progress on employing a ''distributed SIP'' model, which would reduce geographic latency, ''to make their own proprietary data products look better by comparison,'' [47] and that such an allegation is ''unwarranted'' and reflects a ''failure to grasp the complexity of the proposal.'' [48] Another commenter also highlights efforts that have already been undertaken to increase the speed with which subscribers can access SIP data.[49]

[35] *See* Proposed Order, *supra* note 4, 85 FR at 2167–68.

[36] *See* Market Data Infrastructure, Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726 (Mar. 24, 2020) (File No. S7–03–20) (Proposed Rule) (''Infrastructure Proposal'').

[37] *See* Proposed Order, *supra* note 4, 85 FR at 2168–74 (discussing the basis for the Proposed Order and sources of input).

[38] Proprietary data products are significant sources of revenues for exchanges that offer them. Consequently, the Commission believes, and market participants have stated, that the exchanges may not be incentivized to adequately improve the SIPs, including the content and latency of the SIPs, as making SIP content and latency comparable to the proprietary feeds could decrease revenues earned from certain proprietary data products. *See, e.g.,* Clearpool Group Viewpoints Rethinking the Current Market Structure (Sept. 2019), at 7 (stating, ''Currently, SIP [p]lans are governed by SROs that have conflicts of interest in the provision of market data (*i.e.,* the exchanges, excluding FINRA) as they are selling market data products that directly compete with the SIPs. These SROs therefore have a disincentive to either invest in the SIPs or to make SIPs competitive products to their proprietary data products, and it is unlikely that they would vote to make needed changes to the SIP Plans.''), *available at https://cdn2.hubspot.net/hubfs/1855665/Clearpool%20Group%20Viewpoints%20-%20September%202019%20FINAL.pdf. See also* Letter from John Ramsay, Chief Market Policy Officer, IEX, at 3 (Sept. 24, 2019) (''SIP governance is still under the control of exchanges that have no reason to want the SIPs to be competitive with their own lucrative feeds. Some exchanges even overtly market their own data as a better alternative to the SIPs. The conflicts of interest are obvious and acute.'').

[39] *See* Proposed Order, *supra* note 4, 85 FR at 2171–72 (describing improvements to some aspects of the SIPs and related infrastructure).

[40] *See* Proposed Order, *supra* note 4, 85 FR at 2171–72. *See, e.g.,* Letters from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. (Feb. 28, 2020), at 3 (''Bloomberg Letter''); Joe Wald, Chief Executive Officer, and Ray Ross, Chief Technology Officer, Clearpool Group (Feb. 28, 2020), at 2 (''Clearpool Letter''); Tyler Gellasch, Executive Director, Healthy Markets Association (Feb. 20, 2020), at 6 (''Healthy Markets Letter''); and SIFMA Letter, *supra* note 13, at 2.

[41] *See* Proposed Order, *supra* note 4, 85 FR at 2169–70.

[42] SIFMA Letter, *supra* note 13, at 2.

[43] Clearpool Letter, *supra* note 40, at 2.

[44] Healthy Markets Letter, *supra* note 40, at 5.

[45] Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq (Feb. 28, 2020), at 9 (''Nasdaq Letter''); *see also* Nasdaq Letter at 10 (''The Commission must take these facts into account when analyzing the performance of the SIP processors, and base the proposal on grounds other than the verifiably false assertion that the SIP processors have under-invested in technology.''). On February 28, 2020, Nasdaq filed a (i) petition for clarification and extension of comment period and (ii) comment letter in response to the Proposed Order, which restated portions of the petition. Throughout this Order, the Commission is citing to the latter.

[46] Nasdaq Letter, *supra* note 45, at 9.

[47] *Id.* at 10.

[48] *Id.* at 11.

[49] *See* Letter from Elizabeth K. King, Chief Regulatory Officer, ICE, and General Counsel and

The Commission disagrees that recent improvements in SIP performance obviate the need for the governance changes outlined in this Order. While we recognize recent efforts by the Equity Data Plans to improve the performance of the SIPs,[50] those actions have not fully mitigated our concerns with SIP performance.[51] Congress charged the Commission with ensuring the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' [52] In furtherance of this responsibility, the Commission seeks through its rules and regulations to help ensure that certain ''core data'' [53] is widely available for reasonable fees.[54] The Commission has recognized that investors must have this core data ''to participate in the U.S. equity markets.'' [55] And the purpose of the Equity Data Plans, adopted pursuant to Regulation NMS, is to facilitate the collection and dissemination of core data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [56]

Despite recent efforts to improve SIP performance, disparities between SIP data and proprietary DOB data feeds with respect to both speed and content continue to affect the ability of many market participants to use core data to be competitive in today's markets and thereby call into question whether the SIPs continue to adequately serve their regulatory purposes. Moreover, the relevant measure of SIP performance under Section 11A of the Act is not limited to the three factors discussed by one commenter—availability, latency, and message throughput.[57] The Commission must evaluate whether the collection, processing, distribution, and publication of equity market data is ''prompt, accurate, reliable, and fair''—and also, crucially, the ''usefulness of the form and content of such information,'' [58] which recent efforts have not sufficiently addressed.

Nor is the basis of the Commission's action that the Participants have failed to make any improvements to the SIPs. Rather, changes in the market, combined with the current governance structure of the Equity Data Plans, have ''exacerbated the exchanges' lack of incentives to improve the SIPs.'' [59] As the Commission explained in the Proposed Order, addressing these governance concerns is a ''key step'' in responding to the broader concerns about whether the consolidated data feeds continue to serve their regulatory purpose.[60] While the Commission understands that substantial changes to the SIPs are complicated undertakings, the Commission believes that the current governance model of the Equity Data Plans—with its concentration of voting power in a small number of exchange groups, its lack of voting power for non-SRO representatives, and the requirement for unanimity in support of any substantial change to the SIPs—perpetuates disincentives for the Equity Data Plans to invest in certain improvements to enhance the distribution of core data or the content of the core data itself.

Finally, one commenter argues that the Commission has relied on ''cherry-picked opinions of self-interested market participants to justify the Proposed Order—without any of its own independent analysis'' and that this ''further underscores the arbitrary and capricious nature of its decision-making.'' [61] The Commission has studied market data issues over the course of many years and has devoted considerable resources to this study and to the analysis of these issues.[62] Moreover, the Commission published the Proposed Order expressly to provide the opportunity for public comment on this proposal by all interested parties, including the Participants, for the Commission to consider in its analysis.[63] Indeed, the Proposed Order specifically solicited any ''additional insights into the concerns and issues discussed in the Proposed Order'' from the Participants and stated that the Commission ''will consider such information and suggestions, as well as any other comment on the Proposed Order.'' [64] In addition, the New Consolidated Data Plan submitted in response to this Order will itself be published for public comment prior to any Commission decision to disapprove or to approve the plan with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

2. The Efficacy of the Proposed Order

(a) The Proposed Order Reasonably Addresses the Concerns Identified by the Commission

One commenter argues that, ''[r]ather than improving the SIPs, the Proposed Order will instead undermine the SROs' ability to efficiently improve them for the benefit of investors and the market,'' and that, therefore, ''[b]ecause the Commission's approach is not reasonably calculated to address the disparate data feed problem identified by the Commission, it is arbitrary and

Corporate Secretary, NYSE (Feb. 5, 2020), at 6–7 (''NYSE Letter'').

[50] *See* Proposed Order, *supra* note 4, 85 FR at 2172.

[51] The Commission also notes that some of the recent improvements made to the SIPs have been responses to significant SIP outages. For example, in 2013, after a significant SIP outage that caused operations to cease and a market-wide halt in the trading of Nasdaq-listed securities (''UTP SIP Outage''), the then-Chair of the Commission met with the heads of the equities and options exchanges to address the reliability of market systems. *See* SEC Chair White Statement on Meeting With Leaders of Exchanges, September 12, 2013, *available at http://www.sec.gov/News/Press Release/Detail/PressRelease/1370539804861.* In response, the exchanges implemented some enhancements to the reliability of the SIPs and backup systems. *See* Joint Press Release by the Participants, *available at https://ir.theice.com/press/news-details/2013/Self-Regulatory-Organizations-Response-to-SEC-for-Strengthening-Critical-Market-Infrastructure/default.aspx.* After the UTP SIP Outage, however, several market participants continued to raise concerns about the adequacy of the SIP infrastructure. SIFMA, for example, argued that the UTP SIP Outage was a symptom of the outdated system by which critical market data is controlled and distributed and stated that the current system suffers from a lack of transparency and competition, questions of underfunding, and insulated governance. *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Mary Jo White, Chair, Commission (Dec. 5, 2013), *available at https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-sec-on-securities-information-processors-and-operational-resiliency.pdf.*

[52] 15 U.S.C. 78k–1(c)(1)(B).

[53] *See supra* note 31 for definition of core data.

[54] *See* 17 CFR 242.603; *see also, e.g.,* Regulation NMS Release, *supra* note 7, 70 FR at 37560 (stating that ''[i]n the Proposing Release, the Commission emphasized that one of its primary goals with respect to market data is to assure reasonable fees that promote the wide public availability of consolidated market data.'').

[55] *Id.* at 37560.

[56] Equity Market Structure Concept Release, *supra* note 6, 75 FR at 3600.

[57] Nasdaq Letter, *supra* note 45, at 9.

[58] 15 U.S.C. 78k–1(c)(1)(B).

[59] Proposed Order, *supra* note 4, 85 FR 2173.

[60] Proposed Order, *supra* note 4, 85 FR at 2173.

[61] NYSE Letter, *supra* note 49, at 16.

[62] *See* Regulation of Market Information Fees and Revenues, Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613 (Dec. 17, 1999); Equity Market Structure Concept Release, *supra* note 6; Securities and Exchange Commission, ''SEC Announces Members of New Equity Market Structure Advisory Committee'' (Jan. 13, 2015), *available at https://www.sec.gov/news/pressrelease/2015-5.html;* and Securities and Exchange Commission, Equity Market Structure Roundtables, *https://www.sec.gov/spotlight/equity-market-structure-roundtables* (last visited Apr. 17, 2020).

[63] The Commission also notes that the Proposed Order itself included a summary of comments raised in the past by this commenter and others who were opposed to central aspects of the Commission's proposal, including the limitation on exchange-group voting, *see* Proposed Order, *supra* note 4, 85 FR at 2175–76, and the provision of votes to non-SROs. *See* Proposed Order, *supra* note 4, 85 FR at 2178–81.

[64] Proposed Order, *supra* note 4, 85 FR at 2165.

capricious.'' [65] This commenter also argues that the Proposed Order relies on the ''unfounded assumption'' that granting non-SROs authority in the New Consolidated Data Plan would reduce conflicts of interest,[66] and that the Commission's ''decision to ignore the likely impact of the non-SRO's own conflicted interests is a critical oversight.'' [67] This commenter further argues that, ''[w]hile failing to establish how the Proposed Order will reduce the influence of alleged conflicted interests, the Commission has also failed to demonstrate how the Proposed Order will otherwise improve SIP functionality.'' [68] This commenter concludes that the Proposed Order will not advance the Commission's stated purpose and therefore ''lacks the necessary 'rational connection' between regulatory means and ends mandated by the APA [Administrative Procedure Act].'' [69]

Other commenters assert that the Proposed Order does not go far enough. One commenter argues that the Proposed Order uses an ''overly elaborate and conflicted process to potentially implement piecemeal changes that will not fix the fundamental conflict of interest at the heart of SIP governance,'' [70] because the Proposed Order would direct the for-profit exchanges to draft the terms of the New Consolidated Data Plan.[71] The commenter concludes that the Commission should instead ''exercise its authority to directly assume control over the equity data plans, and appoint the SROs to . . . an advisory committee for the provision of the public market data stream,'' [72] ensure that filings by the Equity Data Plans meet the applicable regulatory standards, and adopt its proposed rule to rescind effective-on-filing procedures for NMS plan amendments.[73] Another commenter similarly asserts that the Proposed Order does not directly address the issues presented by the coexistence of SIPs and proprietary data feeds and that the Proposed Order would not sufficiently improve the governance of the Equity Data Plans.[74] This commenter suggests that the Commission itself should appoint the members of the SIPs' operating committees and include a majority of non-SRO members.[75]

Other commenters, however, support the Commission's view that improving the governance structure of the SIPs would likely improve the SIPs. One commenter offers support for the Commission's belief that the evolution of the exchanges into publicly held companies has created a conflict with their regulatory objectives in operating the SIPs.[76] One commenter states that it agrees that ''broader industry participation in the governance of the NMS Plans would be an effective tool to address these conflicts of interest and ensure that core data provided by the SIP[s] continues to improve.'' [77] Another commenter states that it believes that the Proposed Order would ''substantially improve the governance of the SIP, which should enhance both the operations of the SIP and the quality of SIP data.'' [78] And another commenter agrees that ''[i]mproving the governance structure should help ensure that the SIPs keep up with market data innovations in the future.'' [79] Several other commenters also express the view that the Commission's proposed changes to SIP governance would facilitate improvements to the SIPs.[80] One of these commenters states, ''the decision to give non-SROs voting rights and recognizing exchange operators as a single entity for purposes of voting is a positive step in helping to promote useful upgrades of the SIP.'' [81] Another commenter observes, ''[w]e anticipate that the proposed changes will help mitigate the conflicts of interest that are inherent to the current structure and will establish a solid, new foundation through which future enhancements to the SIPs, as necessary, can be more efficiently and fairly made.'' [82] One commenter agrees that ''reform of the current governance structure of the Equity Data Plans can better serve the needs of investors and other market participants.'' [83] Another commenter anticipates that ''reducing the concentration of power in large exchange groups makes SIP enhancements more likely.'' [84] Additionally, one commenter states that, as long as the Commission's final order ''explicitly directs [the] exchanges to take specific actions in the new Plan, without allowing them optionality to craft a different alternative—the current process ought to be sufficient to ensure substantial progress in this area.'' [85]

The Commission believes, as it stated in the Proposed Order, that addressing issues with the current governance structure of the Equity Data Plans is ''an

[65] *See* NYSE Letter, *supra* note 49, at 12.

[66] *Id.* at 16.

[67] *Id.*

[68] *Id.*

[69] *Id.* at 16–17.

[70] Healthy Markets Letter, *supra* note 40, at 14; *see also* Letter from Dan Jamieson (Mar. 29, 2020) (generally concurring with the comment letters submitted by Healthy Markets and Council of Institutional Investors (''CII''), *infra* note 74).

[71] *See id.* at 8–9, 14; *see also id.* at 15 (''While we appreciate the intent of the Proposed Order, it simply doesn't do enough, and in our view further entrenches the deeply flawed system for years to come.'').

[72] *Id.* at 14–15.

[73] *See* Effective-Upon-Filing Proposing Release, *supra* note 31.

[74] *See* Letter from Jeffrey P. Mahoney, General Counsel, CII, (Feb. 20, 2020), at 2 (''CII Letter''). *See also* Letters from Jeffrey T. Brown. Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab & Company, Inc. (Feb. 28, 2020), at 5 (''Schwab Letter'') (expressing concern that ''the proposed changes to the voting structure of the operating committees may still yield only the status quo''); Joseph Kinahan, Managing Director, Client Advocacy and Market Structure, TD Ameritrade, Inc. (Feb. 24, 2020), at 5 (''TD Ameritrade Letter'') (asserting that allowing the SROs to propose amendments to the New Consolidated Data Plan without buy-in from non-SROs ''may lead to substantially similar circumstances which exist currently''); Kelvin To, Founder and President, Data Boiler Technologies, LLC (Feb. 4, 2020), at 2, 4 (asserting that ''spinning off'' the SIPs from the exchanges would be better than prescribing a particular governance structure).

[75] *See* CII Letter, *supra* note 74, at 6.

[76] *See* Letter from Nathaniel N. Evarts, Managing Director, Head of Trading, Americas, et al., State Street Global Advisors (Feb. 28, 2020), at 2 (''State Street Letter'').

[77] Letter from Lisa Mahon Lynch, Associate Director, Global Trading, Wellington Management Company LLP (Feb. 28, 2020), at 1 (''Wellington Letter'').

[78] Letter from Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute (Feb. 28, 2020), at 6 (''ICI Letter'').

[79] SIFMA Letter, *supra* note 13, at 3; *see also id.* at 2 (''We support the Commission mandating these governance changes and recommend finalizing the order as quickly as possible . . . .'').

[80] *See* Letters from Michael Blasi, SVP, Enterprise Infrastructure, and Krista Ryan, VP, Associate General Counsel, Fidelity Investments (Feb. 28, 2020), at 2 (''Fidelity Letter''); Clearpool Letter, *supra* note 40, at 2; Allison Bishop, President, Proof Services LLC (Feb. 27, 2020), at 7 (''Proof Letter''); Anders Franzon, General Counsel, MEMX LLC (Feb. 28, 2020), at 3 (''MEMX Letter''); *see also* Letters from Sherry Madera, Chief Industry & Government Affairs Officer, Refinitiv (Feb. 27, 2020), at 3 (''Refinitiv Letter'') (asserting that the Proposed Order ''will significantly improve the health of our industry and all the market to take concrete, reasonable action to improve administrative, operational and fee-setting processes associated with market data and market access''); Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (Feb. 25, 2020), at 1 (''Virtu Letter'') (asserting that the Proposed Order ''represents an important step forward in enhancing the transparency and efficiency of the NMS [p]lan structure, and in eliminating potential conflicts of interest associated with the dissemination of consolidated equity market data''); Schwab Letter, *supra* note 74, at 4 (''The SEC's proposal to both consolidate equity market data plans and provide for non-SRO representation on the operating committees is both a welcome development and a substantial departure from the status quo of exchange-run market data plans.'').

[81] Clearpool Letter, *supra* note 40, at 2.

[82] Fidelity Letter, *supra* note 80, at 2.

[83] MEMX Letter, *supra* note 80, at 3.

[84] Proof Letter, *supra* note 80, at 7.

[85] Letter from Daniel Keegan, Head of North America Market Securities Services, Co-Head of Global Equities & Securities Services, Citigroup Global Markets Inc. (Mar. 2, 2020), at 4 (''Citi Letter'').

important *first step* in responding to concerns about the consolidated data feed.'' [86] And, as the Proposed Order explained, the Commission believes that the current governance structure of the Equity Data Plans is inadequate to respond to recent changes in the market and to the evolving needs of investors and other market participants,[87] and that, under the current governance structure, sufficient improvements to the consolidated market data feeds have not occurred.[88] Further, the Commission recognizes that the inadequacies in the governance model of the Equity Data Plans that it has identified may not be the sole cause of broader concerns about the consolidated feed. But, based on its extensive experience overseeing the Equity Data Plans and the national market system, as well as input received from market participants through numerous Commission initiatives,[89] the Commission believes that the governance structure of the Equity Data Plans contributes significantly to the broader concerns about the consolidated data feed.[90] Thus, the Commission believes that changes to the governance structure of the SIPs are appropriate to create a governance structure that will reduce obstacles to ongoing improvement of the consolidated market data feeds in ways that the current governance structure of the Equity Data Plans has not. The Commission recognizes that additional operational changes may also be appropriate in order to improve SIP functionality, and believes that making these governance changes will facilitate decision-making regarding operational changes.[91]

As noted above, certain commenters question whether the Commission's proposed changes to SIP governance will, in fact, improve the governance of the SIPs, either because the Commission has not, in their view, appropriately considered the conflicted interests of the non-SRO members of the operating committee of the proposed New Consolidated Data Plan,[92] or because the Commission has not removed the conflicted SROs from the process of creating the New Consolidated Data Plan.[93] Regarding the conflicts of interests of non-SROs, the Commission recognizes that each representative of a buyer of market data would also have an inherent conflict of interest in serving on the operating committee of the Plans.

With respect to both SROs and non-SRO representatives, it is not possible to completely eliminate conflicts from the governance structure of the existing Equity Data Plans or the New Consolidated Data Plan. But the Commission is attempting to balance the views of the exchanges, which are subject to inherent conflicts of interest and which also have dominant voting power on the Equity Data Plans (as well as on the New Consolidated Data Plan), with the views of non-SROs, which would also be subject to conflicts of interest.[94] The Commission believes that a more diverse set of perspectives from full voting members of the operating committee of the New Consolidated Data Plan would improve the governance structure of the SIPs and would help to ensure that the operating committee benefits from these views *before* it takes action or files proposed plan amendments with the Commission.

In addition, the Commission believes that broadening the perspectives represented on the operating committee by including non-SROs would be beneficial in providing more meaningful inclusion of key stakeholders' views in New Consolidated Data Plan decision-making. As the Plans play an important role in the national market system, and because the Plans' decisions frequently place financial and operational burdens on non-SRO market participants, the non-SROs' representation as voting members, combined with a reallocation of voting power, would support the goals of the New Consolidated Data Plan by ensuring that a broader range of relevant opinions and perspectives have voting representation on the operating committee, which the Commission believes will help to facilitate enhanced decision-making and innovation in the provision of equity market data.

Moreover, the Proposed Order specifically acknowledged that the New Consolidated Data Plan should also include provisions to address conflicts of interest of non-SRO representatives on the operating committee.[95] As discussed in more detail below, a conflicts-of-interest policy would apply to non-SRO representatives and would require disclosures similar to those of SRO representatives.[96]

(b) The Relationship Between the Proposed Order and the Commission's Infrastructure Proposal

Two commenters argue that significant unexplained inconsistencies exist between the Proposed Order and the Commission's Infrastructure Proposal.[97] The commenters assert that the Proposed Order would create a single consolidator for equity market data, while the Infrastructure Proposal would replace this system with a system of multiple competing consolidators.[98] One of the commenters also argues that the Proposed Order advocates changes in the governance model because these changes would lead to a distributed SIP model and an expansion of the categories of data disseminated, and that the Infrastructure Proposal instead does not mandate distributed data dissemination by any consolidator and replaces voluntary consideration of expanded data content with ''government mandated depth-of-book and auction data.'' [99] That commenter further argues that the Infrastructure Proposal would make ''extensive changes in the scope of authority vested in the operating committee of the New Consolidated Data Plan''; that the Infrastructure Proposal ''would apparently nullify, or at least undermine, the authority of the New Consolidated Data Plan to continue to act as a data consolidator''; and that the Infrastructure Proposal would ''vest the operating committee with unprecedented new authority to regulate SRO fees far beyond what is included in the consolidated feed operated by the New Consolidated Data Plan.'' [100] And the commenter states that, while the Proposed Order does not directly address market structure, the Infrastructure Proposal would ''significantly impact substantive provisions of Regulation NMS,'' but that the Commission has not provided an analysis of how these market structure

[86] Proposed Order, *supra* note 4, 85 FR at 2173.

[87] *See* Proposed Order, *supra* note 4, 85 FR at 2168.

[88] *See* Proposed Order, *supra* note 4, 85 FR at 2168.

[89] *See supra* note 62 and accompanying text.

[90] *See* Proposed Order, *supra* note 4, 85 FR at 2169–73 (discussing the Commission's concerns regarding the Equity Data Plans' provision of equity market data).

[91] Separately, the Commission has proposed to make specific changes to the *operations* of the SIPs through the Commission's market data infrastructure proposal. *See* Infrastructure Proposal, *supra* note 36.

[92] *See* NYSE Letter, *supra* note 49.

[93] *See* Healthy Markets Letter, *supra* note 40; CII Letter, *supra* note 74.

[94] *See infra* Section II.E. The Commission also believes that many non-SROs, as subscribers to SIP data, would have incentives to improve the usefulness of SIP offerings.

[95] Proposed Order, *supra* note 4, 85 FR at 2185; *see also infra* Section II.E.1.

[96] *See infra* Section II.E.1.

[97] *See* Nasdaq Letter, *supra* note 45, at 2–3, 5; Letter from Elizabeth K. King, Chief Regulatory Officer, ICE, and General Counsel and Corporate Secretary, NYSE (Apr. 23, 2020), at 3–4 (''NYSE Letter 2'').

[98] Nasdaq Letter, *supra* note 45, at 2; NYSE Letter 2, *supra* note 97, at 3.

[99] Nasdaq Letter, *supra* note 45, at 2.

[100] *Id.* at 2; *see also id.* at 11–12.

changes may affect aspects of the Proposed Order.[101]

The commenters argue that the alleged inconsistencies between the Proposed Order and the Infrastructure Proposal work to deny commenters a meaningful opportunity to comment on either proposal, and that commenters will therefore be denied procedural rights guaranteed by the Administrative Procedure Act (''APA'').[102] One of the commenters further urges the Commission to extend the comment period for both the Proposed Order and the Infrastructure Proposal,[103] and to issue a statement that articulates how the Proposed Order and the Commission's Infrastructure Proposal are intended to work together and that reconciles the conflicts between the two proposals.[104] The other commenter argues that the Commission has offered no explanation for why the Proposed Order remains necessary in light of the Infrastructure Proposal,[105] and asks that the Commission withdraw both proposals and propose a ''single, unified, and well-reasoned rule'' to address the issues.[106]

The Commission disagrees with the view that there are inconsistencies between the Proposed Order and the Infrastructure Proposal. The two proposals address distinct aspects of the SIPs. The Proposed Order, as discussed above, addressed only the governance structure of the Plans that oversee the SIPs, and it did not address the core operational structure of the SIPs—including the content of SIP data products and the method by which such NMS stock information is collected, consolidated, and disseminated—or whether there would continue to be multiple SIPs for equity market data. Contrary to the commenter's assertion, the Commission did not propose governance changes in order to bring about specific operational changes to the SIPs, such as a distributed SIP model or specified expansion of data content. Rather, the governance changes are designed to address the Plans' inefficiencies and the inherent conflicts of interest of the SROs, which have affected the provision of core data. The Commission believes that an improved governance structure should foster improvements to the SIPs; however, in the Proposed Order, it did not specify what those improvements might be. In contrast, specific operational changes that the Commission has proposed to the SIPs are contained within the Infrastructure Proposal.

Moreover, while the Proposed Order would require that the three existing Equity Data Plans be replaced by the single New Consolidated Data Plan, it clearly contemplated that processors—plural—could continue to exist.[107] Accordingly, the Commission disagrees with the argument that the Proposed Order would require the Plans to retain a processor, but that the Infrastructure Proposal would subsequently ''nullify, or at least undermine the authority of the New Consolidated Data Plan to continue to act as a data consolidator.'' [108] For the same reason, although one commenter argues that the Proposed Order seeks to mitigate a problem that the Infrastructure Proposal hopes to eliminate,[109] this Order addresses governance issues that are not addressed in the Infrastructure Proposal. Should the Commission adopt the operational changes contemplated by the Infrastructure Proposal, the governance structure of the operating committee of the New Consolidated Data Plan would be applicable to the new operational structure for the equity market's data collection, consolidation, and dissemination and any changes would be subject to the augmented majority voting structure of the new plan, as discussed below.

Further, the Commission disagrees with one commenter's view that, through the Proposed Order and the Infrastructure Proposal, the Commission proposes to create a ''government-sponsored pricing consortium.'' [110] This commenter argues that—because the Proposed Order requires the operating committee to assess the marketplace for equity market data and ensure that SIP data is priced in a manner that is fair and reasonable and not unreasonably discriminatory, and because the Infrastructure Proposal mandates inclusion of DOB and exchange auction data—these proposals, taken together, would promote a framework where fees would be set by a committee of data providers and consumers. But under the Proposed Order—as under the current Equity Data Plans—the operating committee of the New Consolidated Data Plan would file with the Commission proposals to create and set prices for SIP data products, which would be reviewed consistent with the requirements of Rule 608 of Regulation NMS. And exchanges would be able, as they are now, to file with the Commission proposals to create and set prices for proprietary data products, which would be reviewed consistent with the requirements of Section 19(b) of the Act and Rule 19b–4 thereunder.[111] The Commission therefore disagrees that the changes contemplated in the Proposed Order, even if combined with the changes contemplated in the Infrastructure Proposal, would create a pricing consortium.

Other commenters also addressed the relationship between the Commission's Proposed Order and the Commission's Infrastructure Proposal. One commenter encourages the Commission to combine governance and infrastructure into a single package of reforms.[112] Another commenter states that the Commission should coordinate changes in governance with changes to the system for disseminating consolidated data.[113] And other commenters express the view that changes to market data infrastructure are necessary in addition to changes to SIP governance.[114] As

[101] *Id.* at 2.

[102] *See* Nasdaq Letter, *supra* note 45, at 3–5; NYSE Letter 2, *supra* note 97, at 4–5.

[103] *See* Nasdaq Letter, *supra* note 45, at 3. The Commission extended the comment period for the Proposed Order from February 28, 2020, to March 20, 2020. *See* Securities Exchange Act Release No. 88340 (Mar. 6, 2020), 85 FR 14987 (Mar. 16, 2020).

[104] *See id.* at 2–3; *see also id.* at 2 (asserting that the Commission has not provided an analysis of how the market structure changes of the Infrastructure Proposal might affect aspects of the Proposed Order, such as the mandate to create a single SIP).

[105] NYSE Letter 2, *supra* note 97, at 4.

[106] NYSE Letter 2, *supra* note 97, at 2, 5.

[107] *See, e.g.,* Proposed Order, *supra* note 4, 85 FR at 2182 (''[t]he Commission believes that the New Consolidated Data Plan operating committee's role should also include selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of . . . plan processors''), 2185 (''the operating committee of the New Consolidated Data Plan would need to, among other things, select plan processors'').

[108] Nasdaq Letter, *supra* note 45, at 2.

[109] NYSE Letter 2, *supra* note 97, at 4.

[110] Nasdaq Letter, *supra* note 45, at 11–12.

[111] 15 U.S.C. 78s(b); 17 CFR 240.19b–4.

[112] *See* CII Letter, *supra* note 74, at 3; *see also* MEMX Letter, *supra* note 80, at 3 (recommending that the Commission consider the Proposed Order and the Infrastructure Proposal together to ensure that issues around the content of the SIP and market data in general are appropriately considered).

[113] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (Mar. 4, 2020), at 1–2 (''IEX Letter'') (''We believe that progress on both fronts—governance and changing the system for distributing consolidated data—is critical to addressing broker, fiduciary, and investor concerns about market data.'').

[114] *See, e.g.,* Letter from Hubert De Jesus, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc. (Feb. 28, 2020) at 1 (''BlackRock Letter'') (supporting the Commission's Proposed Order, but noting that ''effective governance only addresses one dimension of market data regulations'' and that ''more comprehensive reforms are warranted''); Virtu Letter, *supra* note 80, at 4 (''While we strongly support the efforts of the agency to make enhancements to the NMS [p]lans governing SIP data, we urge the Commission to take even bolder steps to introduce needed reforms in the regulatory construct governing market data and market access.''); Bloomberg Letter, *supra* note 40, at 1 (encouraging the Commission to move forward on plan governance issues, as well as continue the Commission's broader efforts, including the

discussed above, the Commission has proposed to address its concerns with two aspects of consolidated equity market data—the governance of the SIPs and the operation of the SIPs—with different remedies. And while the Commission has proposed to modify the governance and operations of the SIPs separately with different remedies, each of these efforts has been undertaken in furtherance of the same, broader goal: To ensure the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information,'' consistent with Section 11A of the Act.[115]

3. The Commission's Proposals Are Consistent With the Act and Will Benefit Investors and Support the Regulatory Structure of Regulation NMS

One commenter argues that the Proposed Order, combined with the Infrastructure Proposal, would ''reflect a fundamentally anti-competitive transformation that will harm investors, particularly Main Street investors, stifle innovation, and undermine the regulatory structure established by Regulation NMS.'' [116] This commenter further asserts that ''there is no doubt that expanding the breadth and scope of products offered under the SIP would fundamentally change the balance between competition and regulation established by Regulation NMS in 2005,'' which, the commenter argues, ''sought to avoid creation of a 'totally centralized system that loses the benefits of vigorous competition and innovation among individual markets,' and therefore 'allow[ed] market forces, rather than regulatory requirements, to determine what, if any, additional quotations outside the NBBO are displayed to investors.' '' [117] This commenter argues that, instead of requiring the SROs to file the New Consolidated Data Plan, the Commission should review the SIPs to ensure that they only include the data needed to meet regulatory mandates, which in turn must match the needs of investors.[118]

As the Commission stated in the Proposed Order, it believes that changes to the current SIP governance model are appropriate precisely because the Equity Data Plans, under the current governance structure, have not taken sufficient measures to update the SIPs to reflect innovations in market data in response to evolving markets and the changing needs of investors.[119] Given the Congressional mandate that the Commission ensure the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information'' [120]—and the Commission's ongoing monitoring and evaluation of Equity Data Plan developments [121]—the Commission believes that the structure governing the provision of SIP data should be improved to better meet the needs of market participants in light of changes in the markets since the adoption of Regulation NMS. And the Commission believes that the governance changes addressed in this Order will facilitate those improvements.

4. The Need for a Single New Consolidated Data Plan

Several commenters oppose the proposed creation of a single New Consolidated Data Plan.[122] These commenters assert that the Commission failed to adequately consider the cost implications of consolidating the three separate Equity Data Plans.[123] One of these commenters states that the Commission both overestimates the costs of the Equity Data Plans and underestimates the implementation cost associated with the New Consolidated Data Plan.[124] This commenter believes that the Commission is required under Section 3(f) of the Act to consider ''whether the [proposed rulemaking] will promote efficiency, competition, and capital formation.'' [125] To meet this requirement, this commenter states, ''the Commission must consider the economic effects of a proposed rule, including the costs of implementation.'' [126] This commenter further states that the Commission ''asserts without support that the current administrative structure of the [Equity Data Plans] creates 'redundancies, inefficiencies, and inconsistancies' [sic] that necessitates consolidating the Plans under a single Plan with one [a]dministrator.'' [127] This commenter argues that, as recognized in the Proposed Order, the Equity Data Plans ''already largely function as one plan today'' with ''the same distribution formula, legal representation, and other professional services,'' and that the Participants and advisory committee ''do not incur additional costs for the three Plans to meet at the same time, compared to one plan.'' [128] The commenter also states that the SIP operating committees and advisory committees each have identical membership, and their quarterly meetings are held concurrently.[129]

This commenter further asserts that the SROs would need to expend significant resources hiring outside counsel to assist with tasks related to the creation and adoption of the New Consolidated Data Plan, including ''negotiating and drafting the New [Consolidated Data] Plan, drafting contracts with the SIP processors, replacing current contracts with data recipients, and filing to obtain Commission approval of the draft new Plan.'' [130] Additionally, this commenter asserts that ''only the SROs would face the financial burden in Plan consolidation development'' despite being ''forced to abdicate decision-making to non-SROs'' under the New Consolidated Data Plan.[131] Moreover, the commenter states that the New Consolidated Data Plan would ''not reduce the costs of the Participants to produce—nor the costs of the processors to aggregate and distribute—consolidated market data for Tapes A, B, and C.'' [132] This commenter concludes that creating a single New Consolidated Data Plan would not ''provide meaningful cost-savings that would

Infrastructure Proposal). One commenter also expressed support for enhancements both to the governance structure of the Equity Data Plans and the content and delivery of market data through the consolidated tape. *See* Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc. (Feb. 28, 2020), at 2 (''Cboe Letter'').

[115] 15 U.S.C. 78k–1(c)(1)(B).

[116] Nasdaq Letter, *supra* note 45, at 5, 8, 11–12.

[117] *Id.* at 12 (quoting Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005)).

[118] *See id.* at 12.

[119] *See, e.g.,* Proposed Order, *supra* note 4, 85 FR at 2168.

[120] 15 U.S.C. 78k–1(c)(1)(B).

[121] *See supra* note 10 and accompanying text.

[122] *See, e.g.,* Cboe Letter, *supra* note 114, at 12; Nasdaq Letter, *supra* note 45, at 4, n.11; NYSE Letter, *supra* note 49, at 18–19.

[123] *See, e.g.,* Cboe Letter, *supra* note 114, at 12; Nasdaq Letter, *supra* note 45, at 4, n.11; NYSE Letter, *supra* note 49, at 18–19.

[124] *See* NYSE Letter, *supra* note 49, at 18.

[125] *See id.;* 15 U.S.C. 78c(f). Another commenter states that it agrees with the commenter above ''to the extent that they focus on the Commission's clear obligations to assess the economic effects of its proposed action.'' *See* Nasdaq Letter, *supra* note 45, at 4, n.11.

[126] *See* NYSE Letter, *supra* note 49, at 18.

[127] *See id.* at 19.

[128] *See id.*

[129] *See id.*

[130] *See id.* at 19.

[131] *See id.*

[132] *See id.*

support lowering the fees charged for market data products.'' [133]

The Commission disagrees with this commenter's position for several reasons. By its terms, Section 3(f) of the Act does not apply to the Commission's issuance of an order such as this one requiring the Participants to file a new NMS plan.[134] Moreover, the particular costs of implementing the New Consolidated Data Plan will depend on the specific choices made by the Participants as they consider how to implement this Order. And when the Participants file the New Consolidated Data Plan, it will be considered by the Commission under Rule 608 of Regulation NMS. Among other things, Rule 608 requires every national market system plan to be accompanied by an analysis of the impact on competition,[135] which is then published for comment and evaluated by the Commission.[136] In this Order, the Commission considers the overall scope of the implementation costs as well as the costs of developing the New Consolidated Data Plan.

In publishing the Proposed Order for comment, the Commission asked interested parties to ''submit written presentations of views, data, and arguments concerning the Proposed Order,'' including comments on ''the likely economic consequences'' of issuing a final order to the SROs containing the provisions in the Proposed Order.[137] While commenters did not provide quantitative data on development or implementation costs for creating a single New Consolidated Data Plan, the Commission has considered those costs qualitatively by leveraging its oversight experience of the Equity Data Plans and examining the qualitative factors raised by a broad range of market participants.

The Commission acknowledges certain efforts of the Equity Data Plans to operate jointly regarding certain administrative elements.[138] But the Commission believes that redundancies, inefficiencies, and inconsistencies remain under the current administrative structure of the Equity Data Plans that can be significantly reduced under a single New Consolidated Data Plan. Some commenters agree with the Commission's view and state that maintaining three separate Equity Data Plans is inefficient and creates redundant efforts on the part of the operating and advisory committee members that unnecessarily burden ongoing improvements to the SIPs and that contribute to certain duplicative costs.[139] As one commenter states, the ''historical reasons that resulted in the three plans for NYSE-listed, Nasdaq-listed and other exchange-listed stocks no longer exist today in a post-Regulation NMS world.'' And this commenter opines that ''consolidation is a good first step to reforming the current market data infrastructure.'' [140]

One commenter states that a single New Consolidated Data Plan ''will promote efficiencies, especially in terms of streamlining the operation of the SIP feeds.'' [141] Another commenter states that consolidating the Plans would ''lead to greater efficiency in meeting the purposes of Section 11A of the Act'' and ''reduce confusion for investors.'' [142] Another commenter states that the differences between the Equity Data Plans are ''substantial and create unnecessary compliance complexity for SIP data users'' in the areas of ''audit practices and requirements[,] entitlement controls, administrative usage policies, free trial policy, non-professional usage, [and] qualifications as non-professional users.'' [143] Another commenter states that the needless duplication under the current framework results in ''two different sets of staff to deal with, two sets of contracts, two sets of reporting requirements, and two separate audit teams to manage.'' [144] The same commenter states that ''there is no reason for the three distinctive plans to exist,'' and believes that combining the two administrators along with their policies and staffs under a single New Consolidated Data Plan would ''significantly decrease the administrative burden'' that SIP consumers experience.[145]

The Commission agrees with these commenters' statements for the reasons discussed below and believes that creating a single New Consolidated Data Plan with the governance structure discussed below would simplify the administration of the Equity Data Plans' operations to facilitate functional improvements to the provision of equity market data, and would further efforts to ensure that core data meets on a continuing basis the needs of market participants and furthers the objectives of Section 11A of the Act.[146]

The Commission believes that a single New Consolidated Data Plan would simplify the Plans' billing structure to require only one inventory reporting system, one billing method, one reporting obligation for data subscribers, and one plan administrator payment for the Participants. The Commission believes that the simplified billing structure would provide the Plans with a single standardized and comprehensive view of SIP data costs for subscribers. Additionally, the Commission expects that, instead of two auditing teams under the Equity Data Plans, only one auditing team would be necessary for SIP data usage under the New Consolidated Data Plan. Finally, the Commission anticipates that the Plans would no longer need to maintain separate books and records for the Equity Data Plans' businesses (including separate plan websites and secure web portals for Participants), to file with the Commission separate (and often duplicative) plan amendments regarding some aspects of the Equity Data Plans,[147] or to devote additional

[133] *See id.*

[134] ''Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.'' Section 3(f) of the Act, 15 U.S.C. 78c(f).

[135] 17 CFR 242.608(a)(4)(ii)(C).

[136] 17 CFR 242.608(b).

[137] *See* Proposed Order, *supra* note 4, 85 FR at 2165.

[138] *See id.* at 2182. The Commission believes that the current examples of joint operation of the Plans demonstrates that there are certain areas of operation for which creating a single New Consolidated Data Plan would be expected to give rise to minimal, if any, additional implementation costs.

[139] *See, e.g.,* Fidelity Letter, *supra* note 80, at 3; IEX Letter, *supra* note 113, at 3; MEMX Letter, *supra* note 80, at 2; Schwab Letter, *supra* note 74, at 5; SIFMA Letter, *supra* note 13, at 3; Wellington Letter, *supra* note 77, at 2. While one commenter agrees with the Commission's view that creating a single New Consolidated Data Plan is ''likely to promote efficiency and cost-savings,'' this commenter believes that ''those efficiencies may be considerably undermined'' by the Infrastructure Proposal. *See* Nasdaq Letter, *supra* note 45, at 4. *See supra* Section II.B.2 for a discussion on the relationship between this Order and the Infrastructure Proposal.

[140] *See* SIFMA Letter, *supra* note 13, at 3.

[141] *See* State Street Letter, *supra* note 76, at 2.

[142] *See* Letter from Jennifer W. Han, Associate General Counsel, Managed Funds Association, and Adam Jacobs-Dean, Managing Director, Global Head of Markets Regulation, Alternative Investment Management Association (Feb. 28, 2020), at 2 (''MFA/AIMA Letter'').

[143] *See* Schwab Letter, *supra* note 74, at 5–6.

[144] *See* Refinitiv Letter, *supra* note 80, at 2.

[145] *See id.*

[146] *See* 15 U.S.C. 78k–1(c)(1)(B).

[147] One commenter suggests as an alternative consideration to the New Consolidated Data Plan that the Commission amend its rules to allow filings made by the Equity Data Plans to be filed with the Commission as a single filing for all three Equity Data Plans. *See* Cboe Letter, *supra* note 114, at 12–13. The Commission agrees with the commenter that the Equity Data Plans' filing process is one aspect of the many inefficiencies that need to be addressed under the New Consolidated Data Plan. This commenter also highlights the inefficiencies of the SRO rule filing process under Section 19(b) of the Act and Rule 19b–4 thereunder. *See* Cboe

personnel resources to coordinate and facilitate three separate Equity Data Plans.[148]

The Commission believes that reducing the existing redundancies, inefficiencies, and inconsistencies through a single New Consolidated Data Plan should further the goals of Section 11A of the Act and provide meaningful cost savings in the long term for SROs and for other market participants by consolidating the operational costs incurred by the administration of three separate Equity Data Plans. Whereas market participants today must navigate their obligations under three separate Plans, a single New Consolidated Data Plan would remove impediments to the efficient operation of the national market system by providing the foundation for the application of consistent policies,[149] procedures, terms,[150] and conditions. This should provide for a more streamlined approach to the administration and provision of consolidated equity market data and thereby reduce the costs imposed on other market participants, including SIP data subscribers.[151]

In addition, the Commission believes that the economic effects of creating a single New Consolidated Data Plan are likely to provide long-term cost-savings for the SROs in the administration of the Plans, as well. The Commission acknowledges that SROs would incur costs in the process of creating the New Consolidated Data Plan. One commenter asserts that, given the significant resources that would need to be diverted to drafting the New Consolidated Data Plan, the effort would likely increase rather than decrease inefficiencies.[152] Three commenters highlight prior experience in the joint development of an NMS plan as instructive for the significant amount of time and resources devoted to the creation a new NMS plan.[153]

However, while it is likely that initially, the implementation cost of combining the Equity Data Plans may exceed the short-term cost savings from the reduction of existing redundancies, inefficiencies, and inconsistencies described above, the Commission anticipates that ongoing cost savings would continue to accrue over the period that the New Consolidated Data Plan is likely to remain in effect, thereby providing long-term cost savings. In addition, with respect to the costs of creating the New Consolidated Data Plan, we note that SROs, as the parties that have been operating the NMS plans, can provide unique insight in formulating the specific terms and provisions of the New Consolidated Data Plan. The Commission also believes that the plan development costs will differ significantly from those incurred in the development of prior NMS plans. Specifically, the Equity Data Plans have been in existence for over 30 years. This should provide the Participants with the requisite experience to limit the scope of the costs to create the New Consolidated Data Plan.[154] In addition, the Participants may incorporate some or all of the current operational provisions of the existing Equity Data Plans into the New Consolidated Data Plan.[155] Furthermore, as contemplated in the Proposed Order,[156] the New Consolidated Data Plan could retain the same SIP processors under the same terms and conditions, thereby eliminating what otherwise would be a significant burden for the development of the New Consolidated Data Plan.[157] Thus, the Commission anticipates that, at least initially, most of the detailed provisions relating to the operation of the existing Equity Data Plans could be imported into the New Consolidated Data Plan without substantial effort or great cost.[158]

C. Voting Rights on the New Consolidated Data Plan Operating Committee

In its Proposed Order, the Commission set forth specific governance provisions and the voting structure to be included in the New Consolidated Data Plan to help to address certain concerns it identified relating to the provision of consolidated equity market data under the existing Equity Data Plans. The proposed

Letter, *supra* note 114, at 13, n.24. While the Commission appreciates the views shared by the commenter on the SRO rule filing process, more generally, we do not believe that such arguments support keeping three separate Equity Data Plans, which is the issue addressed in this Order. Indeed, consolidating NMS plan filings would be facilitated by creating a single New Consolidated Data Plan.

[148] *See, e.g.,* Refinitiv Letter, *supra* note 80, at 2; Schwab Letter, *supra* note 74, at 5–6.

[149] For example, the Commission understands that there are currently differences among the Equity Data Plans in the policies related to, among other things, the following: Consolidated volume, audit look-back period, entitlement review, entitlement control, disaster recovery, non-display usage, service facilitator, administrative usage, quote meter, and controlled versus uncontrolled products.

[150] *See supra* note 143 (commenter stating that differences among the qualifications as non-professional users create compliance complexity for SIP data users). Additionally, exchanges have acknowledged the administrative burden associated with determining the professional and non-professional status of broker-dealers' customers. *See, e.g.,* NYSE Sharing Data-Driven Insights—Stock Quotes and Trade Data: One Size Doesn't Fit All (Aug. 22, 2019), *available at https://www.nyse.com/equities-insights#20190822* (last accessed Apr. 20, 2020) (''Subscribers pay different rates for the product based on whether the individual viewing the data is deemed a 'professional' or 'non-professional' user. This is a policy that has provided steep discounts for Main Street investors, but has created complex administrative burdens for brokers.''); Nasdaq Total Markets: A Blueprint for a Better Tomorrow (Apr. 2019), at 4, *available at https://www.nasdaq.com/docs/Nasdaq_TotalMarkets_2019_2.pdf* (stating that the distinctions between ''professional'' and ''non-professional'' users ''have become arbitrary and more complex than is necessary and create undue administrative burden to manage. We should modernize the user definitions to achieve the same general goals while streamlining the administrative burden.'').

[151] *See* State Street Letter, *supra* note 76, at 2; TD Ameritrade Letter, *supra* note 74, at 2; Virtu Letter, *supra* note 80, at 2.

[152] *See* Cboe Letter, *supra* note 114, at 12.

[153] *See* Cboe Letter, *supra* note 114, at 12, n.22; Nasdaq Letter, *supra* note 45, at 15; NYSE Letter, *supra* note 49, at 19, n.46. As discussed below, the Commission acknowledges that there will be a transition period with additional costs to onboard a new independent Plan administrator pursuant to this Order. *See infra* Section II.D.

[154] For example, the Commission believes that the Participants' and the advisory committee members' longstanding experience in the Plans would reduce the costs for identifying Plan provisions that could be harmonized or combined under a New Consolidated Data Plan. In fact, based on information the Commission obtained through its oversight of the Plans, the Commission is aware that the Participants and the advisory committee members of the Equity Data Plans have already engaged in some recent efforts to facilitate standardization of the policies of the Equity Data Plans.

[155] The Commission believes that the New Consolidated Data Plan submitted by the SROs under this Order should harmonize inconsistencies among, and combine duplicate provisions in, the Equity Data Plans that do not unavoidably arise from the existence of separate and distinct SIPs. *See* Proposed Order, *supra* note 4, 85 FR at 2186. The Commission believes that this exercise would be incorporated into the process of creating a single New Consolidated Data Plan and provide the administrative benefits described above.

[156] *See supra* note 107 (quoting statements from the Proposed Order that the existing SIP processors could continue to exist under the New Consolidated Data Plan).

[157] The Commission's requirement to create the New Consolidated Data Plan does not contemplate changes to the production, aggregation, or distribution of consolidated market data. Thus, the Commission does not anticipate that any costs associated with the production of market data would be affected. Instead, the direct cost savings envisioned by the Commission are likely to result from the reduction of existing redundancies, inefficiencies, and inconsistencies related to the operation of three separate Equity Data Plans.

[158] The Commission does not anticipate that substantial revisions or re-negotiations of existing SIP subscriber contracts would be necessary to transition to the New Consolidated Data Plan. For example, the Commission understands that the SIP contracting process is automated (*i.e.,* an online form that uses conditional logic to determine the data licensing requirements of a subscriber), which should ease the electronic transfer of existing SIP subscriber requirements to the New Consolidated Data Plan. The Commission did not receive comments on the level of burden to replace current contracts with the New Consolidated Data Plan.

governance provisions include: (i) An allocation of voting rights to unaffiliated exchanges and exchange groups, along with the possibility of additional voting power based on market share, (ii) the inclusion of non-SRO voting members on the operating committee of the New Consolidated Data Plan, specifying the categories to be represented and a nomination and selection process, and (iii) the voting requirements for action under the New Consolidated Data Plan.

1. Voting Rights for SROs

(a) The Need for the Allocation of Voting Power by Exchange Group and Market Share

As it stated in the Proposed Order, the Commission believes that exchange consolidation has altered the relative voting power of SROs such that exchange groups under common management now have greater voting power with respect to plan governance. Exchanges that historically had only one vote on NMS plans have now been consolidated into exchange groups that can control blocks of four or five votes.[159] Consequently, any two exchange groups can now command a majority of votes,[160] and the relative voting power of unaffiliated SROs has been diluted over time. Accordingly, the Commission continues to believe that changing the current voting structure would be beneficial and would promote the goals of Section 11A of the Act [161] with respect to equity market data.

To address the disproportionate influence that the exchange groups have had on the operation of the existing Equity Data Plans, in its Proposed Order, the Commission proposed that voting rights in the New Consolidated Data Plan should be allocated so that each unaffiliated SRO [162] and exchange group has one vote on the operating committee, with a second vote provided if the exchange group or unaffiliated SRO has a market center or centers that trade more than 15 percent of consolidated equity market share [163] for four of the six consecutive months preceding a vote of the operating committee.

A number of commenters share the Commission's concern about the concentration of voting power in exchange groups and support the Commission's proposal to rebalance the relative voting power on the New Consolidated Data Plan's operating committee.[164] One commenter argues that the current voting structure of the Equity Data Plans reduces incentives for SROs to ''agree on changes that could impact the proprietary interests of one or two exchange groups.'' [165] Another commenter ''strongly supports reducing the emphasis on voting based on individual exchange medallions,'' stating, ''this aspect of the proposed order is key to addressing the inherent conflicts of interest that exist relating to SIP governance.'' [166] A third commenter supports the proposed voting allocation structure by noting that the proposal ''would modernize the voting structure . . . while facilitating the fair representation of all participants on the operating committee.'' [167] One commenter agrees, stating that the proposal ''importantly removes some of the perverse incentives for exchange groups to acquire or 'light up' new exchange medallions.'' [168] Another commenter adds that the proposal would ''reward exchanges with market share while balancing potential fluctuations in market share and preventing further consolidation of voting power.'' [169]

Several commenters, however, oppose the Commission's proposal.[170] Specifically, these commenters argue that the Commission's proposal is inconsistent with the APA [171] and with the Commission's historical treatment of the exchanges, in which affiliated exchanges have been treated individually for regulatory purposes.[172] One of these commenters states that the Commission's proposal ''disenfranchises individual exchanges,'' arguing that, ''[t]he concept of 'exchange group' is found nowhere in the statute or SEC rules, but operates to deprive SROs of the votes that they would otherwise have.'' [173] This commenter further asserts that ''one can easily see a scenario in which a proposal could be adopted even though a majority of SEC licensed SROs disapproved of the proposal.'' [174] Another commenter states that the Commission ''fails . . . to explain why the unified votes of multiple, independent SROs are less deserving or meaningful than the votes of unaffiliated SROs.'' [175] This commenter similarly argues that, ''[e]ach SRO participating in the proposed New [Consolidated Data] Plan would have independent obligations under the Exchange Act and the Plan with respect to administering SIPs, irrespective of whether the SRO is affiliated with an exchange group. Yet the impact of the Proposed Order would be to curtail the independence of affiliated SROs by, in effect, requiring that they vote as a bloc.'' [176] This commenter further states that the proposal would result in ''otherwise equal and independent SROs . . . [having] unequal voting power based on their corporate affiliations. And it assumes that the degree of voting power inequity should increase or decrease based on the SRO-affiliate group sizes.'' [177]

[159] For example, for years the NYSE held a single exchange license and therefore had only one vote on the Equity Data Plans' operating committees, despite having approximately 80 percent of the trading volume in NYSE-listed securities. Today, the NYSE group of SROs as a whole has approximately 30 percent market share of trading in NYSE-listed securities, but because the NYSE group holds five exchange licenses, it has five votes and significantly more influence over Equity Data Plans' decisions than before. *See* Cboe U.S. Equities Volume Data, *available at https://markets.cboe.com/us/equities/market_share/* (last accessed Apr. 17, 2020) (month-to-date volume summary as of Apr. 17, 2020).

[160] Specifically, the three exchange groups currently represent 14 of the 17 votes on the operating committees of the Equity Data Plans, and any two exchange groups together command a minimum of 9 votes.

[161] 15 U.S.C. 78k–1.

[162] For purposes of this Order, an ''unaffiliated SRO'' means an SRO that is not part of the same corporate ownership group as other SROs. The currently unaffiliated SROs are FINRA, IEX, LTSE, and MEMX.

[163] As defined in the Proposed Order, and for purposes of this Order, the term ''consolidated equity market share'' means the average daily dollar equity trading volume of an exchange group or unaffiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SROs, as reported by the Equity Data Plans or the New Consolidated Data Plan. *See* Proposed Order, *supra* note 4, 85 FR at 2175, n.141.

[164] *See, e.g.,* Citi Letter, *supra* note 85, at 3; Clearpool Letter, *supra* note 40, at 3–4; Fidelity Letter, *supra* note 80, at 4; ICI Letter, *supra* note 78, at 4–5; IEX Letter, *supra* note 113, at 2; MFA/AIMA Letter, *supra* note 142, at 3; Letter from Christopher Solgan, VP, Senior Counsel, MIAX Exchange Group (Mar. 3, 2020), at 2 (''MIAX Letter''); MEMX Letter, *supra* note 80, at 3; SIFMA Letter, *supra* note 13, at 4; Refinitiv Letter, *supra* note 80, at 2; Letter from Mehmet Kinak, Vice President & Global Head of Systematic Trading & Market Structure, and Jonathan D. Siegel, Vice President & Senior Legal Counsel, T. Rowe Price Associates, Inc. (Feb. 24, 2020), at 2 (''T. Rowe Price Letter''); Virtu Letter, *supra* note 80, at 2.

[165] IEX Letter, *supra* note 113, at 2.

[166] MEMX Letter, *supra* note 80, at 4.

[167] MIAX Letter, *supra* note 164, at 2.

[168] Citi Letter, *supra* note 85, at 3.

[169] SIFMA Letter, *supra* note 13, at 4.

[170] *See, e.g.,* Cboe Letter, *supra* note 114; Nasdaq Letter, *supra* note 45; NYSE Letter, *supra* note 49.

[171] *See* NYSE Letter, *supra* note 49, at 17–18 (arguing that the Commission's proposal lacks a reasonable basis and is therefore arbitrary and capricious).

[172] *See* Cboe Letter, *supra* note 114, at 9–10; Nasdaq Letter, *supra* note 45, at 6–7; NYSE Letter, *supra* note 49, at 17–18; *but see* ICI Letter, *supra* note 78, at 4.

[173] Nasdaq Letter, *supra* note 45, at 7.

[174] *Id.* (providing as an example, ''a proposal supported by four unaffiliated SROs and one exchange group would garner a majority of the permitted SROs votes (six to four in favor) but would not be supported by a majority of SROs (nine to seven against).'').

[175] NYSE Letter, *supra* note 49, at 17.

[176] *Id.*

[177] *Id.* at 18.

The Commission disagrees. The Commission continues to believe that there is a need to rebalance voting power in Plan governance to address the disproportionate influence of affiliated exchange groups.[178] The Proposed Order described in detail the effects on Plan governance of the exchange groups' conflicts of interest arising from their sale of proprietary data products. The current governance structure provides voting power based on each exchange license and thereby concentrates voting power in a small number of exchange group stakeholders, which also have inherent conflicts of interest with respect to the operation of the Plans. The Commission believes that this has perpetuated disincentives for the Equity Data Plans to make improvements to the SIP data products. The Commission continues to believe that modernizing plan governance by reallocating votes by exchange group should help to ensure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS stocks and the fairness and usefulness of the form and content of that information.

As the exchange group commenters accurately point out, however, the Commission has treated affiliated exchanges as separate entities for regulatory purposes in the past. The Commission believes, nonetheless, that a meaningful legal distinction exists between, on one hand, each SRO's individual responsibility pursuant to Sections 6, 15A, 17, and 19 of the Act[179] to comply with the statutory and regulatory requirements that apply to its operation and self-regulation of its market center, including the requirement that its rules ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]''[180]—and, on the other hand, the responsibility of the SROs to jointly operate the NMS plans pursuant to Section 11A of the Act[181] and to disseminate consolidated market data to which different SROs may contribute in varying degrees. The Commission believes that this legal distinction justifies treating affiliated exchanges under common management and control as one exchange group limited to one, or at most two, vote(s) in the context of NMS plan governance. And, as a practical matter, the Commission, in its oversight of the Equity Data Plans, is unaware of an individual affiliated exchange member of an exchange group having cast its vote differently than the votes cast by its affiliated exchanges. The Commission further believes that its authority under Section 11A of the Act[182] is broad and is not limited with respect to a determination as to the allocation of voting power to exchanges, either individually or in groups, based on common management or control.

Moreover, the Commission believes that treating affiliated SROs differently from non-affiliated SROs is justified in this context from a policy perspective because of the disproportionate influence affiliated exchange groups currently exercise in Plan matters by voting as a block and diluting the voting power of other Participants. Indeed, the Commission agrees with the commenter that points out that the augmented majority vote could result in a scenario in which a proposal is adopted with the support of a supermajority of votes on the operating committee and a majority of SRO votes, but without the support of a majority of the individual exchanges.[183] This is precisely the outcome that this Order is intended to achieve—plan action supported by a supermajority of the New Consolidated Data Plan's operating committee, which would include a majority of SRO votes along with sufficient non-SRO votes to achieve the supermajority, that is not constrained by the votes of one or two exchange groups under common management and control that currently command a majority of the votes on the Equity Data Plans. Similarly, while one commenter argues that the Commission's proposal would ''curtail the ability of independent SROs to act independently in service of their own obligations,''[184] another commenter questions the independence of the affiliated exchanges, noting the lack of evidence that affiliated exchanges vote separately and observing that an exchange group commented in a unified voice on behalf of all affiliated exchanges.[185] Similarly, one commenter asserts that the Proposed Order assumes that ''the degree of voting power inequity should increase or decrease based on the SRO-affiliate group sizes.''[186] In the Commission's view, this assertion is incorrect, in that a second vote would be granted only on the basis of the exchange group's consolidated equity market share, not the size or number of exchange licenses of the affiliate group.

In addition, the fact that, as one commenter argues, the concept of an exchange group is not created by statute or rule does not, in the Commission's view, preclude the Commission from recognizing that affiliated exchanges act in some contexts as a collective organization. Instead, the Commission notes that, unlike the SROs' individual regulatory obligations, the one-vote-per-exchange governance model for NMS plans is not compelled by statute or regulation. Further, because of the inherent conflicts of interest that certain exchanges face in their operation of the existing Equity Data Plans, as detailed in the Proposed Order and discussed above, the Commission does not believe that permitting exchange SROs under common ownership to exercise disproportionate influence through block voting over New Consolidated Data Plan decisions, including fees and technology updates, supports the reliability and affordability of consolidated market data.

Two commenters state that the Commission provides no adequate rationale for the decision to cap at two votes the number of votes that affiliated SROs would be granted.[187] One of these commenters questions why there could not be a third vote and advocates adding tiers so that the proposal would ''align the number of votes allocated to exchange groups or unaffiliated SROs with meaningful market share to their overall significance in the market.''[188] Several other commenters argue to the contrary that currently each exchange license obtained by an exchange group provides another vote on the Equity Data Plan's operating committee with ''little incremental overhead expenses. Capping the number of SRO votes at two per exchange group removes this

[178] One commenter noted the relatively recent acquisition by NYSE's parent company of two exchanges that typically account for less than 3 percent of trading volume, yet represent 12 percent of voting power on the Equity Data Plans, allowing the NYSE to ''command 29% of the operating committees vote . . . [rather than] the 18% voting power they had prior to acquiring these exchanges.'' ICI Letter, *supra* note 78, at 5.

[179] 15 U.S.C. 78f, 15 U.S.C. 78o–3, 15 U.S.C. 78q, and 15. U.S.C. 78s.

[180] Section 6(b)(8) and Section 15A(b)(9) of the Act, 15 U.S.C. 78f(b)(8) and 15 U.S.C. 78o-3(b)(9).

[181] 15 U.S.C. 78k–1.

[182] Section 11A of the Act, 15 U.S.C. 78k–1 (''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this [Act] to facilitate . . . a national market system for securities . . . in accordance with the findings and to carry out the objectives set forth in paragraph (1) of [Section 11A(a)].'').

[183] *See* Nasdaq Letter, *supra* note 45 and accompanying text.

[184] NYSE Letter, *supra* note 49, at 17.

[185] ICI Letter, *supra* note 78, at 4 (emphasis in original).

[186] NYSE Letter, *supra* note 49, at 18.

[187] *Id.;* Cboe Letter, *supra* note 114, at 10.

[188] Cboe Letter, *supra* note 114, at 10 (advocating that instead there should be one vote for up to 5 percent consolidated market share, two votes for 5 percent to 15 percent consolidated market share, and three votes for more than 15 percent consolidated market share).

incentive.'' [189] Another commenter that generally supports the proposed voting structure suggests that the threshold for a second vote should be 10 percent of consolidated equity market share, as recommended by the Commission's Equity Market Structure Advisory Committee, rather than the 15 percent threshold proposed by the Commission.[190] This commenter argues that, ''in the current fragmented market structure, 10 percent represents a very significant threshold that we believe would justify a slightly stronger voice in governance.'' [191]

The Commission continues to believe that it is appropriate to limit an SRO or affiliated exchange group to no more than two votes because providing more than two votes to any one SRO or affiliated exchange group would perpetuate the ability of two exchange groups to command a majority of votes on the operating committee, which would perpetuate the status quo. The Commission believes that this outcome would not address the disproportionate influence that the exchange groups have on the governance of the Equity Data Plans. Moreover, the Commission agrees with another commenter's assertion that the two-vote cap would serve to deter actions, such as establishing a new exchange or further consolidation of existing exchanges into groups, taken for the sole purpose of gaining additional voting power on the operating committee.[192]

In addition, the Commission continues to believe that the voting allocation set forth in the Proposed Order, which would provide a second vote only where an unaffiliated SRO or exchange group has a consolidated equity market share of more than 15 percent over a specified period of time, is appropriate. A 15 percent threshold signifies the importance to the national market system of those exchanges that, in their roles as SROs, therefore oversee trading activity that generates a significant amount of equity market data and, as noted below, each exchange group would have an additional vote. While one commenter argues instead for a 10 percent threshold and another advocates for a tiered approach, with the possibility of a third vote, the Commission, as discussed below, continues to believe that the 15 percent threshold is appropriate.

The Commission disagrees that 10 percent consolidated equity market share is sufficiently significant to warrant a second vote, particularly given the trend toward exchange consolidation. The consolidated equity market share of the largest exchange groups is already well above 10 percent and continues to range from 17 percent to 22 percent.[193] Setting the threshold for a second vote at 10 percent consolidated equity market share would create the expectation that exchange groups should receive a third vote at the same interval threshold above 10 percent (*e.g.,* 20 percent). However, the Commission is not permitting the exchange groups, regardless of their consolidated equity market share, to have a third vote as this would lead to a continuing concentration of voting power. For the same reason, the Commission is concerned that a 10 percent threshold may be too easy to achieve through consolidation, which would result in too low a threshold for obtaining an additional vote and could lead to a continuing concentration of voting power. Conversely, as discussed above, the Commission believes that it is appropriate to provide an extra vote for exchanges or exchange groups with a greater consolidated equity market share.

With respect to the proposed ''look-back period'' of four of the six consecutive months preceding a vote of the operating committee, the Commission notes that several commenters expressly supported the specified period, while none objected to it.[194] The Commission believes that using a look-back period of at least four of the six calendar months preceding a vote of the operating committee for determining whether an exchange group or an unaffiliated exchange has met the threshold for a second vote would allow the voting structure of the New Consolidated Data Plan to adapt over time to potential fluctuations in trading volume among exchanges, while avoiding frequent changes in vote allocations resulting from short-term changes in trading activity.

(b) Prohibiting Voting by Nonoperational Equity Trading Venues

The Commission proposed that the New Consolidated Data Plan should provide that if an exchange ceases operation as an equity trading venue, or has yet to commence operation as an equity trading venue, that exchange should not have a vote on Plan matters.[195] The Commission proposed this provision to ensure that only those SROs that are contributing to the generation or collection of the core data disseminated by the New Consolidated Data Plan have a vote on New Consolidated Data Plan decisions, and several commenters expressed their support for the Commission's view.[196] The Commission continues to believe that exchanges should have voting rights for New Consolidated Data Plan matters only if those exchanges actively operate equity market trading venues, and no commenters disagreed with this view. Accordingly, this Order requires that the New Consolidated Data Plan provide that if an exchange ceases operation as an equity trading venue, or has yet to commence operation as an equity trading venue,[197] that exchange will not be permitted to have a vote on Plan matters.

2. The Need for Non-SRO Participation in Plan Governance

A key provision in the Proposed Order was providing voting representation to non-SROs on the New Consolidated Data Plan's operating committee. Commenters express opinions on a range of issues relating to non-SRO voting, including the Commission's statutory authority, the categories of non-SROs proposed to have representation on the operating committee, the process for selecting non-SRO members, as well as the number of terms and term length each non-SRO member should be permitted to serve.

[189] Citi Letter, *supra* note 85, at 3; *see also* IEX Letter, *supra* note 113, at 2; ICI Letter, *supra* note 78, at 5; Letter from RBC Capital Markets, LLC, Rich Steiner, Head of Client Advocacy and Market Innovation (Feb. 28, 2020), at 2 (''Royal Bank of Canada Letter''); T. Rowe Price Letter, *supra* note 164, at 2.

[190] *See* IEX Letter, *supra* note 113, at 2.

[191] *Id.; but see* MEMX Letter, *supra* note 80, at 4; Clearpool Letter, *supra* note 40, at 4 (stating it would not support lowering the 15 percent threshold).

[192] *See* ICI Letter, *supra* note 78, at 5.

[193] *See* Cboe U.S. Equities Volume Data, *available at https://markets.cboe.com/us/equities/market_share/* (last accessed Apr. 20, 2020) (month-to-date volume summary as of Apr. 20, 2020). Specifically, the consolidated market shares for the Cboe, Nasdaq, and NYSE exchange groups were 16.63 percent, 17.84 percent, and 22.65 percent, respectively. *Id.*

[194] *See, e.g.,* SIFMA Letter, *supra* note 13, at 4; Clearpool Letter, *supra* note 40, at 4; MEMX Letter, *supra* note 80, at 4.

[195] Both ISE and Cboe have been inactive as equities exchanges for several years but continue to retain full voting rights on the Equity Data Plans. ISE ceased trading equities on December 23, 2008. *See* Securities Exchange Act Release No. 80873 (June 4, 2017), 82 FR 27094 (June 13, 2017). Cboe stopped trading equities on April 30, 2014. *See* Securities Exchange Act Release No. 71880 (Apr. 4, 2014), 79 FR 19950 (Apr. 10, 2014).

[196] *See* Clearpool Letter, *supra* note 40, at 4; ICI Letter, *supra* note 78, at 5; MEMX Letter, *supra* note 80, at 4.

[197] For purposes of this Order, operating a trading venue means trading NMS stocks on the venue as opposed to maintaining status as a national securities exchange without actually trading.

(a) The Commission Has Statutory Authority to Require Non-SRO Voting Power on the Operating Committee

The Commission believes that an operating committee that takes into account views from non-SRO members that are charged with carrying out the objectives of the New Consolidated Data Plan will have an overall improved governance structure that better supports the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information,'' [198] because it will reflect a more diverse set of perspectives from a range of market participants, including significant subscribers of SIP core data products.

Some commenters, however, question the Commission's statutory authority to require an NMS plan to provide voting power to non-SROs.[199] These commenters state that Section 11A of the Act does not authorize the Commission to require the SROs to work with non-SROs in developing or administering NMS plans, and instead obligates SROs only to ''act jointly'' with other SROs to operate the national market system.[200] These exchange group commenters state that, because the statute does not directly provide for non-SRO participation, the Commission does not have the authority to require the SROs to coordinate with them in developing and maintaining an NMS plan.[201] One of these commenters argues that ''because Congress only granted the Commission authority to empower *SROs* to develop and maintain the operation of the national market system, the Commission could not grant non-SROs voting authority over the SIPs under Section 11A even if the SROs wish the Commission to do so.'' [202] Another commenter states, ''[w]here a statute or regulation contains express language limited only to a particular group, the negative implication is that other groups are not covered by the provision.'' [203] Thus, while it supports voting rights for non-SROs on the New Consolidated Data Plan's operating committee, this commenter believes that Section 11A of the Act[204] and Rule 608 of Regulation NMS [205] currently do not allow for non-SRO voting power on an NMS plan and this statute and regulation would need to be amended to permit such voting power on an NMS plan.[206]

The Commission disagrees. Section 11A of the Act [207] directs the Commission to ''use its authority under this title''—including all of our authority over SROs —to facilitate the establishment of the national market system and further the objectives set forth in that section.[208] And Section 11A(a)(3)(B) of the Act provides the Commission the authority to require the SROs ''to act jointly . . . in planning, developing, operating, or regulating a national market system (or a subsystem thereof).'' [209] Thus, while Section 11A affirmatively authorizes the Commission to allow or require the SROs to act jointly, it does not prohibit non-SRO participation in developing and administering NMS plans. Rather, it is silent on this issue. And, as explained by the Commission in the Proposed Order, permitting non-SRO views to be more directly heard regarding Plan matters (while preserving joint SRO control of the New Consolidated Data Plan provided for by the plan voting structure discussed below) [210] would neither impede the SROs' ability to act jointly nor interfere with their ability to operate the national market system. Thus, pursuant to its authority over the national market system, the Commission is ordering the Participants to the New Consolidated Data Plan, as they act jointly, to include in the Plan voting rights for non-SROs.

The Commission disagrees with the commenter that believes that because the language of a statute or regulation expressly refers to a particular group, the negative implication is that other groups are not covered by the provision. To the contrary, in the context of a statute delegating rulemaking to an agency, statutory silence leaves discretion with the agency.[211] In this instance, the Commission believes it is appropriate to exercise that discretion to give non-SROs a vote on the New Consolidated Data Plan's operating committee.

While two commenters argue that the plain language of the statute provides that the Commission may do no more than authorize the non-SROs to act as advisory committees to the Equity Data Plans,[212] these arguments misconstrue the statutory language. The statute is silent on the use of advisory committees with respect to the planning, developing, operating, or regulating of a national market system.[213] Even though the language of Section 11A(a)(3)(A) of the Act does not expressly address the creation of advisory committees to an NMS plan or the participation of non-SROs in Plan matters, the Commission has previously exercised its authority to provide non-SROs a role on the Equity Data Plans as advisors.[214] With this Order, the Commission is similarly exercising its statutory authority to require that the role of the non-SROs be expanded to include voting power on the operating committee of the New Consolidated Data Plan.[215] Notably, however, as discussed in greater detail below, the Commission is not granting the non-SRO members sufficient voting power to compel plan action or to block action agreed upon by a supermajority of the operating committee that includes a majority of the SROs.[216]

Moreover, several commenters agree that the Commission has the authority

[198] 15 U.S.C. 78k–1(c)(1)(B).

[199] *See* NYSE Letter, *supra* note 49, at 14–15; Nasdaq Letter, *supra* note 45, at 5–6.

[200] *See* NYSE Letter, *supra* note 49, at 14; Nasdaq Letter, *supra* note 45, at 5–6; *see also* Cboe Letter, *supra* note 114, at 7, n.13 (stating that it supports greater participation for non-SROs, but that the Commission should ''ensure that any steps it takes to further this participation are within its statutory authority''). This commenter also suggests that non-SRO members of the operating committee be entities regulated by the Commission, rather than individual employees of the entities, and therefore, subject to the same obligations and responsibilities as SRO members. *Id.* at 7. For a full discussion of this comment, *see infra* Section II.E.1.

[201] *See* NYSE Letter, *supra* note 49, at 14–15; Nasdaq Letter, *supra* note 45, at 5–6.

[202] NYSE Letter, *supra* note 49, at 14 (emphasis in original).

[203] Nasdaq Letter, *supra* note 45, at 6.

[204] 15 U.S.C. 78k–1.

[205] 17 CFR 242.608.

[206] *See* Nasdaq Letter, *supra* note 45, at 5–6.

[207] 15 U.S.C. 78k–1.

[208] 15 U.S.C. 78k–1(a)(2).

[209] 15 U.S.C. 78k–1(a)(3)(B).

[210] *See infra* Section II.C.2.

[211] *See NAM* v. *SEC,* 748 F.3d 359, 368 (D.C. Cir. 2014); *Catawba Cty, N.C.* v. *EPA,* 571 F.3d 20, 36 (D.C. Cir. 2009).

[212] *See* Nasdaq Letter, *supra* note 45, at 5–6; NYSE Letter, *supra* note 49, at 13–14.

[213] While Section 11A(a)(3)(A) of the Act does refer to advisory committees, that provision provides for the creation by the Commission of committees pursuant to the Federal Advisory Committee Act to advise the Commission itself on the development of the national market system. *See* 15 U.S.C. 78k–1(a)(3)(A).

[214] *See* Regulation NMS Release, *supra* note 7, 70 FR at 37561.

[215] As discussed above, the Commission believes that changes in the markets over the last two decades (*e.g.,* conversion from member-owned exchanges to for-profit exchanges, consolidation of exchange voting power, and exchanges offering for sale proprietary data products) have heightened these inherent conflict of interests between certain exchanges' commercial interests and their regulatory obligations under the Act and rules, as well as pursuant to the effective Equity Data Plans to produce and provide equity market data. The Commission believes that providing voting power on the New Consolidated Data Plan to non-SROs, including to individuals representing entities that have previously served in an advisory capacity to the operating committees of the Equity Data Plans, will serve to mitigate these conflicts and will result in improved governance over equity market data matters.

[216] *See infra* Section II.C.3.

under Section 11A of the Act to provide for non-SRO participation on the New Consolidated Data Plan's operating committee as voting members.[217] One commenter, for example, states that an interpretation of Section 11A that concludes the SEC lacks authority under Section 11A to force the SROs to act jointly with non-SROs in the operation of NMS plans is too narrow. The commenter states that Congress granted the SEC authority in Section 11A(c)(1) to prescribe rules and regulations as necessary or appropriate in the public interest to assure the prompt, accurate, reliable and fair collection, processing, distribution and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.[218]

Some commenters also question the wisdom of granting votes to non-SROs, citing the conflicts of interests that non-SROs would bring to the operation of the New Consolidated Data Plan, as well as potential inefficiencies.[219] One commenter states that the non-SRO and SRO members of the New Consolidated Data Plan's operating committee may face challenges in working together for the benefit of the SIP data.[220] This commenter further opines that it does not believe there would be ''many areas of likely agreement, and there may also be areas wherein there is agreement—but that agreement may be in a direction that is contrary to the timely provision of essential market data at a reasonable cost through the public market data stream.'' [221] The Commission does not share these concerns.

Broader representation on the New Consolidated Data Plan's operating committee, along with the Commission's continued oversight and supervision and the strengthened conflict of interest and confidentiality policies,[222] should help to ensure that plan governance facilitates the provision of consolidated market data consistent with Congressional goals. The Commission believes that including representatives from non-SROs alongside the SROs on the operating committee will enhance the ability of all relevant constituencies to work together to facilitate the goals of Section 11A of the Act. Although non-SROs members of the operating committee will themselves have conflicts of interests based on the type of business and constituency they represent, the Commission believes that the views of the non-SRO members, as data customers, will provide some balance with respect to the views of the exchanges, as data providers.[223] Further, the non-SRO members of the New Consolidated Data Plan's operating committee will be subject to the same conflict of interest policy as the SROs, which, as discussed below, will require disclosure of all material facts necessary for market participants and the public to understand any potential conflicts of interest and will require recusal in certain defined instances.[224] In addition, the New Consolidated Data Plan will include a confidentiality policy applicable to the non-SRO members that addresses sharing of information and data, which will also serve to manage conflicts of interest.[225]

One commenter suggests that any non-SRO member on the operating committee should be a Commission-regulated entity and subject to the same obligations and responsibilities as SRO members.[226] This commenter believes that having a Commission-regulated entity participate on the operating committee would reduce individual conflicts of interests, treat non-SRO members similarly to SROs, and facilitate the Commission's ability to exercise its oversight of the operating committee.[227]

The Commission is now requiring a broader representation of market participants in the governance of the New Consolidated Data Plan by including non-SROs as voting members on the operating committee of the New Consolidated Data Plan. The Commission does not believe that it is necessary to require that non-SRO members of the operating committee be associated with a regulated entity in order for the Commission to be able to exercise its oversight of the operating committee.[228] As discussed below,[229] the Commission believes that the SROs should, by themselves, maintain sufficient voting power at all times to act jointly on behalf of the New Consolidated Data Plan, thus providing them with the ability to ensure that the New Consolidated Data Plan meets the requirements of Section 11A of the Act [230] and Rule 608 of Regulation NMS.[231] Further, any substantive amendment of the New Consolidated Data Plan would require Commission approval, and the Commission would be able, if it deemed it appropriate, to amend the terms of the New Consolidated Data Plan pursuant to Rule 608 of Regulation NMS.[232] Thus, the Commission does not believe that the inclusion of non-SRO members on the operating committee, with insufficient votes to block plan action by themselves, would interfere with the Commission's ability to exercise its oversight over the New Consolidated Data Plan.

Nor does the Commission believe that potential disagreements between these members and the SROs will result in overall inefficiencies. The existence of different perspectives that result in additional discussion does not equate to inefficiency, but rather helps to ensure that more options for addressing an issue are considered by the operating committee. Adding non-SRO views to the discussions of the operating committee could therefore add to the range of solutions presented on issues and could, in fact, result in an ultimate resolution that is more beneficial to the market. In addition, as described below, the voting structure for the New Consolidated Data Plan will not require a unanimous vote for plan action. Therefore, even if all members of the operating committee do not agree on a matter, the operating committee can

[217] *See* Royal Bank of Canada Letter, *supra* note 189, at 3 (''One of the SROs has already provided comments arguing that this voting construct violates Section 11A because it would afford voting rights to entities not expressly identified in the law. We do not believe they are correct in this argument, and that the law is so limiting.''); ICI Letter, *supra* note 78, at 2–4; Fidelity Letter, *supra* note 80, at 5–6 (stating, ''[t]he Commission has plenary authority to prescribe rules governing the collection and dissemination of equity market data.''); Schwab Letter, *supra* note 74, at 4–5; SIFMA Letter, *supra* note 13, at 5 (''SIFMA believes that the SEC has the broad authority to instruct the SROs to take action to consolidate the existing Plans into a single new Plan and to incorporate its non-SRO representation and voting structure.'').

[218] Schwab Letter, *supra* note 74, at 4–5.

[219] *See* NYSE Letter, *supra* note 49, at 16–17; Cboe Letter, *supra* note 114, at 7–9; Nasdaq Letter, *supra* note 45, at 9; Healthy Markets Letter, *supra* note 40, at 11–13.

[220] *See* Healthy Markets Letter, *supra* note 40, at 12–13.

[221] *Id.*

[222] *See* Conflicts of Interest Approval Orders, *infra* note 325, and Confidentiality Policy Approval Order, *infra* note 340 (both stating that the policies, as modified, further the goals set forth by Congress).

[223] *See infra* Section II.C.3 regarding the augmented voting requirement. *See also* Royal Bank of Canada Letter, *supra* note 189, at 2 (stating, ''This conflict can be mitigated by granting voting rights to other market participants, rather than exclusively to the exchanges . . . .).

[224] *See infra* Section II.E.1 and Conflicts of Interest Approval Orders, *infra* note 326.

[225] *See infra* Section II.E.2

[226] *See* Cboe Letter, *supra* note 114, at 8–9.

[227] *See id.* at 7–9.

[228] Non-SRO members will be individuals that hold positions with firms or entities that satisfy a category of non-SRO members (*e.g.,* a broker-dealer with a predominantly retail customer base).

[229] *See infra* Section II.C.3 (describing the voting structure of the New Consolidated Data Plan).

[230] 15 U.S.C. 78k–1.

[231] 17 CFR 242.608.

[232] 17 CFR 242.608.

move forward with an augmented majority vote in favor of an action.[233]

(b) Categories of Non-SRO Members

As noted above, in the Proposed Order, the Commission proposed to require a broader representation of market participants in the governance of the New Consolidated Data Plan by including as voting members on the operating committee of the New Consolidated Data Plan a number of non-SRO market participants. The categories of non-SRO representatives proposed by the Commission included an institutional investor (*e.g.,* an asset management firm), a broker-dealer with a predominantly retail investor customer base, a broker-dealer with a predominantly institutional investor customer base, a securities market data vendor, an issuer of NMS stock, and a retail investor, provided that the representatives of the securities market vendor, the issuer, and the retail investor, respectively, may not be affiliated with an SRO, a broker-dealer, or an institutional investor.

A number of commenters suggest modifications to the Commission's proposed categories of non-SRO voting representatives to the New Consolidated Data Plan's operating committee. Two commenters recommend the addition of a broker-dealer with a substantial wholesale customer base.[234] One of these commenters states that the vast majority of retail orders are routed to wholesale broker-dealers, and therefore these broker-dealers play a role in protecting investors through price and liquidity enhancement. The commenter believes that these firms have knowledge regarding market structure that would benefit the New Consolidated Data Plan.[235] Another commenter suggests that either a wholesale broker-dealer or a market-making broker-dealer would be a better representative of issues facing the industry than an issuer representative.[236]

The Commission disagrees with these commenters' suggestion. The Commission believes that the perspective and knowledge base of such a broker-dealer sufficiently overlaps with a broker-dealer that has a predominantly retail customer business as both have familiarity with the price and liquidity issues associated with retail trading. Further, the Commission believes that the interests of the constituencies that would be served by these representatives would be aligned, as ultimately they are both servicing the same end-user base, retail customers. Therefore, the Commission does not believe it is necessary to add a broker-dealer with a substantial wholesale customer base to the operating committee. The Commission believes that the same is true for a market-making broker-dealer. The Commission believes that the interests specifically of market-making broker-dealers are sufficiently aligned with those of retail broker-dealers that adding a separate representative to the operating committee is warranted.

One commenter recommends including a representative of an alternative trading system (''ATS'') as a voting member of the operating committee.[237] This commenter acknowledges that the views of ATSs could be represented by a broker-dealer with a predominantly institutional customer base, but notes that not all institutional broker-dealers operate an ATS and some ATSs exist that are not affiliated with large institutional broker-dealers, and therefore the commenter argues that ATSs should have separate representation on the operating committee.[238]

The Commission disagrees with this commenter. In the Proposed Order, the Commission stated that ''ATSs and institutional broker-dealers serve similar roles in the markets, as both operate as over-the-counter trading venues'' and concluded that ''the New Consolidated Data Plan operating committee should not include a designated ATS representative.'' [239] The Commission continues to hold this view. The Commission does not believe that it is necessary for an ATS to be operated by an institutional broker-dealer in order for these two market participants to share opinions and perspectives on market data issues. Regardless of whether an institutional broker-dealer operates an ATS or an ATS is an affiliate of institutional broker-dealer, their business models are sufficiently aligned with respect to market data issues that the Commission continues to believe that an institutional broker-dealer representative on the operating committee is adequate to represent the interests of ATSs.

The Commission also disagrees with the commenter's suggestion to add an investment technology provider supporting the buy-side as a representative on the operating committee. While the Commission believes that input from technology providers on matters the operating committee will consider with respect to market data and its collection, consolidation, and dissemination will be valuable, there will be a market data vendor representative on the operating committee who should be able to provide input and guidance for New Consolidated Data Plan decision-making from a technological perspective.

The Proposed Order also provided for one representative of an institutional investor (*e.g.,* an asset management firm) on the operating committee. One commenter argues that there should be at least two representatives from institutional investors, including at least one representative from a public pension plan.[240] However, because adding additional non-SRO members to the operating committee would dilute the votes of the other non-SROs members, and because the operating committee of the New Consolidated Data Plan would already include a representative for institutional investors, the Commission does not believe it is necessary to provide an additional slot on the operating committee exclusively for the representative of an institutional investor.

In the Proposed Order, the Commission also included a retail investor among the non-SRO members on the operating committee of the New Consolidated Data Plan to ensure that the interests of Main Street investors were represented in discussions regarding the equity data feeds. The interests of retail investors are central to the Commission's mission, and the Commission believes it is important that the operating committee of the New Consolidated Data Plan have a non-SRO member who can effectively represent the interests of individual investors with regard to the issues considered by the operating committee of the New Consolidated Data Plan. In particular, the Commission is ordering that the member of the operating committee representing retail investors shall have experience working with or on behalf of retail investors and have the requisite background and professional experience to understand the interests of retail investors, the work of the operating

[233] *See infra* Section II.C.3. An augmented majority vote is a supermajority vote of the New Consolidated Data Plan's operating committee, along with a majority vote of the SRO members of the operating committee. *Id.*

[234] *See* Schwab Letter, *supra* note 74, at 5; TD Ameritrade Letter, *supra* note 74, at 4.

[235] *See* TD Ameritrade Letter, *supra* note 74, at 4.

[236] *See* Schwab Letter, *supra* note 74, at 5. This commenter argues that issuer representatives have a strong interest in how well their securities trade, but ''lack the operational knowledge relevant to operating committee discussions.'' *Id.*

[237] *See* SIFMA Letter, *supra* note 13, at 4.

[238] *Id.*

[239] Proposed Order, *supra* note 4, 85 FR at 2179–80.

[240] *See* CII Letter, *supra* note 74, at 6.

committee of the New Consolidated Data Plan, and the role of market data in the U.S. equity market. The Commission believes it is less important that this person simply be a ''retail investor'' and more important that this position be filled by a person with a combination of the background and experience described above so that he or she can effectively represent the interests of retail investors as a ''retail representative.'' Accordingly, the Commission is modifying the language in the proposal to replace ''retail investor'' with ''a person who represents the interests of retail investors ('retail representative').''

As proposed, the retail investor representative could not be affiliated with an SRO, broker-dealer, or institutional investor. However, as discussed above, the Commission is expanding the available group from which the ''retail representative'' could be chosen to a ''person who represents the interests of retail investors.'' Because many retail investors gain exposure to the equities markets through various types of institutional investors, the Commission believes it is appropriate to permit (but not require) the ''retail representative'' to be associated with an institutional investor, provided that this person otherwise meets the requirements as set forth in this Order. The retail representative may not be affiliated with an SRO or broker-dealer, however, because, in the Commission's view, both SROs and broker-dealers will have adequate representation on the New Consolidated Data Plan's operating committee, including a broker-dealer with a predominantly retail customer base. Thus, the Commission believes that prohibiting duplicative representation in this regard will help ensure that the non-SRO members reflect a diversity of perspectives.

Another commenter proposes adding voting representatives of a custodial bank, arguing that such a representative has unique insights into the needs of large institutional broker-dealers and has an interest in ensuring cost-effective access to market data.[241] This commenter also recommends adding an agency broker-dealer focused on institutional investors, and an investment technology provider supporting the buy-side to serve as additional voices representative of the ''financial markets ecosystem.''[242] The Commission disagrees with adding to the operating committee these additional non-SRO members that purport to represent the views or needs of institutional broker-dealers. The Order currently provides for an operating committee member that represents a broker-dealer with a predominantly institutional investor customer base. The Commission believes that the views of institutional broker-dealers will be adequately represented without the addition of a custodial bank or a designated agency broker.

Two commenters question the usefulness of an issuer as a voting member of the operating committee.[243] One of these commenters asserts that an issuer representative should not be eligible to serve under another non-SRO category,[244] while another commenter suggests that the Commission provide ''certain objective requirements'' to make sure that such representatives understand the technical aspects of equity market structure.[245] In addition, one commenter argues that the Commission's final order should specify that non-SRO members, to maintain their neutrality, should not be permitted to be representatives of an entity that ''has an ownership interest in an SRO or its holding company beyond a specified level.''[246]

The Commission disagrees with the commenters that believe a representative of an issuer should not have a vote on the operating committee. The Commission believes that an issuer representative has unique knowledge about a segment of the industry—the corporations that issue the stocks traded—that is not represented by the other representatives and should have a voice on matters relating to market data. However, the Commission agrees with a commenter that it is appropriate that the issuer representative should not also be eligible to serve as a representative of another category on the operating committee.[247] The Commission believes the representative who will serve as the issuer representative on the operating committee should serve to represent primarily the point of view of issuers, as views that support other categories of non-SRO members will have their own dedicated representative. If an issuer representative were also eligible to serve as another category of representative, questions could be raised as to whether the issuer representative is solely wearing his or her issuer ''hat'' in operating committee discussions or if he or she is actually advocating for views that are more aligned with another category on the operating committee. The Commission believes that it is important to ensure that the representative for the issuer constituency does not have business interests that significantly overlap with the interests of other non-SRO members on the operating committee such that the issuer representative's interests would be duplicative of other non-SRO members. To address these concerns, the Commission is ordering that the representative for the issuer category not be affiliated or associated with an SRO, a broker-dealer, or an investment adviser with third-party clients.

Another commenter objects to the restriction in the Proposed Order that vendors, issuers, and retail investors[248] may not be affiliated with an SRO, a broker-dealer, or an institutional investor. This commenter argues that the restriction could prevent otherwise qualified candidates with relevant industry experience or knowledge from serving on the operating committee.[249] The Commission anticipates that—notwithstanding the Order's restriction on affiliations for securities market data vendors and issuers with SROs, broker-dealers, and institutional investors, and the Order's restriction on a retail representative's affiliations with SROs and broker-dealers—the operating committee of the New Consolidated Data Plan will be able to attract knowledgeable representatives of securities market data vendors and issuers as the New Consolidated Data Plan will address issues and make important decisions that will impact these constituencies. The Commission believes that the opportunity to have a voice on the operating committee of a Plan responsible for issues related to market data will be highly coveted and there will be qualified nominees willing to serve as representatives from organizations that are not affiliated with SROs, broker-dealers, or institutional investors.

(c) Process for Selecting Non-SRO Members and Term Limits

The Commission proposed that the non-SRO members of the New Consolidated Data Plan's operating committee should be selected solely by

[241] *See* State Street Letter, *supra* note 76, at 3.

[242] *Id.* at 5.

[243] *See* Schwab Letter, *supra* note 74, at 5; TD Ameritrade Letter, *supra* note 74, at 4.

[244] *See* TD Ameritrade Letter, *supra* note 74, at 4. The Commission notes that this Order is not intended to dictate all of the specific terms of the New Consolidated Data Plan, which the Commission will notice for public comment and consider when submitted by the SROs.

[245] *See* SIFMA Letter, *supra* note 13, at 4.

[246] IEX Letter, *supra* note 113, at 3.

[247] *See* TD Ameritrade Letter, *supra* note 74, at 4.

[248] As discussed above, the Commission has modified the requirements relating to the retail investor category of non-SRO member.

[249] *See* BlackRock Letter, *supra* note 114, at 2.

non-SROs and that the operating committee should provide for a process to publicly solicit, and make available for public comment, nominations for non-SRO members. Further, the Proposed Order would require that the initial non-SRO operating committee members be selected by the current members of the Equity Data Plans' advisory committees, excluding advisory committee members selected by a Participant to be its representative, and that subsequent non-SRO members be selected collectively by the then-serving non-SRO members of the New Consolidated Data Plan's operating committee. In addition, to facilitate continuity of membership of the Equity Data Plan's advisory committees (excluding exchange representatives) through the transition to the New Consolidated Data Plan, the Commission proposed, to the extent possible, that the SROs should renew the expiring terms of all members of the Equity Data Plans' advisory committees (other than those selected to represent an SRO) who remain willing to serve in that role.

A number of commenters support the Commission's proposal to have the current advisory committee members, excluding exchange representatives, select the initial non-SRO members of the New Consolidated Data Plan's operating committee.[250] One commenter states, ''[t]o help promote independence of views, we agree that the Plan Participants should not select non-SRO members of the [o]perating [c]ommittee.'' [251] Several of these commenters also emphasize the importance of an independent and transparent nomination and selection process for non-SRO members of the New Consolidated Data Plan's operating committee.[252] These commenters agree that the operating committee should provide for a process to publicly solicit, and make available for public comment, nominations for non-SRO members.[253] Additionally, as discussed above, one commenter suggests that the Commission appoint the members of the operating committee.[254]

One commenter objects to the proposed mechanism by which the non-SRO representatives would be selected for service on the Plan stating that is clearly inconsistent with Section 11A of the Act and Rule 608 of Regulation NMS, as it would bar SROs from having any role in the selection of those representatives.[255] This commenter argues that such restriction cannot be reconciled with the clear requirement of the statute and rule that NMS plans be governed by the joint action of SROs.[256]

The Commission disagrees with this commenter's position. As discussed above, Section 11A of the Act [257] affirmatively authorizes the Commission to allow or require the SROs to act jointly to further the statutory objectives of a national market system, but it does not prohibit non-SRO participation in developing and administering NMS plans. Pursuant to its statutory authority ''to facilitate the establishment of a national market system,'' [258] the Commission believes that permitting non-SROs solely to select the non-SRO members of the New Consolidated Data Plan's operating committee will facilitate the governance of this Plan in that it will help ensure the independence of these members.

As the Commission discussed in the Proposed Order, the SROs currently select the members of the advisory committee, including both members representing specific categories of market participants and members chosen by individual exchanges to serve on the committee. The Commission believes that this may deter advisory committee members from expressing views that might contradict the views of the exchanges. The Commission's decision to prohibit the SROs from having a role in selecting the non-SRO members who will serve on the operating committee is designed to address this concern. Non-SRO members must be wholly independent from the SROs in order to represent their constituency free from interference. The ability of SROs to fully participate in, and ultimately act jointly to control decisions made by the operating committee,[259] will not be compromised simply because they are not involved in the selection of certain other members of the operating committee. The Commission therefore continues to believes that, as proposed, the existing advisory committee members of the Equity Data Plans (excluding the exchange-selected representatives), rather than the SROs or the Commission, should select the initial group of non-SRO members of the New Consolidated Data Plan's operating committee and subsequent non-SRO members should be selected solely by the then-serving non-SRO members of the New Consolidated Data Plan's operating committee in order to help ensure the independence of the non-SRO members.

The Commission further believes that the current Equity Data Plans' advisory committee members' experience with the operation of the Equity Data Plans will assist in the selection of the initial non-SRO operating committee members and will thus support the stable transition of operations from the Equity Data Plans to the New Consolidated Data Plan. Therefore, until the initial non-SRO members have been selected, the Commission believes that it is important to maintain the current membership of the Equity Data Plans' advisory committees, to the extent possible when excluding exchange-selected representatives, through the transition to the New Consolidated Data Plan. Accordingly, to facilitate continuity, the Commission is ordering the SROs to renew the expiring terms of all members of the Equity Data Plans' advisory committees (other than those members selected by an individual SRO) who remain willing to serve in that role.

In the Proposed Order, the Commission also proposed that non-SRO members of the operating committee would serve for a term of two years and that the New Consolidated Data Plan should establish reasonable term limits. The Commission noted that advisory committee members of the Equity Data Plan currently serve two-year terms and stated its belief that a two-year term would enhance the ability of non-SRO members to obtain sufficient experience with the operation of the New Consolidated Data Plan, and to make informed contributions as members of the operating committee.

Several commenters, expressing concern about individual members becoming ''de facto permanent members'' of the operating committee, specifically recommend term limits as an antidote to non-SRO member inertia.[260] Other commenters agree, stating that the benefits of limiting the number of terms a non-SRO representative could serve on the operating committee would include

[250] *See* Fidelity Letter, *supra* note 80, at 5; IEX Letter, *supra* note 113, at 3; Royal Bank of Canada Letter, *supra* note 189, at 3; SIFMA Letter, *supra* note 13, at 4.

[251] Fidelity Letter, *supra* note 80, at 5.

[252] *See* Fidelity Letter, *supra* note 80, at 5; IEX Letter, *supra* note 113, at 3; SIFMA Letter, *supra* note 13, at 4.

[253] *See* Fidelity Letter, *supra* note 80, at 5; IEX Letter, *supra* note 113, at 3; SIFMA Letter, *supra* note 13, at 4.

[254] *See* CII Letter, *supra* note 74, at 6.

[255] *See* Nasdaq Letter, *supra* note 45, at 7–8.

[256] *Id.* at 8 (stating, ''[q]uite simply, an NMS plan in which SROs play no part at all in important aspects of plan governance is not an NMS plan at all.'').

[257] 15 U.S.C. 78k–1.

[258] 15 U.S.C. 78k–1(a)(2).

[259] *See infra* Section II.C.3.

[260] *See* Fidelity Letter, *supra* note 80, at 5; IEX Letter, *supra* note 113, at 3; SIFMA Letter, *supra* note 13, at 4.

obtaining diverse perspectives.[261] Two commenters support a two-year term for non-SRO members, as proposed by the Commission, and these commenters recommend a two-term limit for representation on the operating committee.[262]

Certain other commenters, however, suggest alternative terms and term limits for non-SRO members' tenure on the New Consolidated Data Plan's operating committee. For example, a number of commenters recommend that the non-SRO members serve on the operating committee for a three-year term with a two-term limit.[263] Another commenter suggests one four-year term, but argues that ''the need for institutional knowledge specific to the New Plan and the need for new perspectives . . . can be accomplished by rotating out one half of the members every two years.'' [264] Finally, one commenter argues that the Commission should have the opportunity to object to the slate of nominees.[265]

With respect to terms of service and term limits for non-SRO members, the Commission believes that it is appropriate that the New Consolidated Data Plan balance the advantages of institutional knowledge with the potential benefits to be derived from new perspectives on Plan governance. Moreover, the Commission notes that the commenters' varied suggestions highlight the diversity of views with respect to the appropriate term and term limits to achieve this goal. The Commission believes a term of two years will provide non-SRO members with sufficient time to become familiar with the operations and issues affecting the New Consolidated Data Plan and to make informed contributions. The Commission believes that a term less than two years could result in a member being removed from the operating committee before he or she had an adequate opportunity to get familiar with the issues before the operating committee at that time and could result in a significant amount of disruptive turnover, resulting in inefficiencies on the operating committee. However, the Commission believes that a term of two years, with the potential for additional terms to be determined in the New Consolidated Data Plan, would provide sufficient time for a member to become familiar with the issues dealt with by the operating committee.[266]

The Commission further believes that the New Consolidated Data Plan should provide a maximum term limit for non-SRO members to ensure that new and diverse viewpoints are reflected among the non-SRO members of the operating committee. The Commission is not dictating in this Order what the maximum term limit must be. The Commission believes that the SROs, as current members of numerous NMS plan operating committees, may have useful insights into balancing the value of having long-standing members on an operating committee with the potential detriment of allowing a membership to become stale and no longer useful or engaged and are thus well positioned to propose what the maximum term limit should be in the first instance. Accordingly, as proposed, the Commission is ordering that the New Consolidated Data Plan provide that non-SRO members of the operating committee serve for a term of two years and that the New Consolidated Data Plan set forth a maximum term limit for non-SRO members.

One commenter raises concerns that the non-SRO members on the New Consolidated Data Plan's operating committee would not ''adequately and fairly'' represent the views of the constituencies that the member was selected to represent.[267] This commenter further asserts that the nomination process outlined by the Commission is inadequate to address these concerns.[268]

To the contrary, the Commission believes that the requirement that the non-SRO members of the operating committee will collectively select replacement non-SRO members will help to ensure that the individuals selected will represent their constituencies' views on important market data issues, and will help to ensure that the most effective and knowledgeable advocates for their views serve on the operating committee. Further, because the then-serving non-SRO members, and not the SROs, will select non-SRO members, the Commission does not believe that individuals may be blocked from serving on the New Consolidated Data Plan's operating committee because they are perceived by the Participants as ''anti-exchange,'' [269] as the commenter suggests.

In addition, the New Consolidated Data Plan will require that the process for soliciting nominations for non-SRO members to serve on the operating committee be transparent. The Commission is requiring in this Order that the New Consolidated Data Plan must specifically include a process for publicly soliciting and making available for public comment nominations for non-SRO members and the public will be permitted to submit nominees for consideration and to provide comment on the pool of nominees.[270] Therefore, if the non-SRO members select a new member to serve on the operating committee who is less qualified than other nominees to represent a particular constituency, the decision will face public scrutiny.

Finally, the Commission also disagrees that providing some discretion to the SROs to propose a transparent nomination process and reasonable term limits for non-SRO member service renders its proposal ''facially inadequate.'' Instead, the Commission believes that the requirements set forth in this Order, coupled with the Rule 608 process under which the New Consolidated Data Plan will be considered by the Commission, which includes public notice and comment, should help to assure that the nomination and selection process is fair, transparent, and public.

3. Voting Structure Under the New Consolidated Data Plan

In its Proposed Order, the Commission proposed that the New Consolidated Data Plan provide the SROs in aggregate with two-thirds of the voting power on the operating committee—and non-SRO members of the operating committee in aggregate with one-third of the voting power—with proportionate fractional votes allocated to non-SRO members of the operating committee as necessary to preserve this ratio at all times. Further, the Commission proposed that action by the operating committee of the New Consolidated Data Plan on all matters, including amendments to the New Consolidated Data Plan, should require an ''augmented majority vote,'' meaning a two-thirds majority of all votes on the operating committee, provided that this vote also includes a majority of the SRO

[261] *See* Royal Bank of Canada Letter, *supra* note 189, at 3; T. Rowe Price Letter, *supra* note 164, at 2.

[262] *See* MFA/AIMA Letter, *supra* note 142, at 2; SIFMA Letter, *supra* note 13, at 3.

[263] *See* Fidelity Letter, *supra* note 80, at 5; Schwab Letter, *supra* note 74, at 5; State Street Letter, *supra* note 76, at 3; T. Rowe Price Letter, *supra* note 164, at 2.

[264] TD Ameritrade Letter, *supra* note 74, at 5; *see also* Royal Bank of Canada Letter, *supra* note 189, at 3.

[265] *See* Royal Bank of Canada Letter, *supra* note 189, at 3.

[266] *See supra* note 262.

[267] *See* Healthy Markets Letter, *supra* note 40, at 13.

[268] *Id.*

[269] *Id.*

[270] *See* Proposed Order, *supra* note 4, 85 FR at 2180 (''The Commission believes that the operating committee should provide for a process to publicly solicit, and make available for public comment, nominations for non-SRO members.'').

votes. The requirement for an augmented majority vote was intended to ensure that at all times the SROs have sufficient voting power to act jointly on behalf of the plan pursuant to the requirements of Section 11A of the Act[271] and Rule 608 of Regulation NMS.[272]

Commenters express opinions on several aspects of the Proposed Order's voting structure. Notably, several commenters support that the Proposed Order does not permit a requirement for a unanimous vote for plan action, as is currently required for certain actions of the Equity Data Plans.[273] As one commenter points out, unanimous voting is not a requirement for NMS plans and, in fact, the most-recently approved NMS plan required by Rule 613 of Regulation NMS (''CAT NMS Plan'') requires the affirmative vote of a two-thirds supermajority of all members of the operating committee for plan amendments.[274] Another commenter, however, states that unanimous voting ''can help protect individual SRO participants that may have divergent structures or interests from otherwise dominant SROs.'' [275] This commenter recommends that, if unanimous voting requirements in the SIP plan governance structure are eliminated, plan participants should be ''permitted and encouraged'' by the Commission to communicate dissenting views and concerns to the Commission about New Consolidated Data Plan actions that they believe may be ''discriminatory, contrary to the public interest or improperly influenced by commercial interests.'' [276]

The Commission agrees with commenters who support not including a unanimous voting requirement in the new plan and believes that the New Consolidated Data Plan should provide that plan action, including amendments to the plan, will be approved by less than a unanimous vote. Further, the Commission believes that expanding the voting membership of the operating committee of the New Consolidated Data Plan, limiting the voting power of exchange groups, and providing for augmented majority voting—coupled with the existing requirement that NMS plan amendments must be published for comment and (except those put into effect upon filing) subject to approval by the Commission to become effective—should help to address concerns that the views of individual SRO participants will not be given adequate consideration. Additionally, consistent with its decision to expand the membership of the operating committee governing the SIPs, the Commission encourages open debate of issues within the operating committee and the communication of dissenting views to the Commission.

A number of commenters express support for the Commission's proposal to require an augmented majority vote for action of the New Consolidated Data Plan.[277] Other commenters, however, suggest variations on the voting requirements. One commenter suggests imposing a supermajority requirement for plan amendments and a majority vote for all other actions, similar to the requirements of the CAT NMS Plan.[278] Another commenter expresses concern that the augmented majority vote proposal would require that ''a majority of SROs must support any proposal before it can be adopted.'' [279] This commenter suggests that the Commission's proposal for the augmented majority vote, designed to address the SROs' statutory and regulatory obligations under the Act, should be limited to apply only to ''those decisions tied to statutory SRO responsibilities.'' [280] Another commenter argues that the definition of augmented majority vote should be ''expanded to include, at a minimum, a required one-third total vote of the non-SRO members in support of any amendment,'' noting that this would recognize the needs of those subject to regulatory requirements to display consolidated market data.[281] A number of commenters state that non-SRO members of the New Consolidated Data Plan's operating committee should have greater voting power than that proposed by the Commission.[282] Some commenters advocate for an even distribution of voting power between SROs and non-SROs,[283] while one argues for non-SRO members of the operating committee to have majority voting power, noting that independent directors outnumber other directors on SRO boards today.[284]

The Commission disagrees with these variations on the voting requirements. First, rather than adopting, as one commenter suggests, the particular voting requirements established in the CAT NMS Plan, the Commission has elected to require an ''augmented majority vote,'' which requires a supermajority vote of the operating committee, as well as a majority vote of the SRO members of the operating committee.[285] The Commission notes that, among other distinctions between the two plans,[286] here the Commission has determined that it is appropriate to include non-SRO members on the New Consolidated Data Plan's operating committee. Because all votes on the CAT NMS Plan are allocated to SROs, the concern about whether SROs retain sufficient voting power is not present for the CAT NMS Plan.

Second, the Commission disagrees with the commenter's suggestion that the augmented majority vote should apply only to decisions of the New Consolidated Data Plan relating to the SROs' statutory responsibilities. While the Commission acknowledges the commenter's concern about requiring a majority of SRO votes, the Commission believes that any attempt to identify and separate statutory-related items to come before the operating committee would likely require more of the operating committee's time and attention than the potential benefits could justify. In addition, the Commission believes non-SRO members would offer informed views on statutory-related matters given their expertise.

[271] 15 U.S.C. 78k–1.

[272] 17 CFR 242.608.

[273] *See* NYSE Letter, *supra* note 49, at 10 (''Adopting such a structure here would eliminate the ability of any single SRO to impose roadblocks to innovation, and would further encourage collaboration among the participants to the Plans.''); SIFMA Letter, *supra* note 13, at 4–5; IEX Letter, *supra* note 113, at 4; MEMX Letter, *supra* note 80, at 4; Royal Bank of Canada Letter, *supra* note 189, at 2–3; Clearpool Letter, *supra* note 40, at 4; Fidelity Letter, *supra* note 80, at 5; Virtu Letter, *supra* note 80, at 2; Refinitiv Letter, *supra* note 80, at 2.

[274] *See* NYSE Letter, *supra* note 49, at 10.

[275] Letter from Robert Colby, Executive Vice-President & Chief Legal Officer, FINRA (May 1, 2020) (''FINRA Letter'').

[276] *Id.*

[277] *See, e.g.,* SIFMA Letter, *supra* note 13, at 4–5; IEX Letter, *supra* note 113, at 4; MEMX Letter, *supra* note 80, at 4; Royal Bank of Canada Letter, *supra* note 189, at 2–3; Clearpool Letter, *supra* note 40, at 4; Fidelity Letter, *supra* note 80, at 5; Virtu Letter, *supra* note 80 at 2; Refinitiv Letter, *supra* note 80, at 2.

[278] *See* NYSE Letter, *supra* note 49, at 10.

[279] Royal Bank of Canada Letter, *supra* note 189, at 3.

[280] *Id.*

[281] TD Ameritrade Letter, *supra* note 74, at 6.

[282] *See, e.g.,* IEX Letter, *supra* note 113, at 3; CII Letter, *supra* note 74, at 6; State Street Letter, *supra* note 76, at 3; SIFMA Letter, *supra* note 13, at 4; BlackRock Letter, *supra* note 114, at 2.

[283] *See* IEX Letter, *supra* note 113, at 3; Schwab Letter, *supra* note 74, at 5; SIFMA Letter, *supra* note 13, at 4; State Street Letter, *supra* note 76, at 3.

[284] *See* CII Letter, *supra* note 74, at 6. In addition, CII advocates that all actions of the New Consolidated Data Plan be approved by a simple majority vote. *Id.*

[285] All plan action, including amendments to the New Consolidated Data Plan, will require an augmented majority vote, with two exceptions. First, the selection of non-SRO members will require a majority vote of non-SROs. Second, the decision to enter into an executive session, discussed below, will require a majority vote of the SRO members.

[286] Other differences between the two plans include, among other things, their distinct purposes and different impact on market participants.

Finally, the Commission does not agree that the proposed definition of augmented majority should be modified to require, in addition to the two-thirds majority of the operating committee and the majority of SRO votes, the vote of one-third of all non-SRO members eligible to vote, as suggested by a commenter. While this approach would further help to ensure that no proposed amendments to the New Consolidated Data Plan could be filed with the Commission without some level of non-SRO member concurrence, the Commission believes that creating a governance structure that would not, at a minimum, provide the SROs alone with the voting power necessary to effectuate action by the New Consolidated Data Plan [287] does not appropriately recognize the SROs' regulatory responsibilities to act jointly to operate the Plan.

For the same reason, the Commission does not agree that non-SRO members should have greater voting power than that proposed by the Commission. The Commission continues to believe that broader representation than currently exists on the Equity Data Plans would help to ensure that decisions relating to operations facilitate the regulatory goals of the New Consolidated Data Plan, and the Commission believes that providing non-SROs a vote for the first time furthers this goal. Increased representation, however, must be balanced against the SROs' statutory regulatory responsibilities under the Act and Rule 608 of Regulation NMS with respect to operation of the Plans. The Commission believes that the distribution of voting power, as proposed, appropriately strikes this balance by providing for meaningful input from a broad range of stakeholders while also ensuring that the SROs retain sufficient voting power to act jointly on behalf of the plan pursuant to their regulatory responsibilities.[288] Therefore, the Commission disagrees with the commenters' calls for greater non-SRO voting power than that proposed.

Nonetheless, the Commission believes that permitting non-SRO stakeholders to have voting power on the New Consolidated Data Plan should facilitate discussion and encourage the SROs to more carefully consider the anticipated effects of plan action. Moreover, in the Commission's view, this approach represents a logical step in the evolution of NMS plan governance.[289] As noted in the Proposed Order, the Commission explained in Regulation NMS that the creation of advisory committees to the Equity Data Plans was ''a useful first step toward improving the responsiveness of Plan participants and the efficiency of Plan operations.''[290] And in adopting Regulation NMS, the Commission stated that it would ''continue to monitor and evaluate Plan developments to determine whether any further action is warranted.'' [291] The Commission believes that further action, in the form of the governance measures discussed in this Order, including the exchange group voting allocation, the provision of voting power to non-SROs, and the augmented majority voting requirement, is warranted at this time and should help to ensure that New Consolidated Data Plan decisions and action relating to consolidated market data result in improved governance that will benefit the equity markets as a whole.

D. The Need for an Independent Plan Administrator

In the Proposed Order, the Commission included a requirement that the New Consolidated Data Plan use an independent plan administrator that could not be owned or controlled by a corporate entity that offers for sale its own proprietary market data product, either directly or via another subsidiary.[292] Commenters reflecting a broad range of market participants (including one exchange) express support for the Commission's requirement of an independent plan administrator.[293] In contrast, two commenters question the rationale for requiring an independent plan administrator and express concern with the potential burdens imposed by changing the existing framework, in which plan administrators are SRO-affiliated.[294] One commenter states that the Proposed Order failed to identify ''any shortcomings or problems'' in the current approach and highlights the existence of information control policies and procedures that are designed to safeguard the confidential information handled by the plan administrator.[295] Another commenter requests clarification on the scope of activity that would disqualify an entity from acting as the independent plan administrator.[296] This commenter believes that the prohibition on an entity offering its own proprietary market data products should be ''expressly limited to data products that compete with the SIP—in other words, data with content that includes NMS stock quotations or transactions.'' [297]

The Commission continues to believe that, as stated in the Proposed Order, an entity that acts as the administrator while also offering for sale its own proprietary data products faces a substantial, inherent conflict of interest, because it would have access to sensitive SIP customer information of significant commercial value.[298] As discussed further below, the Commission has separately approved amendments to the Equity Data Plans establishing policies, as modified by the Commission, designed to address conflicts of interest and protect confidential information from misuse.[299] The Commission continues

[287] The augmented majority vote would allow a measure to pass with support of only the SRO votes on the operating committee, which would satisfy the requirements of a supermajority vote of the operating committee and a majority of the SRO votes.

[288] 15 U.S.C. 78k–1 and 17 CFR 242.608.

[289] *See* Regulation NMS Release, *supra* note 7.

[290] *Id.,* 70 FR at 37561.

[291] *Id.*

[292] *See* Proposed Order, *supra* note 4, 85 FR at 2187. NYSE and Nasdaq currently act as administrators of the Equity Data Plans. Under the independence provision, NYSE and Nasdaq would be excluded from operating as plan administrators, although they would not be excluded from continuing to act as SIPs.

[293] *See, e.g.,* T. Rowe Price Letter, *supra* note 164, at 2; Refinitiv Letter, *supra* note 80, at 2; ICI Letter, *supra* note 78, at 5; Wellington Letter, *supra* note 77, at 2; MFA/AIMA Letter, *supra* note 142, at 5; Bloomberg Letter, *supra* note 40, at 2; State Street Letter, *supra* note 76, at 2; Fidelity Letter, *supra* note 80, at 3; Schwab Letter, *supra* note 74 at 6; Royal Bank of Canada Letter, *supra* note 189, at 4; MEMX Letter, *supra* note 80, at 5; Clearpool Letter, *supra* note 40, at 5; Citi Letter, *supra* note 85, at 4; IEX Letter, *supra* note 113, at 3. One commenter recommends that the independence requirement also apply to the SIP processors for all the same reasons. *See* Schwab Letter, *supra* note 74, at 6. The Commission acknowledges that independence of the plan processors may mitigate some concerns regarding conflicts of interest. In this regard, the Proposed Order, as recognized by this commenter, requires the operating committee to review the performance of the plan processors and ensure the public reporting of plan processor's performance and other metrics and information about the plan processors. Furthermore, as discussed above, the Commission has proposed rule amendments related to the SIP processors in the Infrastructure Proposal. *See supra* Section II.B.2(b).

[294] *See* Nasdaq Letter, *supra* note 45, at 13; NYSE Letter, *supra* note 49, at 20. Nasdaq also expresses support for a single administrator and processor for the SIPs. *See* Nasdaq Letter, *supra* note 45, at 13. Nasdaq believes that the Commission should consider a single consolidated tape for all exchange-listed equities. *See id.* As discussed above, this Order is taking an incremental approach to the governance issues related to the Equity Data Plans and is at this time not addressing the production, aggregation, or distribution of consolidated market data.

[295] *See* NYSE Letter, *supra* note 49, at 20. Similarly, Nasdaq states that the Commission cited ''no actual evidence as justification for impairing the functioning of the administrator, only 'concerns.'" *See* Nasdaq Letter, *supra* note 45, at 13.

[296] *See* FINRA Letter, *supra* note 275.

[297] *Id.*

[298] *See* Proposed Order, *supra* note 4, 85 FR at 2183.

[299] *See infra* Section II.E.1 and 2. The new conflicts of interest policy will require the administrators of the Equity Data Plans to disclose

to believe that the conflicts of interest faced by a non-independent administrator are so great that these conflicts cannot be sufficiently mitigated. Unlike the exchanges, an independent plan administrator would not have as a competing objective maximizing the profitability of its own proprietary data products.[300] The Commission agrees that, as one commenter states, ''[t]rue separation or independence is necessary to mitigate the conflicts of controlling the SIP data products while selling proprietary products.''[301] Similarly, another commenter states that an independent administrator ''would eliminate any potential conflict of interest and allow the administrator to focus efforts on improved technology and reduced latency.''[302] The Commission agrees, as the independence requirement would separate the independent administrator from an exchange's commercial interests and allow it to focus on the regulatory objectives of Section 11A of the Act. Additionally, because the relevant conflict of interest for an administrator would arise from administration of the SIPs while selling overlapping proprietary data products, the Commission believes that the independence requirement for the administrator must prohibit an entity from serving as administrator of the New Consolidated Data Plan if it is owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data products for NMS stocks.

As stated in the Proposed Order, Participants and Participant representatives have been privy to confidential information of substantial commercial or competitive value, including, among other things, information about core data usage, the SIPs' customer lists, financial information, and subscriber audit results.[303] A particular area of heightened sensitivity with an exchange-affiliated administrator relates to the audit function. As one commenter points out, ''the audit function creates special conflicts when it is managed by an affiliate of a Participant (which is presently the case for all the [Equity Data] Plans) because it is directly involved in raising revenue for the [P]lans, which benefits the affiliated Participants directly through distributions of Plan revenue (almost all revenue collected is distributed to Participants).''[304] This commenter further states that ''there is the potential for the audit function to be used to advance the business objectives of one or more Participants, in cases where they compete in one or more businesses with an entity that is the subject of an audit.''[305] The Commission believes that the proposed independent plan administrator requirement would address concerns regarding the potential use of SIP subscriber audit data to pursue commercial interests outside of the New Consolidated Data Plan.

However, two commenters state that employing an independent administrator would disrupt the administration of the Plans.[306] One commenter states that the independence requirement ''may impair the eventual functioning of the administrator as having separate firms responsible for administration and processing may slow coordination and response time during a possible market event.''[307] Another commenter emphasizes that the current SRO-affiliated administrators have specialized experience, established relationships with SIP customers, and familiarity with the practices and systems of the SIP.[308] This commenter states that the SROs would incur costs in the process of identifying, negotiating with, and hiring a new administrator.[309] This commenter also states that ''[a]ll of that experience and shared institutional knowledge would be lost in a transition to an unaffiliated [a]dministrator, and SIP customers would have to shoulder the burden of familiarizing the new Administrator with their practices and systems.''[310] The commenter further states that the Proposed Order ''failed to consider substantial benefits enjoyed by SIP customers as a result of the Administrators' affiliation with SROs [and that] . . . [c]ustomers generally appreciate that administrators can concurrently audit the customer's use of the SRO's proprietary data feeds when auditing the customer's SIP usage . . . .''[311] Finally, this commenter asserts that under the independent plan administrator framework, each SIP customer that is also a customer of NYSE and Nasdaq proprietary data feeds would be audited three times—by the new independent plan administrator, by NYSE, and Nasdaq—instead of only by NYSE and Nasdaq.[312]

The Commission acknowledges that the current plan administrators' significant experience and familiarity with the SIPs' practices and systems facilitate the continuity of the administration of the SIPs, and that there will be a transition period with additional costs to onboard the new independent plan administrator, including system infrastructure (*e.g.,* network connectivity to exchanges, hosting, and database upgrades) and human capital (*e.g.,* contract management, hiring personnel, service support, and consolidating policies). In addition, depending on the level of experience and knowledge in the operation of the SIPs, the Commission anticipates that there will be a transition period for the new independent administrator, as would be anticipated in any new role involving the New Consolidated Data Plan. On balance, however, the Commission believes that eliminating the conflict of interest justifies the requirement. Other NMS plans, moreover, have the roles of administrator and processor performed by different entities.[313] The Commission also disagrees with one commenter's statement that employing separate firms responsible for administration and processing would slow coordination and response time to market events

any employment or affiliation with an SRO and a narrative description of functions performed. *See* Conflicts of Interest Approval Orders, *infra* note 326. After the Participants have transitioned to the New Consolidated Data Plan and adopted a conflicts of interest policy as outlined in the Conflicts of Interest Approval Orders, the Commission believes that the administrator's disclosure requirements would continue to provide transparency with respect to the independence of the plan administrator.

[300] *See, e.g.,* Clearpool Letter, *supra* note 40, at 5; ICI Letter, *supra* note 78, at 5; IEX Letter, *supra* note 113, at 5; Fidelity Letter, *supra* note 80, at 3; MFA/AIMA Letter, *supra* note 142, at 5; Schwab Letter, *supra* note 74, at 6; State Street Letter, *supra* note 76, at 2; T. Rowe Price Letter, *supra* note 164, at 2.

[301] Schwab Letter, *supra* note 74, at 6.

[302] Refinitiv Letter, *supra* note 80, at 2.

[303] *See* Proposed Order, *supra* note 4, 85 FR at 2185.

[304] IEX Letter, *supra* note 113, at 4–5.

[305] IEX Letter, *supra* note 113, at 5. This commenter recommends that the Commission specify that the New Consolidated Data Plan ''require strict independence of the audit function.'' *See id.* Under the terms of the proposal, the independent plan administrator would help to ensure that the audit process is fair and reasonable. Another commenter states that confidential information received by exchanges under the Equity Data Plans may have been used to further the exchanges' commercial interests. *See* Healthy Markets Letter, *supra* note 40, at 20.

[306] *See* Nasdaq Letter, *supra* note 45, at 13; NYSE Letter, *supra* note 49, at 20. One commenter states that the Commission failed to consider in the Proposed Order the potential disruption to the administration of the Equity Data Plans by switching to an independent administrator. *See* NYSE Letter, *supra* note 49, at 20.

[307] Nasdaq Letter, *supra* note 45, at 13.

[308] *See* NYSE Letter, *supra* note 49, at 20.

[309] *See id.* at 19.

[310] *Id.* at 20.

[311] *Id.*

[312] *See id.*

[313] Under the OPRA Plan, for example, Cboe Exchange, Inc. serves as the plan administrator and the Securities Industry Automation Corporation (''SIAC''), an NYSE affiliate, serves as the processor.

because the roles of administrator and processor are functionally different, as prescribed by the Plans, and operate independently of one another (*e.g.,* do not share the same personnel, shared systems, monitoring systems or databases).

The Commission acknowledges commenters' concerns regarding the transition to an independent administrator, including the burden of familiarizing the new administrator with subscriber practices and systems. With respect to one commenter's statement regarding the benefits of established relationships and familiarity with SIP customers and their systems, the Commission understands that administrators receive confidential and competitively sensitive information from broker-dealers about their products, systems, and operations, when engaging in the contracting process. This access to information and familiarity of SIP customers is the exact concern raised by commenters, some representing those same SIP customers, regarding conflicts of interest in the current administrator framework.[314] For example, the Commission understands that the administrators have significant latitude with respect to the information they may request during contract approval process for use of SIP market data, some of which may be highly sensitive.

With respect to concerns regarding loss of expertise and shared institutional knowledge, the Commission believes this expertise would be leveraged in a different manner under the New Consolidated Data Plan because the Participants currently acting as administrators would continue to be active members of the operating committee and could advise and facilitate the onboarding process of the new administrator. As stated in the Proposed Order, the New Consolidated Data Plan shall provide for the orderly transition of functions and responsibilities from the three existing Equity Data Plans, which generally would include administrator functions, thereby helping to ameliorate the risk for disruption to the SIP administration process. Furthermore, the Commission highlights that any industry experience loss would be specific to the previous administrative policies and procedures under the Equity Data Plans instead of the New Consolidated Data Plan (*e.g.,* two auditing teams under the Equity Data Plans instead of only one team under the New Consolidated Data Plan).

The Commission disagrees with the commenter's assertion that SIP customers generally appreciate that administrators can concurrently audit the customer's use of the SRO's proprietary data feeds when auditing the customer's SIP usage. In 2018, during the Commission's Division of Trading and Markets Roundtable on Market Data and Market Access (''Market Data Roundtable''), panelists stated there are substantial burdens associated with the Equity Data Plans' audits of their firms' subscriber data usage and fee payment.[315] The Commission also understands that firms must engage in a burdensome approval process with the administrators each time the firms add a new market data product and also upon the request of an administrator at any time.[316] The Commission believes that such burdens identified by these commenters reflect the sort of concerns about the fairness and reasonableness of the audit and contract administration process that the new independent plan administrator is intended to address by completely separating the New Consolidated Data Plan's audit function from the commercial interests of members of the operating committee and their employers and affiliates. Additionally, as discussed above, a single New Consolidated Data Plan would provide the foundation for the application of consistent policies and procedures, which generally would include the audit function.[317] Furthermore, the Commission acknowledges the commenter's example that a joint SIP and NYSE/Nasdaq proprietary data feed customer would be audited three times under the proposal; however, the Commission believes that a consolidated SIP audit under one independent administrator would promote independence of the audit staff of the New Consolidated Data Plan from exchange personnel and directly address concerns related to cross-selling exchange proprietary data products for NMS stocks to the same market participants that are SIP subscribers.

The Commission believes that, despite the implementation costs of selecting an independent administrator, it is a necessary step to ensure that the Plans further the objectives of Section 11A. Further, based on its oversight experience and as described by commenters, the Commission believes that these costs are justified because the inherent conflicts of interest identified by the Commission, whereby an entity acts as a plan administrator while also offering its own competing products to the SIPs, either directly or via a subsidiary, raises significant concerns regarding access to confidential subscriber information. Access to such confidential subscriber information and its use for purposes outside the scope of the Plans by an SRO-affiliated administrator undermines the fair administration of equity market data in the public interest.

Additionally, two commenters argue that the independent plan administrator requirement would constrain the administrator selection process.[318] One of these commenters asserts that the independence requirement would eliminate all firms that have experience in managing a SIP and ''necessarily diminish the quality of the competition among potential administrators.''[319] Rather than adopt the independence requirement, this commenter states that the operating committee tasked with selecting an administrator is in the best position to weigh the conflicts of interest issues against the risk of hiring an administrator without experience.[320]

The Commission disagrees with commenters' concerns that the independence requirement will prevent the New Consolidated Data Plan from employing an administrator capable of managing the SIPs and inappropriately constrain the selection process.[321] The Commission believes that there is a broad range of financial service firms, unaffiliated with an SRO, with specialized capabilities to oversee market data administrative functions, such as licensing, billing, contract administration and client relationship management, and record keeping. Finally, the Commission disagrees with

[314] *See supra* notes 304–305 and accompanying discussion.

[315] *See, e.g.,* Transcript of Day One, Market Data Roundtable, at 112:21–24 and 114:2–9 (statements of Matt Billings, TD Ameritrade) (''The plans regularly audit brokers for compliance with their overly complex rules, which are not harmonized across the CTA and UTP Plans, and are a cause for misinterpretation. . . . The question ultimately becomes, at what point does a retail broker move away from the NMS plans . . . to avoid . . . the audit risk liability that currently exists under the plans.''); Transcript of Day Two, Market Data Roundtable, at 196:20–197:7 (statement of Marcy Pike, Fidelity Investments) (''Most large brokerage firms or asset managers that are consuming this data have significant staffs that are counting and reporting the usage of this data . . . . There is a whole group of folks that have entered into the industry to help facilitate audits for the exchanges. . . .'').

[316] For example, an administrator may view something on a firm's website and seek further explanation from the firm.

[317] *See supra* Section II.B.4 (describing the need for a single New Consolidated Data Plan).

[318] *See* Nasdaq Letter, *supra* note 45, at 13; NYSE Letter, *supra* note 49, at 20.

[319] Nasdaq Letter, *supra* note 45, at 13.

[320] *See id.*

[321] *See* Nasdaq Letter, *supra* note 45, at 13; NYSE Letter, *supra* note 49, at 20.

one commenter's statement that the operating committee is currently in the best position to weigh administrator conflicts of interest issues in selecting an administrator because members of the operating committee would face their own conflict of interest concerns related to any affiliated bidders. Rather, the Commission believes that the independence requirement will ameliorate the burden on the operating committee of deliberating over administrator's conflicts of interest concerns by eliminating conflicted parties at the outset.

One commenter also argues that the termination of contracts of the existing Equity Data Plans' administrators as a result of the transition to a single New Consolidated Data Plan would result in an unconstitutional taking in violation of the Fifth Amendment of the U.S. Constitution.[322] This commenter believes that the Commission should mandate in the Proposed Order that ''no action may be taken that alters the administrators' or processors' rights under current contractual provisions.'' [323]

The Commission disagrees with the commenter's argument that the Commission's proposal would constitute a Fifth Amendment ''taking.'' As discussed in the Proposed Order, the New Consolidated Data Plan's terms should provide for the orderly and predictable transition of functions and responsibilities from the three existing Equity Data Plans to the New Consolidated Data Plan. The commenter fails to explain how that legally authorized transition in this highly regulated field could upset a protected property interest for purposes of the Fifth Amendment's takings clause. Moreover, the operation of the Equity Data Plans is a fundamental component of the national market system, and Congress has given the Commission broad authority to regulate that system. Indeed, the role of administrator exists solely in response to the regulatory requirements of Section 11A of the Act and Regulation NMS. Here, the Commission has determined that it is appropriate, in response to changes in the market, to alter the existing regulatory structure pursuant to this authority. In a highly regulated industry such as the national market system for securities, the Commission does not believe that such a change impermissibly interferes with an administrator's reasonable investment-backed expectations.[324]

E. New Consolidated Data Plan Policies and Procedures

1. Conflicts of Interest Policy

The Proposed Order provided that the New Consolidated Data Plan shall include provisions designed to address the conflicts of interest of SRO members and non-SRO members. On January 8, 2020, the Commission issued for notice and comment the Participants' proposal to amend the Equity Data Plans to make mandatory the current voluntary conflicts-of-interest disclosure regime.[325] Simultaneously with this Order, the Commission is approving the Conflicts of Interest Amendments to the Plans, as modified by the Commission.[326]

The Commission received a number of comments in response to the Proposed Order that address the appropriate scope of conflicts-of-interest policies for the New Consolidated Data Plan, including some comments directly referring to the Conflicts of Interest Amendments. Most commenters acknowledge the conflicts that exchanges face between their regulatory obligations to produce and provide core data and their commercial interests, and support including a robust conflicts-of-interest policy in the New Consolidated Data Plan.[327] However, one commenter states that it believes that the Conflicts of Interest Amendments reduce or eliminate many of the concerns that the Commission raised in the Proposed Order about the governance of the Equity Data Plans, and, in particular, potential conflicts of interests.[328]

The Commission agrees with the commenters that the Conflicts of Interest Amendments, as proposed, attempt to address some of the conflicts inherent in the current market data structure where exchanges can offer proprietary market data products while also sharing responsibility for the public SIP data stream. In fact, the Commission believes that full disclosure of all material facts necessary for market participants and the public to understand the potential conflicts of interest is one important approach to dealing with those potential conflicts. As the Commission states today in its separate approval order, detailed, clear, and meaningful disclosures that provide insight into otherwise non-transparent structures and operations can raise awareness of potential conflicts of interest inherent in the current equity market data structure and increased access to information can facilitate public confidence in Plan operations.[329] However, the Commission believes that broader market developments, such as exchanges converting from being mutually owned to demutualized entities that serve their shareholders, and the emergence of exchange groups, have heightened the potential for competing interests to affect the governance of the Equity Data Plans to a degree that simply cannot be addressed solely by enhanced disclosures.[330] As such, the Commission believes that the Conflicts of Interest Amendments are by themselves insufficient to address these issues.

Some of the exchange groups raise concerns that non-SRO members of the New Consolidated Data Plan's operating committee would favor their own business interests, and that the Proposed Order included neither obligations on non-SRO members nor a mechanism to enforce compliance with the terms of the New Consolidated Data Plan.[331] Another commenter states it would not object to a provision in the New Consolidated Data Plan explicitly providing that non-SRO members have a duty to act in good faith and in the public interest in furtherance of the purposes of Section 11A of the Act.[332]

The Commission recognizes that non-SRO members also face conflicts of interest as both voting members of the operating committee and employees of

[322] *See* Nasdaq Letter, *supra* note 45, at 13–14.

[323] *Id.* at 14.

[324] *See, e.g., Ruckleshaus* v. *Monsanto Co.,* 467 U.S. 986, 1005 (1984); *District Intown Properties Ltd. P'ship* v. *District of Columbia,* 198 F.3d 874, 884 (D.C. Cir. 1999).

[325] *See* Securities Exchange Act Release Nos. 87907 (Jan. 8, 2020), 85 FR 2193 (Jan. 14, 2020) and 87908 (Jan. 8, 2020), 85 FR 2202 (Jan. 14, 2020) (together, the ''Conflicts of Interest Amendments'').

[326] *See* Securities Exchange Act Release Nos. 88823, 88824 (May 6, 2020) (''Conflicts of Interest Approval Orders'').

[327] *See* CII Letter, *supra* note 74, at 6; T. Rowe Price Letter, *supra* note 164, at 2; Refinitiv Letter, *supra* note 80, at 3; MEMX Letter, *supra* note 80, at 6; MFA/AIMA Letter, *supra* note 142, at 5; SIFMA Letter, *supra* note, 13 at 6; Citi Letter, *supra* note 85, at 4; Clearpool Letter, *supra* note 40, at 5; IEX Letter, *supra* note 113, at 4–5.

[328] *See* NYSE Letter, *supra* note 49, at 10. *See also* Cboe Letter, *supra* note 114, at 4 (stating that the Conflicts of Interest Amendments would constitute meaningful improvements to Equity Data Plan governance).

[329] *See* Conflicts of Interest Approval Orders, *supra* note 326, at 6.

[330] *See* Proposed Order, *supra* note 4, 85 FR at 2173–75.

[331] *See* NYSE Letter, *supra* note 49, at 15; Nasdaq Letter, *supra* note 45, at 8–9 (arguing that the Proposed Order does not impose any obligations on non-SRO members of the New Consolidated Data Plan, nor even a clear means to enforce their compliance with the terms of the New Consolidated Data Plan); Cboe Letter, *supra* note 114, at 7–9 (stating that it is critical that the Commission take steps to ensure that it can exercise appropriate oversight over any non-SRO members).

[332] *See* ICI Letter, *supra* note 78, at 4.

businesses that utilize core data or proprietary data feeds. Thus, the Commission believes that the New Consolidated Data Plan should include conflicts-of-interest provisions for both SRO and non-SRO representatives of the operating committee, and as approved, the Conflicts of Interest Amendments will apply equally to SRO and non-SRO representatives. The Commission believes that each of the disclosing parties will be required to disclose conflicts of interest, and will be guided by the goals of the New Consolidated Data Plan to ensure the ''prompt, accurate, reliable, and fair collection, processing, distribution and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' [333] Additionally, because the recusal process outlined in the Conflicts of Interest Amendments as approved is applicable not only to non-SRO members, but to all disclosing parties, it is designed to address these conflicts-of-interest concerns as well.

As stated in the Conflicts of Interest Approval Orders, the Commission believes that those policies, as approved, will enhance the governance of the existing Equity Data Plans and would similarly help the New Consolidated Data Plan address the conflicts of interest that its expanded set of operating committee members would face. The Commission therefore orders the SROs to incorporate into the New Consolidated Data Plan provisions consistent with the Conflicts of Interest Amendments as modified by the Commission.

2. Confidentiality Policy

The Proposed Order provided that the New Consolidated Data Plan shall include provisions designed to protect confidential and proprietary information from misuse. On January 8, 2020, the Commission issued the notice of the Equity Data Plans' proposal to adopt a confidentiality policy to provide guidelines for the operating committee and the advisory committee of the Plans, and all subcommittees thereof, regarding the confidentiality of any data or information generated, accessed, or transmitted to the operating committee, as well as discussions occurring at a meeting of the operating committee or any subcommittee.[334]

The Commission received a number of comments in response to the Proposed Order that address the appropriate confidentiality policy for the New Consolidated Data Plan, including comments that addressed the Confidentiality Policy Amendments submitted by the Participants to the Equity Data Plans. Most commenters support a robust confidentiality policy in the New Consolidated Data Plan that would apply to both SRO and non-SRO members of the operating committee.[335] One commenter believes that the Confidentiality Policy Amendments reduced or eliminated many of the concerns expressed in the Proposed Order.[336] Another commenter states that the proposed Confidentiality Policy Amendments would improve the handling of confidential information and are designed to both protect confidential information from misuse and facilitate the sharing of confidential information with the advisory committee.[337]

In the Proposed Order, the Commission stated its concerns about the possibility of an exchange or its representative obtaining confidential data subscriber information of potentially significant commercial value, as they are privy to information about core data usage, the SIPs' customer lists, financial information, and subscriber audit results via their position on the operating committee.[338] The conflicts resulting from such access could influence decisions as to the Equity Data Plans' operations and thereby impede their ability to achieve the goals of the Plans to ensure the ''prompt, accurate, reliable, and fair collection, processing, distribution and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' Thus, the Commission agrees with the commenters that the Confidentiality Policy Amendments, as initially proposed, are a necessary first step towards implementing a policy to address the commercial use of confidential or proprietary information.

Another commenter recommends that any adopted confidentiality policy included in the New Consolidated Data Plan be sufficiently robust and implemented in a manner to ensure that topics in any executive session are appropriately handled in a secure manner by SRO members, so that non-SRO members may participate in executive sessions.[339]

Simultaneously with the issuance of this Order, the Commission is approving the Confidentiality Policy Amendments to the Equity Data Plans, as modified by the Commission.[340] In approving the Confidentiality Policy Amendments, the Commission modified a provision so that classification of information would be based on the content and sensitivity of the information, rather than on whether it is shared in an executive session, resulting in a more vigorous confidentiality policy.[341]

The Commission believes that the Confidentiality Policy Amendments, as approved by the Commission, will enhance the governance of the existing Equity Data Plans and would similarly help the New Consolidated Data Plan appropriately identify and treat confidential information. The Commission therefore orders the SROs to incorporate into the New Consolidated Data Plan, provisions consistent with the Confidentiality Policy Amendments as modified by the Commission.

3. Executive Session Policy

The Proposed Order provided that the New Consolidated Data Plan should include an executive session policy that permits the SROs to hold executive sessions only in circumstances when it is appropriate to exclude non-SRO members.[342] The Commission further proposed that a request to enter into an executive session be included on the written agenda along with a clearly stated rationale for each matter to be discussed and subsequently approved by a majority vote of the SRO members of the operating committee.[343]

The Commission received several comments regarding the proposed executive session policy.[344] Most

[333] 15 U.S.C. 78k–1.

[334] *See* Securities Exchange Act Release Nos. 87909 (Jan. 8, 2020), 85 FR 2207 (Jan. 14, 2020) and 87910 (Jan. 8, 2020), 85 FR 2212 (Jan. 14, 2020) (together, the ''Confidentiality Policy Amendments'').

[335] *See* Refinitiv Letter, *supra* note 80, at 3; Wellington Management Letter, *supra* note 77, at 2; MEMX Letter, *supra* note 80, at 6; MFA/AIMA Letter, *supra* note 142 at 5; SIFMA Letter, *supra* note 13, at 6; Royal Bank of Canada Letter, *supra* note 189, at 4; Clearpool Letter, *supra* note 40, at 5; Citi Letter, *supra* note 85, at 4.

[336] *See* NYSE Letter, *supra* note 49, at 10.

[337] *See* Cboe Letter, *supra* note 114, at 5.

[338] *See* Proposed Order, *supra* note 4, 85 FR at 2185.

[339] *See* TD Ameritrade Letter, *supra* note 74, at 7–8.

[340] *See* Securities Exchange Act Release Nos. 88825, 88826 (May 6, 2020) (''Confidentiality Policy Approval Orders'').

[341] *See* Confidentiality Policy Approval Order, *supra* note 340.

[342] *See* Proposed Order, *supra* note 4, 85 FR at 2184–85.

[343] *See id.* at 2185.

[344] *See* NYSE Letter, *supra* note 49; TD Ameritrade Letter, *supra* note 74; Virtu Letter, *supra* note 80; Refinitiv Letter, *supra* note 80; MEMX Letter, *supra* note 80; Cboe Letter, *supra* note 114; Royal Bank of Canada Letter, *supra* note 189; Clearpool Letter, *supra* note 40.

commenters were supportive of the Commission's proposal, reiterating that executive sessions should be severely limited to certain circumstances.[345] However, one commenter believes that the executive session policy should be limited to ''necessary'' circumstances, and not merely ''appropriate'' as proposed by the Commission, and states that coupled with the Confidentiality Policy Amendments, the need for executive sessions should be minimal.[346] The exchange groups contend that the Equity Data Plans' operating committee had already limited the use of executive sessions and implemented a process of disclosing potential topics for executive sessions in advance and voting on them in the presence of the advisory committee.[347]

One commenter suggests that, instead of approving an executive session by a majority vote of the SRO members, an executive session request should be approved by the augmented majority voting procedures (as discussed above) and the votes should be reflected in the meeting minutes.[348] Specifically, the commenter is concerned that limiting non-SRO members' voting rights, in determining whether to move into executive session or not, could potentially cause topics outside the stated policy to be approved for executive session. The commenter further recommends that the policy should provide a process by which decisions to close meetings can be challenged by any operating committee member with cause.[349] Another commenter proposes that non-SRO members should be able to participate, but not vote, in executive sessions, arguing that non-SRO participation would still allow SROs to effect solely SRO business, while providing non-SRO members with the necessary context to inform their positions.[350] Regarding non-SRO member participation in executive sessions, the commenter further suggests that one non-SRO member voted on by peers be permitted to participate without a vote in the executive session, or, alternatively, that a non-conflicted legal counsel be in attendance.[351]

As reflected in the Proposed Order,[352] the Commission recognizes that there may be circumstances in which deliberations by the SROs alone may be appropriate. Because this Order provides that the New Consolidated Data Plan shall confine executive sessions to circumstances in which it is appropriate to exclude non-SRO members—such as, for example, discussions regarding matters that exclusively affect the SROs with respect to the Commission's oversight of the New Consolidated Data Plan (including attorney-client communications relating to such matters)—the Commission believes that it is appropriate that the request to enter into an executive session require a majority vote of the SRO members of the operating committee. The Commission further believes that requiring only a majority vote of the SROs is balanced by the requirement that a request to enter into an executive session be included on a written agenda, along with a clearly stated rationale for each matter to be discussed.[353] Non-SROs, as voting members of the operating committee, would have access to this agenda and be present for the vote to enter into executive session, providing an opportunity to discuss or inquire about the basis for the requested session.

4. Responsibilities of the Operating Committee

The Proposed Order set forth several responsibilities of the operating committee under the New Consolidated Data Plan.[354] The Commission received several comments regarding the role of the operating committee, with most commenters supporting the enunciated functions.[355] One commenter agrees that the New Consolidated Data Plan should make explicit that the operating committee is responsible for taking action to meet the statutory goals of assuring the ''prompt, accurate, reliable, and fair collection, processing, distribution, publication of information with respect to quotations for and transactions in NMS stock and the fairness and usefulness of the form and content of that information.'' [356]

Several commenters support the operating committee's responsibility to select, oversee, specify the role and responsibilities of, and evaluate the performance of, an independent plan administrator, plan processors, and auditor, and other professional service providers.[357] Commenters also express support for the operating committee's role to review the performance of the plan processors, and ensure the public reporting of plan processors' performance and other metrics and information about the plan processors and believed it would allow industry participants to provide meaningful input to the operating committee and the Commission.[358]

However, one commenter contends that the Equity Data Plan administrators and processors operate pursuant to service contracts and that terminating the contracts without regard to the administrators' or processors' rights would violate the Fifth Amendment prohibition against takings without just compensation. The commenter asserts that the Commission should mandate that the operating committee not take any action that would alter the administrators' or processors' rights under their current contractual provisions.[359]

The Commission does not agree that the Proposed Order would mandate the termination of the current contract with the processors, because the Proposed Order contemplated that the New Consolidated Data Plan may incorporate the current operational provisions of the Equity Data Plans and that therefore the existing processors for the Equity Data Plans would become the processors for the New Consolidated Data Plan. Thus, the Proposed Order would not impermissibly interfere with a protected property interest and does not represent a ''taking'' within the meaning of the Fifth Amendment. Indeed, the Proposed Order should not result in any economic harm to the processors. Currently under the Equity Data Plans, the SIAC is the

[345] *See* TD Ameritrade Letter, *supra* note 74, at 7; Virtu Letter, *supra* note 80, at 2; MEMX Letter, *supra* note 80, at 7; Clearpool Letter, *supra* note 40, at 5; Refintiv Letter, *supra* note 80, at 3.

[346] *See* Royal Bank of Canada Letter, *supra* note 189, at 3.

[347] *See* NYSE Letter, *supra* note 49, at 8; Cboe Letter, *supra* note 114, at 5.

[348] *See* TD Ameritrade Letter, *supra* note 74, at 7.

[349] *See id.* at 8.

[350] *See* TD Ameritrade Letter, *supra* note 74, at 8.

[351] *Id.*

[352] *See* Proposed Order, *supra* note 4, 85 FR at 2184–85.

[353] *See id.* at 2185.

[354] *See id.* at 2186–87.

[355] *See* Clearpool Letter, *supra* note 40, at 5; Letter from John L. Thornton, Co-Chair, Hal S. Scott, President, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation (Feb. 28, 2020), at 6 (''Capital Markets Letter''); IEX Letter, *supra* note 113, at 3–4; Virtu Letter, *supra* note 80, at 2; MEMX Letter, *supra* note 80, at 5–6; TD Ameritrade Letter, *supra* note 74, at 6–7; Bloomberg Letter, *supra* note 40, at 3–5; MFA/AIMA Letter, *supra* note 142, at 4–5.

[356] *See* IEX Letter, *supra* note 113, at 3. *See also* Virtu Letter, *supra* note 80, at 2 (supporting implementation of governance reforms and mandating new policies and procedures to ensure transparency and accountability for actions taken by the operating committee); TD Ameritrade Letter, *supra* note 74, at 8 (supporting adoption and inclusion of all other provisions of the Equity Data Plans necessary for the operation and oversight of the SIPs under the New Consolidated Data Plan).

[357] *See* Clearpool Letter, *supra* note 40, at 5; MEMX Letter, *supra* note 80, at 5–6.

[358] *See* Capital Markets Letter, *supra* note 355, at 6; Clearpool Letter, *supra* note 40, at 5; MEMX Letter, *supra* note 80, at 6.

[359] *See* Nasdaq Letter, *supra* note 45, at 14.

exclusive processor for Tapes A and B and Nasdaq is the exclusive processor for Tape C. While the Commission is ordering a single New Consolidated Data Plan, it is not imposing requirements or taking a position as to whether the three Tapes will continue to exist. Upon commencement of the New Consolidated Data Plan, the operating committee may determine to select new processors, however, such selection will be subject to the augmented voting structure and subsequent review, pursuant to Rule 608, by the Commission.

In any event, even if contractual arrangements with processors would have to be altered, no commenter has presented any identifiable and protected property interest. Nor has any commenter explained how such arrangements would alter any reasonable investment-backed expectations in this highly regulated field.

The Commission also received comments regarding the proposed requirement about terms and fees for the distribution, transmission, and aggregation of core data.[360] Some commenters recommend that the operating committee clarify the terms ''fair and reasonable.'' [361] Commenters alternatively suggest that the Commission use its rulemaking authority to codify its ''Staff Guidance on SRO Rule Filings Relating to Fees'' to assist in the review of prices or that the Commission introduce additional rulemaking to include clear and specific cost-based requirements to support SIP data fees.[362] One commenter argues that the current SIP fees have already gone through the required regulatory review process and as such, should remain in place unless the new operating committee determines to change them.[363]

As the Commission stated in the Proposed Order, the existing Equity Data Plans will continue to be responsible for the consolidation and dissemination of SIP data and the fees for SIP data will continue to be governed by the provisions of the Equity Data Plans, until the New Consolidated Data Plan is ready to assume responsibility for the dissemination of SIP data and fees of the New Consolidated Data Plan have become effective.[364] Thus, the Equity Data Plans will continue to function, with their existing fees, until those Plans are decommissioned and are no longer responsible for the consolidation and dissemination of equity market data. This Order creates a new NMS plan for equity market data, and the Commission believes that any new SIP data fees, including consideration of what would be ''fair and reasonable,'' should be discussed among and developed by the new operating committee and would need to be voted and approved by an augmented vote pursuant to the terms of the New Consolidated Data Plan. Consistent with the requirements of Rule 608, all of the terms of the New Consolidated Data Plan, both those filed as part of the initial plan itself, or those submitted as later amendments to address products or fees, would be subject to public notice and comment and Commission review.

The Commission also received comments regarding the operating committee's responsibility to design a fair and reasonable revenue allocation formula for allocating plan revenues to be applied by the independent plan administrator, and overseeing, reviewing, and revising that formula as needed.[365] One commenter recommends that the Commission revisit the current revenue allocation formula now, with the goal of arriving at a new formula that better rewards displayed liquidity resulting in price discovery.[366] Another commenter concurs, stating that the revenue allocation formula should be modified to reward displayed quotes where investors receive an execution.[367]

The Commission believes that the SROs as operators of the SIPs are well suited to determine how the revenues are distributed among the SROs. Consistent with any other plan actions, once the operating committee determines a fair and reasonable allocation and files a proposed amendment with the Commission, the Commission will publish such an amendment for notice and comment pursuant to Rule 608, and will have an opportunity to review the provisions, consider the operating committee's rationale, and at that time make a determination as to whether the proposal is fair and reasonable.

F. Transition From Equity Data Plans to New Consolidated Data Plan

The Proposed Order stated that the New Consolidated Data Plan shall provide for the orderly transition of functions and responsibilities from the three existing Equity Data Plans and shall provide that the dissemination of, and fees for, SIP data continue to be governed by the provisions of the Equity Data Plans until the New Consolidated Data Plan is ready to assume responsibility for the dissemination of SIP data and fees of the New Consolidated Data Plan has been approved.[368] The Commission received several comments on the proposed transition to the New Consolidated Data Plan.[369]

One commenter argues that the proposed allocation of 90 days for the SROs to file the New Consolidated Data Plan with the Commission was unreasonable, stating that the current operating committee would have to resolve numerous issues, such as (1) developing comprehensive conflicts-of-interest provisions for both SRO and non-SRO representatives of the operating committee, (2) reconciling inconsistencies between the Equity Data Plans, (3) designing processes for selection and evaluation of an independent plan administrator, auditor, and other professional service providers, and (4) setting parameters for a revision to the revenue allocation formula.[370] Alternatively, this commenter suggests a 180-day deadline for an initial progress report, followed by progress reports every 90 days until completion.[371]

Conversely, another commenter asserts that a shorter period of time, for example 45 days after the Order is issued, would be sufficient for the SROs to file the New Consolidated Data Plan with the Commission, and suggests that the Commission be more prescriptive in providing the terms for the New Consolidated Data Plan to avoid implementation delay.[372]

The Commission continues to believe that it is appropriate and in the public

[360] *See* Capital Markets Letter, *supra* note 355, at 6 (stating that cost transparency is crucial to ensuring that consolidated market data fees are ''not unreasonably discriminatory'' and ''fair and reasonable''); MFA/AIMA Letter, *supra* note 142, at 4 (stating that the New Consolidated Data Plan should make clear that fees should be related to the cost of production, aggregation and distribution, rather than to user value).

[361] *See* TD Ameritrade Letter, *supra* note 74, at 6; Bloomberg Letter, *supra* note 40, at 4–5; NYSE Letter, *supra* note 49, at 11.

[362] *See* TD Ameritrade Letter, *supra* note 74, at 6–7; NYSE Letter, *supra* note 49, at 11.

[363] *See* Cboe Letter, *supra* note 114, at 11.

[364] *See* Proposed Order, *supra* note 4, 85 FR at 2186.

[365] *See* NYSE Letter, *supra* note 49, at 11; MEMX Letter, *supra* note 80, at 6.

[366] *See* NYSE Letter, *supra* note 49, at 11.

[367] *See* Nasdaq Letter, *supra* note 45, at 4–5.

[368] *See* Proposed Order, *supra* note 4, 85 FR at 2186.

[369] *See* ICI Letter, *supra* note 78; Nasdaq Letter, *supra* note 45; TD Ameritrade Letter, *supra* note 74; Royal Bank of Canada Letter, *supra* note 189; Fidelity Letter, *supra* note 80; SIMFA Letter, *supra* note 13; State Street Letter, *supra* note 76; IEX Letter, *supra* note 113.

[370] *See* Nasdaq Letter, *supra* note 45, at 14–15.

[371] *See id.* at 15.

[372] *See* IEX Letter, *supra* note 113, at 2.

interest for the Participants to submit the New Consolidated Data Plan to the Commission within 90 days to ensure timely implementation of the enhanced governance structure. As discussed above, the Participants have significant experience to draw upon in developing the New Consolidated Data Plan. And the Commission anticipates that the Participants may incorporate many, if not most, of the operational provisions of the Equity Data Plans into the New Consolidated Data Plan filed with the Commission, substantially reducing the work required to prepare and file the New Consolidated Data Plan. Further, through this Order, the Commission is prescribing, in substantial detail, most of the governance provisions that would differ between the Equity Data Plans and the New Consolidated Data Plan, further reducing the work required of the Participants to prepare the new plan. In addition, as stated above, the Commission is simultaneously issuing the Conflicts of Interest Approval Orders and the Confidentiality Policy Approval Orders, and the conflicts of interest and confidentiality policies, as approved by the Commission, can be incorporated into the New Consolidated Data Plan.

Notwithstanding the above, the Commission understands the challenges associated with the current global pandemic. As the impact of the pandemic unfolds, the Commission continues to monitor market developments, including as they may relate to this initiative.

Commenters also express concerns that SROs may unnecessarily delay implementing the New Consolidated Data Plan and recommend that the Commission prescribe specific milestones, and establish timetables for the completion of such milestones to compel an expedient transition to the New Consolidated Data Plan.[373] Specifically, one commenter suggests that the New Consolidated Data Plan be implemented and the new independent administrator be selected within 180 days of the date of the Order, with the ability for the Commission to grant an extension.[374] Another commenter recommends that the Order either impose immediate reforms on the SROs or alternatively require that the New Consolidated Data Plan have a rolling implementation schedule specifying that some reforms take effect immediately, such as including non-SRO members on the operating committee, implementing the augmented voting structure, and adopting the Conflicts of Interest and Confidentiality Amendments.[375] Separately, several commenters suggest penalizing the SROs for any unwarranted delays or failures to meet a milestone deadline.[376] Commenters also recommend that the Commission impose a fine on SROs for delays or prohibit the SROs from receiving market data revenues from the SIP data fees for a certain period of time to incentivize timely implementation.[377]

For the reasons discussed above, the Commission continues to believe that 90 days is an appropriate amount of time for the SROs to file the New Consolidated Data Plan. The Commission is not imposing, beyond the 90-day requirement to file the New Consolidated Data Plan, specific timetables, milestones or implementation schedules because the Commission expects that the SROs will be able to act expeditiously based on their experience as operators of the SIP, coupled with their statutory requirement to ensure the ''prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' [378]

G. Other Comments

Comment letters also addressed financial disclosures regarding New Consolidated Data Plan operations,[379] the calculation of SIP fees,[380] the timing of financial disclosures,[381] the information such disclosures should include,[382] and concerns raised by high speed trading.[383] Ultimately, however, this Order focuses on certain critical aspects of the governance structure of the Plans. These additional topics fall outside the scope of this Order.

* * * * *

As noted above, Section 11A(a)(2) of the Act [384] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to facilitate the establishment of a national market system for securities. Section 11A(a)(3)(B) of the Act provides the Commission the authority to require the SROs, by order, ''to act jointly . . . in planning, developing, operating, or regulating a national market system (or a subsystem thereof).'' [385]

For the reasons discussed above, the Commission believes that it is in the public interest to require the Participants in the Equity Data Plans to jointly develop and file with the Commission a New Consolidated Data Plan as an NMS plan pursuant to Rule 608(a) of Regulation NMS.[386]

III. The New Consolidated Data Plan

The Commission hereby orders the Participants in the Equity Data Plans to jointly develop and file with the Commission, as an NMS plan pursuant to Rule 608(a) of Regulation NMS,[387] a single New Consolidated Data Plan that replaces the three current Equity Data Plans and that includes, at a minimum, the following terms and conditions:

- The New Consolidated Data Plan shall provide for the orderly transition of functions and responsibilities from the three existing Equity Data Plans and shall provide that dissemination of, and fees for, SIP data will continue to be governed by the provisions of the Equity Data Plans until the New Consolidated Data Plan is ready to assume responsibility for the dissemination of SIP data and fees of the New Consolidated Data Plan have become effective.
- The New Consolidated Data Plan shall provide that each exchange group and unaffiliated SRO will be entitled to name a member of the operating committee (''SRO member''), who will be authorized to cast one vote on all

[373] *See* ICI Letter, *supra* note 78, at 6; Fidelity Letter, *supra* note 80, at 6; TD Ameritrade Letter, *supra* note 74, at 8; Royal Bank of Canada Letter, *supra* note 189, at 2; SIFMA Letter, *supra* note 13, at 5–6; State Street Letter, *supra* note 76, at 4.

[374] *See* TD Ameritrade Letter, *supra* note 74, at 8.

[375] *See* Royal Bank of Canada Letter, *supra* note 189, at 2.

[376] *See* ICI Letter, *supra* note 78, at 6; Fidelity Letter, *supra* note 80, at 6; SIFMA Letter, *supra* note 13, at 5–6.

[377] *See* ICI Letter, *supra* note 78, at 6; Fidelity Letter, *supra* note 80, at 6.

[378] 15 U.S.C. 78k–1(c)(b).

[379] *See* Bloomberg Letter, *supra* note 40, at 3–4; Capital Markets Letter, *supra* note 355, at 6; IEX Letter, *supra* note 113, at 5; Schwab Letter, *supra* note 74, at 6–7; Virtu Letter, *supra* note 80, at 5; TD Ameritrade Letter, *supra* note 74, at 6 (suggesting that the Commission codify explicit requirements regarding what is ''fair and reasonable.'').

[380] *See* MFA/AIMA Letter, *supra* note 142, at 4.

[381] *See* Bloomberg Letter, *supra* note 40, at 3–4; Schwab Letter, *supra* note 74, at 6–7; IEX Letter, *supra* note 113, at 5; Virtu Letter, *supra* note 80, at 5.

[382] *See* Bloomberg Letter, *supra* note 40, at 3–4; IEX Letter, *supra* note 113, at 5; Virtu Letter, *supra* note 80, at 5; Schwab Letter, *supra* note 74, at 6–7.

[383] *See* Letter from Kermit R. Kubitz, Individual Consumer, San Francisco, CA (Mar. 20, 2020).

[384] 15 U.S.C. 78k–1(a)(2).

[385] 15 U.S.C. 78k–1(a)(3)(B).

[386] 17 CFR 242.608(a).

[387] 17 CFR 242.608(a). The New Consolidated Data Plan, or any amendment thereto, must comply with the requirements of Rule 608 of Regulation NMS, including the requirement in Rule 608(a) to include an analysis of the impact on competition. 17 CFR 242.608(a).

operating committee matters pertaining to the operation and administration of the New Consolidated Data Plan, provided that an SRO member representing an exchange group or an unaffiliated SRO whose market center(s) have consolidated equity market share of more than 15 percent during four of the six calendar months preceding a vote of the operating committee will be authorized to cast two votes, and provided that an SRO member representing an exchange that has ceased operations as an equity trading venue, or has yet to commence operation as an equity trading venue, will not be permitted to cast a vote on New Consolidated Data Plan matters.

• The New Consolidated Data Plan shall provide that the operating committee will include, for a term of two years, and for a maximum term to be set forth in the New Consolidated Data Plan, individuals representing each of the following categories: An institutional investor, a broker-dealer with a predominantly retail investor customer base, a broker-dealer with a predominantly institutional investor customer base, a securities market data vendor, an issuer of NMS stock, and a person who represents the interests of retail investors (''retail representative'') (collectively, ''Non-SRO Members''), provided that the representatives of the securities market data vendor and the issuer are not permitted to be affiliated or associated with an SRO, a broker-dealer, or an investment adviser with third-party clients. The retail representative shall have experience working with or on behalf of retail investors and have the requisite background and professional experience to understand the interests of retail investors, the work of the operating committee of the New Consolidated Data Plan, and the role of market data in the U.S. equity market. The retail representative shall not be affiliated with an SRO or a broker-dealer.

• The New Consolidated Data Plan shall provide that the initial Non-SRO Members will be selected by a majority vote of those current members of the Equity Data Plans' advisory committees, excluding advisory committee members who were selected by a Participant to be its representative, and that subsequent Non-SRO Members be selected solely by the then-serving Non-SRO Members of the New Consolidated Data Plan's operating committee, and, further, that until the initial Non-SRO Members have been selected, the Participants shall renew the expiring terms of all members of the Equity Data Plans' advisory committee (other than those selected to represent a Participant) who remain willing to serve in that role.

• The New Consolidated Data Plan shall provide for a fair, transparent, and public nomination process for Non-SRO Members and shall specify a process for publicly soliciting and making available for public comment nominations for Non-SRO Members.

• The New Consolidated Data Plan shall provide that the aggregate number of votes provided to Non-SRO Members will, at all times, be one half of the aggregate number of SRO member votes and the number of Non-SRO Member votes will increase or decrease as necessary to ensure that the ratio between the number of SRO member votes and the number of Non-SRO Member votes is maintained, with Non-SRO Member votes equally allocated, by fractional shares of a vote as necessary, among the Non-SRO Members authorized and eligible to vote.

• The New Consolidated Data Plan shall include provisions to address circumstances in which a member is unable to attend an operating committee meeting or to cast a vote on a matter.

• The New Consolidated Data Plan shall provide that all actions under the terms of the New Consolidated Data Plan, except the selection of Non-SRO Members and decisions to enter into an SRO-only executive session, will be required to be authorized by an augmented majority vote, *i.e.,* a supermajority vote of the New Consolidated Data Plan's operating committee, along with a majority vote of the SRO members of the operating committee.

• The New Consolidated Data Plan shall provide that the responsibilities of the operating committee will include:

○ Proposing amendments to the New Consolidated Data Plan or implementing other policies and procedures as necessary to ensure prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS stocks and the fairness and usefulness of the form and content of that information;

○ selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of, an independent plan administrator, plan processors, an auditor, and other professional service providers, provided that any expenditures for professional services that are paid for from New Consolidated Data Plan revenues must be for activities consistent with the terms of the New Consolidated Data Plan and must be authorized by the operating committee;

○ developing and maintaining fair and reasonable fees and consistent terms for the distribution, transmission, and aggregation of core data;

○ reviewing the performance of the plan processors; and ensuring the public reporting of plan processors' performance and other metrics and information about the plan processors;

○ assessing the marketplace for equity market data products and ensuring that SIP data offerings are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of SIP data to investors and market participants; and

○ designing a fair and reasonable revenue allocation formula for allocating plan revenues to be applied by the independent plan administrator, and overseeing, reviewing and revising that formula as needed.

• The New Consolidated Data Plan shall provide that the independent plan administrator will not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks.

• The New Consolidated Data Plan shall include provisions designed to address the conflicts of interest of SRO members and Non-SRO Members as outlined in the Conflicts of Interest Approval Orders.

• The New Consolidated Data Plan shall include provisions designed to protect confidential and proprietary information from misuse as outlined in the Confidentiality Policy Approval Orders.

• The New Consolidated Data Plan shall identify the circumstances in which SRO members may meet in executive session and shall confine executive sessions to circumstances in which it is appropriate to exclude Non-SRO Members, such as, for example, discussions regarding matters that exclusively affect the SROs with respect to the Commission's oversight of the New Consolidated Data Plan (including attorney-client communications relating to such matters).

• The New Consolidated Data Plan shall provide that requests to enter into an executive session of SRO members must be included on a written agenda, along with a clearly stated rationale for each matter to be discussed, and that each such request must be approved by a majority vote of the SRO members of the operating committee.

• To the extent that those provisions are in furtherance of the purposes of the New Consolidated Data Plan as expressed in this Order and not inconsistent with any other regulatory requirements, the New Consolidated

Data Plan shall adopt and include all other provisions of the Equity Data Plans necessary for the operation and oversight of the SIPs under the New Consolidated Data Plan, and the New Consolidated Data Plan should, to the extent possible, attempt to harmonize and combine existing provisions in the Equity Data Plans' separate processors.

* * * * *

it is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act,[388] that the Participants act jointly in developing and filing with the Commission, as an NMS plan pursuant to Rule 608(a) of Regulation NMS,[389] a New Consolidated Data Plan, as described above. The Participants are ordered to file the New Consolidated Data Plan with the Commission no later than August 11, 2020.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–10041 Filed 5–12–20; 8:45 am]

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[388] 15 U.S.C. 78k–1(a)(3)(B).

[389] 17 CFR 242.608(a).

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Part III

Securities and Exchange Commission

17 CFR Parts 210 and 270

Good Faith Determinations of Fair Value; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 270

[Release No. IC–33845; File No. S7–07–20]

RIN 3235–AM71

Good Faith Determinations of Fair Value

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing a new rule (''rule 2a–5'') under the Investment Company Act of 1940 (the ''Investment Company Act'' or the ''Act'') that would address valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company (a ''fund''). The proposed rule would provide requirements for determining fair value in good faith with respect to a fund for purposes of section 2(a)(41) of the Act. This determination would involve assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; overseeing and evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records. The proposed rule would permit a fund's board of directors to assign the fair value determination to an investment adviser of the fund, who would then carry out these functions for some or all of the fund's investments. This assignment would be subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board's ability effectively to oversee the adviser's fair value determinations. The proposed rule would include a specific provision related to the determination of the fair value of investments held by unit investment trusts, which do not have boards of directors. The proposed rule would also define when market quotations are readily available under section 2(a)(41) of the Act. If rule 2a–5 is adopted, the Commission would rescind previously issued guidance on the role of the board of directors in determining fair value and the accounting and auditing of fund investments.

DATES: Comments should be submitted on or before July 21, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/interp.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–07–20 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–07–20. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/interp.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Joel Cavanaugh, Senior Counsel; Bradley Gude, Senior Counsel; Thoreau A. Bartmann, Senior Special Counsel; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management; Kieran G. Brown, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551–6825 or *IMOCC@sec.gov,* Chief Counsel's Office, Division of Investment Management; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549. Regarding accounting and auditing matters: Jenson Wayne or Alexis Cunningham, Assistant Chief Accountants, or Jacob Sandoval, Branch Chief, at (202) 551–6918 or *IM-CAO@sec.gov,* Chief Accountant's Office, Division of Investment Management, Securities and Exchange Commission; or Jamie Davis or Thomas Collens, Professional Accounting Fellows, at (202) 551–5300 or *OCA@sec.gov,* Office of the Chief Accountant, Securities and Exchange Commission.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment 17 CFR 270.2a–5 (new rule 2a–5) under the Investment Company Act.

Table of Contents

I. Introduction
II. Discussion
A. Fair Value as Determined in Good Faith Under Section 2(a)(41) of the Act
1. Valuation Risks
2. Fair Value Methodologies
3. Testing of Fair Value Methodologies
4. Pricing Services
5. Fair Value Policies and Procedures
6. Recordkeeping
B. Performance of Fair Value Determinations
1. Board Oversight
2. Board Reporting
3. Specification of Functions
4. Records of Assignment
C. Readily Available Market Quotations
D. Rescission of Prior Commission Releases
E. Existing Staff No-Action Letters, Other Staff Guidance, and Proposed Transition Period
III. Economic Analysis
A. Introduction
B. Economic Baseline
1. Current regulatory framework
2. Current practices
3. Affected parties
C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation of Proposed Rule
1. General Economic Considerations
2. Benefits
3. Costs
4. Effects on Efficiency, Competition, and Capital Formation
D. Reasonable Alternatives
1. More Principles-Based Approach
2. Assignment of Responsibilities to Service Providers Other Than Investment Advisers
3. Not Permit Boards To Assign Fair Value Determinations to an Investment Adviser
E. Request for Comment
IV. Paperwork Reduction Act Analysis
A. Introduction
B. Policies and Procedures
C. Board Reporting
D. Recordkeeping
E. Proposed Rule 2a–5 Total Estimated Burden
F. Request for Comment
V. Initial Regulatory Flexibility Analysis
A. Reasons for and Objectives of the Proposed Actions
B. Legal Basis
C. Small Entities Subject to Proposed Rules
D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Policies and Procedures
2. Recordkeeping
3. Board Reporting
E. Duplicative, Overlapping, or Conflicting Federal Rules
F. Significant Alternatives
G. Request for Comment
VI. Consideration of Impact on the Economy
VII. Statutory Authority

I. Introduction

The Investment Company Act requires funds to value their portfolio investments using the market value of their portfolio securities when market quotations for those securities are ''readily available,'' and, when a market quotation for a portfolio security is not readily available, by using the fair value of that security, as determined in good faith by the fund's board.[1] The aggregate value of a fund's investments is the primary determinant of the fund's net asset value (''NAV''), which for many funds determines the price at which their shares are offered and redeemed (or repurchased).[2] Accordingly, proper valuation, among other things, promotes the purchase and sale of fund shares at fair prices, and helps to avoid dilution of shareholder interests.[3] Valuation also affects the accuracy of funds' asset-based and performance-based fee calculations;[4] disclosures of fund fees, performance, NAV, and portfolio holdings;[5] and compliance with investment policies and limitations.[6] As a result, improper valuation can cause investors to pay fees that are too high or to base their investment decisions on inaccurate information.[7]

For these reasons, a number of the substantive requirements of the Investment Company Act relate to investment company valuation.[8] Moreover, the federal securities laws impose liability on funds, fund boards, and advisers for improperly valuing fund investments and for making material misstatements regarding a fund's valuation procedures.[9] Properly valuing a fund's investments also is a critical component of the accounting and financial reporting for investment companies.[10] Section 2(a)(41)(B) defines ''value'' for purposes of many of the requirements of the Investment Company Act as: (i) With respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors.[11]

The Commission last comprehensively addressed valuation under the Investment Company Act in a pair of releases issued in 1969 and 1970, Accounting Series Release 113 (''ASR 113'') and Accounting Series Release 118 (''ASR 118'').[12] ASR 113

[1] Section 2(a)(41) of the Investment Company Act. *See also* Investment Company Act rule 2a–4.

[2] The Investment Company Act requires registered investment companies that issue redeemable securities to sell and redeem their shares at prices based on the current net asset value of those shares. *See* section 22(c) of the Investment Company Act and rule 22c–1(a) thereunder. Rule 2a–4 defines the term ''current net asset value'' of a redeemable security issued by a registered investment company and provides, similar to section 2(a)(41)(B), that ''[p]ortfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company.'' Rule 22c–1(a) requires open-end funds to sell, redeem, or purchase shares at a price based on their current NAV next computed following receipt of an order.

Although closed-end funds are not subject to rules 2a–4 and 22c–1 under the Investment Company Act, section 23(b) limits the ability of closed-end funds to sell their common stock at a price below current NAV. Section 23(c) of the Investment Company Act provides for the repurchases of closed-end fund shares. The shares of closed-end funds (including business development companies (''BDCs'')) that are listed on an exchange often trade at a premium or discount to NAV. *See* Item 1.1(i) of Form N–2 (requiring closed-end funds whose securities have no history of public trading to include ''a statement describing the tendency of closed-end fund shares to trade frequently at a discount from net asset value'').

[3] *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) (''Liquidity Risk Management Release'') (adopting rule 22e–4 under the Investment Company Act and noting ''the risk of shareholder dilution associated with improper fund pricing'').

If fund shares are overpriced, selling shareholders will receive too much for their shares, and purchasing shareholders will pay too much for their shares. On the other hand, if fund shares are underpriced, selling shareholders will receive too little for their shares, and purchasing shareholders will pay too little for their shares. *See generally* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 136–38 (1940) (discussing the effect of dilution on fund shareholders).

[4] *See* section 205 of the Investment Advisers Act of 1940 (''Advisers Act'') (permitting a fund's adviser to receive compensation based upon the total value of the fund and permitting certain specified types of performance fee arrangements with funds).

[5] *See, e.g.,* Item 3 of Form N–1A (requiring annual fund operating expenses to be disclosed in the fund's prospectus as a percentage of the value of a shareholder's investment); Item 4(b)(2) of Form N–1A (requiring certain disclosures about fund performance in fund prospectuses); Item 4.1 and Instruction 4.b. to Item 24 of Form N–2 (requiring disclosure of the fund's NAV in its prospectus and annual report); Item 6 of Form N–CSR and § 210.12–12 of Regulation S–X (requiring a schedule of the fund's investments, including the value of the investment, in the fund's annual report).

[6] *See* Rule 22e–4(b)(1)(iv) (generally prohibiting an open-end fund from acquiring an illiquid investment if such investment would cause more than 15% of such fund's net assets to be invested in illiquid investments). *See also* Liquidity Risk Management Release, *supra* footnote 3; Instruction 4 to Item 9(b)(1) of Form N–1A (requiring a fund to disclose any policy to invest more than 25% of its net assets in a particular industry or group of industries).

[7] Fund advisers may have an incentive to overvalue fund assets, for example, to increase fees, but also in some cases may have incentives to undervalue fund assets, for example to smooth reported returns or comply with investment policies and restrictions. *See* In re Piper Capital Management, et al., Investment Company Act Release No. 26167 (Aug. 26, 2003) (Commission opinion) (''Piper'') (''the record shows that Respondents determined to smooth or ratchet down gradually the Fund's NAV over a period of days. It appears that Respondents sought to prevent an abrupt drop in the Fund's NAV as a result of updating the stale prices.''). *See also* Gjergi Cici, et al., Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds, 101 J. Fin. Econ. 206 (2011) (observing evidence of price smoothing behavior in mutual funds and expressing concern that such smoothing may result in sub-optimal investment decisions) (''Cici et al. 2011'').

[8] *See infra* footnote 11.

[9] *See, e.g.,* 15 U.S.C. 77*l*(a)(2); 15 U.S.C. 77k; 15 U.S.C. 78j(b); 15 U.S.C. 80a–33(b); 17 CFR 240.10b–5; 17 CFR 270.22c–1(a); 17 CFR 210.4–01(a)(1); 17 CFR 275.206(4)–8.

Section 206(1) of the Advisers Act makes it unlawful for an investment adviser to employ any device, scheme or artifice to defraud any client or prospective client. Section 206(2) of the Advisers Act makes it unlawful for an investment adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client or prospective client. The Commission has brought enforcement actions under sections 206(1) and/or 206(2) of the Advisers Act against advisers for material misstatements or omissions to a fund's board (such as the failure to disclose that the adviser is not complying with the fund's stated valuation procedures) or willfully or recklessly aiding and abetting the misvaluing of fund investments. *See, e.g.,* In re Morgan Asset Management, et al., Investment Company Act Release No. 29704 (June 22, 2011) (settlement) (''In re Morgan Asset Management'').

[10] Rule 6–02(b) of Regulation S–X defines the term ''value'' to have the same meaning as in section 2(a)(41)(B) of the Investment Company Act.

[11] Section 2(a)(41) of the Investment Company Act defines ''value'' with respect to the assets of registered investment companies. Section 59 of the Investment Company Act makes section 2(a)(41) applicable to BDCs. Section 2(a)(41)(A) provides the definition of ''value'' under the Investment Company Act for purposes of whether an issuer is an investment company under section 3, is a ''diversified company'' or a ''non-diversified company'' under section 5, or exceeds certain investment limitations under section 12. Section 28(b) of the Investment Company Act contains provisions for the valuation of the investments of face-amount certificate companies. Section 2(a)(41)(B) defines value for all other purposes under the Investment Company Act. Section 2(a)(41)(A)(iii) provides that investments acquired after the last preceding quarter shall be valued at the cost thereof. In certain circumstances, section 2(a)(41) permits directors to determine in good faith the value of securities issued by controlled companies even though market quotations are available for such securities.

[12] Statement Regarding ''Restricted Securities,'' Accounting Series Release No. 113 (Oct. 21, 1969); Accounting for Investment Securities by Registered Investment Companies, Accounting Series Release No. 118 (Dec. 23, 1970). In 1982, the Commission codified ASR 113 and ASR 118 in the ''Codification of Financial Reporting Policies'' as section 404.04: '' 'Restricted' Securities'' and section 404.03:

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addressed a number of federal securities law and accounting topics related to the purchase of restricted securities by funds, including how to determine fair value [13] for such securities. A year later, ASR 118 expressed the Commission's views on certain valuation matters, including accounting and auditing, as well as the role of the board in the determination of fair value.

The Commission acknowledged in ASR 113 and ASR 118 that the board need not itself perform each of the specific tasks required to calculate fair value in order to satisfy its obligations under section 2(a)(41). However, under ASR 113 and ASR 118 the board chooses the methods used to arrive at fair value, and continuously reviews the appropriateness of such methods.[14] In addition, the Commission stated that boards should consider all appropriate factors relevant to the fair value of securities for which market quotations are not readily available.[15] Finally, the Commission stated that whenever technical assistance is requested from individuals who are not directors, the findings of such individuals must be carefully reviewed by the directors in order to satisfy themselves that the resulting valuations are fair.[16]

Since ASR 113 and ASR 118 were issued, markets and fund investment practices have evolved considerably. Funds now invest in a greater variety of securities and other instruments, some of which did not exist in 1970 and may present different and more significant valuation challenges.[17] Furthermore, advances in communications and technology have greatly enhanced the availability and currency of pricing information.[18] Today there is a greater volume of data available that may bear on determinations of fair value, and new technologies have developed that facilitate enhanced price discovery and greater transparency.[19] Many funds also now engage third-party pricing services to provide pricing information, particularly for thinly traded or more complex assets.[20]

In addition, three significant regulatory developments since 1970 have fundamentally altered how boards, advisers, independent auditors (also referred to herein as ''independent accountants''), and other market participants address valuation for various purposes under the federal securities laws.

The first such development was the enactment of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and the adoption of rules mandated by the Sarbanes-Oxley Act.[21] In particular, the Sarbanes-Oxley Act established the Public Company Accounting Oversight Board (''PCAOB''). The PCAOB oversees the audits of companies that are subject to the federal securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.[22] The PCAOB also has the authority to establish or adopt, among other things, professional standards, including audit and quality controls standards, to be used by registered public accounting firms in the preparation and issuance of audit reports.[23] In addition, section 108 of the Sarbanes-Oxley Act established criteria necessary for the work product of an accounting standard-setting body to be recognized as ''generally accepted'' for purposes of the federal securities laws.[24]

''Accounting, Valuation and Disclosure of Investment Securities,'' respectively. *See* Codification of Financial Reporting Policies, Investment Company Act Release No. 12376 (Apr. 15, 1982) (codifying certain existing Accounting Series Releases, including ASR 113 and ASR 118). ASR 113 and ASR 118 continue to be included in the list of interpretive releases relating to the Investment Company Act found in 17 CFR part 271 as Investment Company Act Release Nos. 5847 and 6295, respectively. We refer to the releases herein as ASR 113 and ASR 118.

[13] We generally use the term ''fair value'' in this release as that term is used in the definition of ''value'' in the Investment Company Act, that is, the value of securities for which no readily available market quotations exist. *See* section 2(a)(41) of the Investment Company Act and *supra* footnote 11.

In contrast to the Investment Company Act, FASB Accounting Standard Codification Topic 820: *Fair Value Measurement* (''ASC Topic 820'') uses the term ''fair value'' to refer generally to the value of an asset or liability, regardless of whether that value is based on readily available market quotations or on other inputs. Accordingly, when we use the term fair value in the release we are using it to mean fair value as defined under the Investment Company Act, unless we specifically note that we mean fair value under ASC Topic 820, such as in the sections below that discuss proposed rescission of the accounting guidance. *See also infra* notes 30 and 141.

[14] ASR 118 at 19988 (''it is incumbent upon the Board of Directors . . . to determine the method of arriving at the fair value of each such security''). *See also* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014) (''2014 Money Market Fund Release'') at n.896 (citing ASR 118). In ASR 113, the Commission similarly stated:

''It is the responsibility of the board of directors to determine the fair value of each issue of restricted securities in good faith . . . . While the board may, consistent with this responsibility, determine the method of valuing each issue of restricted securities in the company's portfolio, it must continuously review the appropriateness of any method so determined.''

[15] ASR 118 at 19988 (''it is incumbent upon the Board of Directors to satisfy themselves that all appropriate factors relevant to the fair value of securities for which market quotations are not readily available have been considered''). *See also* 2014 Money Market Fund Release, *supra* footnote 14, at n.896 (citing ASR 118).

[16] ASR 118.

[17] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Release No. 33704 (''Derivatives Release'') (Nov. 25, 2019) (noting the dramatic growth in the volume and complexity of the derivatives markets over the past two decades, and the increased use of derivatives by certain funds); Use of Derivatives by Investment Companies under the Investment Company Act of 1940, Investment Company Act Release No. 29776 (Aug. 31, 2011) at 69 (noting that ''[v]aluation of some derivatives may present special challenges for funds'').

The fund industry has grown tremendously in the intervening years. For example, in December 1969, open-end funds had net assets of over $53 billion. *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 2 (1970). As of August 31, 2019, there were 12,040 open-end funds registered with the Commission with total net assets of nearly $28 trillion. (We estimate the number of registered investment companies and their net assets by reviewing all Forms N–CEN filed with the Commission between June 2018 and August 2019.) Moreover, as of June 2019, there were 99 BDCs with $63 billion in total net assets. (Estimates of the number of BDCs and their net assets are based on a staff analysis of Form 10–K and Form 10–Q filings as of June 30, 2019.) BDCs, which did not exist in 1970, must invest at least 70% of their assets in certain investments that may be difficult to value. *See* Section 55(a) of the Act.

[18] For example, FINRA's TRACE introduced in 2002 is an over-the-counter real-time price dissemination service for the fixed income market. *See https://www.finra.org/sites/default/files/TRACE_Overview.pdf*

[19] For example, the Electronic Municipal Market Access (''EMMA'') website, available since 2009, ''provides free public access to objective municipal market information and interactive tools for investors, municipal entities and others.'' *See https://emma.msrb.org/#*.

[20] 2014 Money Market Fund Release, *supra* footnote 14 (''many funds . . . use evaluated prices provided by third-party pricing services to assist them in determining the fair values of their portfolio securities'').

[21] Sarbanes-Oxley Act, Public Law 107–204, 116 Stat. 745.

[22] *See* Sarbanes-Oxley Act, *supra* footnote 21, at Title I Sec. 101(a).

PCAOB auditing standards apply to the preparation or issuance of ''audit reports,'' which are defined to include documents, reports, notices, or other records that, among other things, are prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws. *See* PCAOB rule 3200; PCAOB rule 1001(a)(vi). *See also* PCAOB rule 1001(i)(iii) (defining the term ''issuer'' to include issuers (as defined in Section 3 of the Securities Exchange Act of 1934 (the ''Exchange Act'')), the securities of which are registered under Section 12 of the Exchange Act, or that are required to file reports under the Exchange Act or that file or have filed registration statements that have not yet become effective under the Securities Act of 1933 (the ''Securities Act''), and that have not been withdrawn).

[23] *See* Sarbanes-Oxley Act, *supra* footnote 21, at Title I Sec. 101(c)(2).

[24] The federal securities laws for this purpose are the Securities Act, the Exchange Act, the Sarbanes-Oxley Act, the Trust Indenture Act of 1939, the Investment Company Act, the Advisers Act, and the Securities Investor Protection Act of 1970, and the rules, regulations and Commission orders thereunder. *See* PCAOB rule 1001(s)(ii); section 3(a)(47) of the Exchange Act.

Rule 30a–3 under the Investment Company Act, which was adopted in part to implement certain requirements of the Sarbanes-Oxley Act, requires registered management investment companies to maintain disclosure controls and procedures and internal control over financial reporting.[25]

Second was the adoption in 2003 of compliance rules under the Investment Company Act and the Advisers Act (together, the ''Compliance Rules'').[26] The Compliance Rules were designed to enhance compliance with the federal securities laws by requiring funds and advisers to adopt and implement written compliance policies and procedures that are reasonably designed to prevent violation of the federal securities laws, to review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and to designate a chief compliance officer (''CCO'') to be responsible for administering them.[27] Of particular relevance, the Commission stated that rule 38a–1 requires a fund to adopt compliance policies and procedures with respect to fair value that require the fund to:

1. Monitor for circumstances that may necessitate the use of fair value;

2. establish criteria for determining when market quotations are no longer reliable for a particular portfolio security;

3. provide a methodology or methodologies by which the fund determines fair value; and

4. regularly review the appropriateness and accuracy of the methodology used to determine fair value, and make any necessary adjustments.[28]

Third was the issuance and codification by the Financial Accounting Standards Board (''FASB'') of ASC Topic 820 in 2006 and 2009.[29] ASC Topic 820 defines the term ''fair value'' for purposes of the accounting standards [30] and establishes a framework for the recognition, measurement, and disclosure of fair value under U.S. generally-accepted accounting principles (''U.S. GAAP'').[31]

Taken together, we believe these regulatory developments have significantly altered the framework in which funds, boards, fund investment advisers, other fund service providers such as pricing services, and auditors perform various functions relating to fair value determinations. We believe that today determining fair value often requires greater resources and expertise than when the Commission issued ASR 113 and ASR 118 roughly fifty years ago. In addition, we believe that regulatory changes during that period have altered the way that boards, fund investment advisers, other fund service providers, and auditors address valuation. Our views are also informed by significant outreach that the staff has conducted with funds, investment advisers, audit firms, trade groups, fund directors, and others, particularly over the past two years. As part of these discussions, many boards sought additional clarity on how they can effectively fulfill their fair value determination obligations while seeking the assistance of others. The staff understands that this is of particular focus in light of the increased complexity of many fund portfolios and the in-depth expertise required to accurately fair value such complex investments.

In recognition of these changes, we are proposing a new rule to reflect the increased role that subsequent accounting and auditing developments play in setting fund fair value practices, as well as the growing complexity of valuation and the interplay of the compliance rule in facilitating board oversight of funds. The proposed rule also acknowledges the important role that fund investment advisers now play and expertise they now provide in the fair value determination process given these and other developments.

II. Discussion

The proposed rule would provide requirements for determining fair value in good faith with respect to a fund for purposes of section 2(a)(41) of the Act and rule 2a–4 thereunder.[32] We believe that, in light of the developments discussed above, to determine the fair value of fund investments in good faith requires a certain minimum, consistent framework for fair value and standard of baseline practices across funds, which would be established by the proposed rule. The proposed rule would also permit a fund's board to assign fair value determinations to an investment adviser of the fund.[33] Permitting a fund's board to assign fair value determinations to an investment adviser is designed to recognize the developments discussed above, including the important role that fund investment advisers now play and expertise they now provide in the fair value determination process, given these developments. However, when a fund's board uses the services of a fund investment adviser as part of the fair value determination process, we believe it is particularly important to establish a framework for boards to effectively oversee the investment adviser through the proposed rule, in light of the adviser's conflicts of interest and given that, in these circumstances, the fund's board would satisfy its statutory obligation to determine fair value in good faith through the framework of the proposed rule, including this board oversight.

Accordingly, under the proposed rule, fair value as determined in good faith would require assessing and managing

[25] The Commission adopted rule 30a–3 and a number of other rules in order to implement certain certification requirements of the Sarbanes-Oxley Act, *supra* footnote 21, that are applicable to companies filing reports under section 13(a) or 15(d) of the Exchange Act, and to extend those requirements to all registered management investment companies other than small business investment companies registered on Form N–5. *See* Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act, Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Investment Company Act rule 30a–3); Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Investment Company Act Release No. 26068 (June 5, 2003) (amending rule 30a–3). *See also* Certification of Disclosure in Companies' Quarterly and Annual Reports, Investment Company Act Release No. 25722 (Aug. 30, 2002) (adopting Exchange Act rules 13a–15 and 15d–15 to require that certain Exchange Act filers have disclosure controls and procedures in order ''to assist principal executive and financial officers in the discharge of their responsibilities in making the required certifications, as well as to discharge their responsibilities in providing accurate and complete information to security holders'').

[26] 17 CFR 270.38a–1 and 17 CFR 275.206(4)–7. *See also* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) (''Compliance Rules Adopting Release'').

[27] Investment Company Act rule 38a–1 provides that the policies and procedures must be reasonably designed to prevent violations of the federal securities laws (as defined in the rule), and Advisers Act rule 206(4)–7 provides that the policies and procedures must be reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

[28] Compliance Rules Adopting Release, *supra* footnote 26, at section II.A.2.c.

[29] The FASB issued *Fair Value Measurements,* Statement of Financial Accounting Standards No. 157 (''SFAS No. 157''), in September 2006, and codified it in 2009 as ASC Topic 820.

[30] *See supra* footnote 13 (describing the difference between what ''fair value'' means under the Investment Company Act and under ASC Topic 820).

[31] *Id.* Rule 4–01(a)(1) of Regulation S–X [17 CFR 210.4–01(a)(1)] states that ''[f]inancial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided.''

[32] The rule would define ''fund'' as a registered investment company or a business development company. Proposed rule 2a–5(e)(1).

[33] For purpose of the proposed rule, ''board'' means either the fund's entire board of directors or a designated committee of such board composed of a majority of directors who are not interested persons of the fund. Proposed rule 2a–5(e)(3).

material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; overseeing and evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records.[34] These required functions generally reflect our understanding of current practices used by funds to fair value their investments and we discuss each in detail below. When a board assigns the determination of fair value to an adviser for some or all of the fund's investments under the proposed rule, in addition to board oversight, the rule would include certain reporting, recordkeeping, and other requirements designed to facilitate the board's oversight of the adviser's fair value determinations.[35]

The proposed rule would apply to all registered investment companies and BDCs, regardless of their classification or sub-classification (*e.g.,* open-end funds and closed-end funds, including BDCs [36]), or their investment objectives or strategies (*e.g.,* equity or fixed income; actively managed or tracking an index).[37] In the case of a unit investment trust (''UIT''), because a UIT does not have a board of directors or investment adviser, a UIT's trustee would conduct fair value determinations under the proposed rule.[38]

We are also proposing to rescind ASR 113 and 118, which provide guidance on, among other things, the role of the fund board in fair value determinations as well as guidance on certain accounting and auditing matters. In addition, the staff letters related to the board role in the fair value process would be withdrawn as discussed in section II.E below.[39]

A. Fair Value as Determined in Good Faith Under Section 2(a)(41) of the Act

We discuss below each of the required functions set forth in proposed rule 2a–5(a) that must be performed to determine in good faith the fair value of the fund's investments.[40]

1. Valuation Risks

Proposed rule 2a–5 would provide that determining fair value in good faith requires periodically assessing any material risks associated with the determination of the fair value of the fund's investments, including material conflicts of interest, and managing those identified valuation risks.[41] We believe that assessing and managing identified valuation risks is an important element for determining fair value in good faith because ineffectively managed valuation risks can make it more likely that a board or an adviser may incorrectly value an investment.

There are many potential sources of valuation risk. A non-exhaustive list of the types or sources of valuation risk includes:

- The types of investments held or intended to be held by the fund;
- potential market or sector shocks or dislocations; [42]
- the extent to which each fair value methodology uses unobservable inputs, particularly if such inputs are provided by the adviser; [43]
- the proportion of the fund's investments that are fair valued as determined in good faith, and their contribution to the fund's returns;
- reliance on service providers that have more limited expertise in relevant asset classes; the use of fair value methodologies that rely on inputs from third party service providers; and the extent to which third party service providers rely on their own service providers (so-called ''fourth party'' risks); and
- the risk that the methods for determining and calculating fair value are inappropriate or that such methods are not being applied consistently or correctly.

Other than material conflicts of interest, the proposed rule does not identify the specific valuation risks to be addressed under this requirement. Rather, we believe that specific valuation risks would depend on the facts and circumstances of a particular fund's investments. The proposed rule also does not include a specific frequency for the required periodic re-assessment of a fund's valuation risks, as we believe that different frequencies may be appropriate for different funds or risks. We believe that the periodic re-assessment of valuation risk generally should take into account changes in fund investments, significant changes in a fund's investment strategy or policies, market events, and other relevant factors.

We request comment on the proposal to require the assessment and management of the material risks associated with fair value determinations.

1. Is this requirement appropriate? Should we further define what risks would need to be considered or provide guidance on the types of valuation risks that a fund may face? Are there additional sources or types of valuation risk that we should address? If so, what sources?

2. Should we require a certain minimum frequency for re-assessing valuation risk (*e.g.,* annually or quarterly)? Should the rule specify types of market events or investment strategy changes that would require a re-assessment of valuation risk? If so, what events or changes should prompt such a review?

3. Should we provide any further guidance on how valuation risk should be managed?

2. Fair Value Methodologies

Proposed rule 2a–5 would provide that fair value as determined in good faith requires selecting and applying in a consistent manner an appropriate methodology or methodologies [44] for

[34] Proposed rule 2a–5(a).

[35] Proposed rule 2a–5(b).

[36] An open-end fund is a management investment company that offers for sale or has outstanding redeemable securities of which it is the issuer. *See* section 5(a)(1) of the Investment Company Act. A closed-end fund is a management investment company other than an open-end fund. *See* section 5(a)(2) of the Investment Company Act. Section 2(a)(48) of the Investment Company Act defines a ''business development company'' as any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Investment Company Act and that makes available significant managerial assistance with respect to the issuers of such securities.

[37] *See* proposed rule 2a–5(e)(1) (defining ''fund'' to mean a registered investment company or business development company).

[38] Proposed rule 2a–5(d). Section 4(2) of the Investment Company Act defines a UIT as an investment company that (1) is organized under a trust indenture or similar instrument, (2) does not have a board of directors, and (3) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. *But see* Form N–7 for Registration of Unit Investment Trusts under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Release No. 15612, Appendix B, Guide 2, [52 FR 8268, 8295–96 (Mar. 17, 1987)] (Staff Guidelines stating that the board's fair value role under section 2(a)(41) is to be performed by the UIT's trustee or the trustee's appointed person). *See infra* section II.D (rescission of staff guidance).

[39] The staff's review will include, but will not necessarily be limited to, the letters identified in that section.

[40] These requirements would apply to a fund's board that is determining fair value or, if the board assigns any fair value determinations to an adviser as discussed below, to that adviser.

[41] Proposed rule 2a–5(a)(1). Valuation risk includes the risks associated with the process of determining whether an investment must be fair valued in the first place.

[42] Potential indicators of market or sector shocks or dislocations could include a significant change in short-term volatility or market liquidity, significant changes in trading volume, or a sudden increase in trading suspensions.

[43] *See infra* footnotes 209–210 and accompanying text.

[44] ASC Topic 820 refers to valuation approaches and valuation techniques. In practice, many valuation techniques are referred to as *methods* (*e.g.,* discounted cash flow method). As a result, this release uses the terms ''technique'' and ''method'' interchangeably to refer to a specific way of determining fair value and likewise uses the

determining (which includes calculating) the fair value of fund investments. This requirement would include specifying (1) the key inputs and assumptions specific to each asset class or portfolio holding, and (2) the methodologies that will apply to new types of investments in which the fund intends to invest.[45] The proposed rule also would require the selected methodologies to be periodically reviewed for appropriateness and accuracy, and to be adjusted if necessary. Selecting and applying a methodology consistently—and reviewing the methodology and adjusting it if necessary—are all important elements to determining fair value in good faith.[46] This is because an inappropriate methodology, or a methodology that is applied inconsistently, increases the likelihood that a fund's investments will be improperly valued.

Currently, ASC Topic 820 refers to valuation approaches, including the market approach, income approach, and cost approach, as well as valuation techniques and methods as ways in which to measure fair value.[47] To be appropriate under the rule, and in accordance with current accounting standards, a methodology used for purposes of determining fair value must be consistent with ASC Topic 820, and thus derived from one of these approaches. We recognize, however, that there is no single methodology for determining the fair value of an investment because fair value depends on the facts and circumstance of each investment, including the relevant market and market participants.[48]

Proposed rule 2a–5 also would require that the board or adviser consider the applicability of the selected fair value methodologies to types of fund investments that a fund does not currently hold but in which it intends to invest in the future.[49] This requirement is designed to facilitate the effective determination of the fair value of these new investments by the board or adviser. In addition, the proposed rule would require periodic reviews of the selected fair value methodologies for appropriateness and accuracy, and adjustments to the methodologies where necessary. For example, the results of back-testing or calibration (as discussed below) or a change in circumstances specific to an investment could necessitate adjustments to a fund's fair value methodologies.[50] As discussed above, while the proposed rule would require that the fair value methodologies be consistently applied to the asset classes for which they are relevant, there can be circumstances where it is appropriate to adjust methodologies if the adjustments would result in a measurement that is equally or more representative of fair value.[51] The proposed rule's requirement to apply fair value methodologies in a consistent manner would not preclude the board or adviser from changing the methodology for an investment in such circumstances.[52]

The proposed rule also would require the board or adviser to monitor for circumstances that may necessitate the use of fair value as determined in good faith.[53] The use of fair value is required when market quotations are not readily available. The rule would require the establishment of criteria for determining when market quotations no longer are reliable, and therefore are not readily available.[54] For example, if a fund invests in securities that trade in foreign markets, the board or adviser generally should identify and monitor for the kinds of significant events that, if they occurred after the market closes in the relevant jurisdiction but before the fund prices its shares, would materially affect the value of the security and therefore may suggest that market quotations are not reliable.[55]

We continue to believe that for any particular investment there may be a range of appropriate values that could reasonably be considered to be fair value, and whether a specific value should be considered fair value will depend on the facts and circumstances of the particular investment. Accordingly, we expect that the methodologies used may reflect this range of potential fair values and result in unbiased determinations of fair value within the range.

We request comment on the proposed requirement to establish and apply the methodologies for determining and calculating fair value.

4. This requirement includes several specified elements, discussed above, relating to the fair value methodologies. Are these elements appropriate? Are there additional elements that commenters believe should be included under this requirement? Should we modify or remove any of the proposed elements? Should we require application of the methodologies in a reasonably consistent manner, or as consistently as possible under the circumstances?

5. Do commenters believe we should provide additional guidance relating to this requirement? If so, on which elements of the proposed requirement should we provide additional guidance? For example, is the proposed requirement that boards or advisers ''select'' a methodology sufficiently clear?

6. Are there investments for which it is not feasible to establish a methodology in advance? If so, how should the rule address such situations? Is it clear what new investment types a

terms ''methods'' and ''methodologies'' interchangeably.

[45] Proposed rule 2a–5(a)(2). Regarding the key inputs and assumptions specific to each asset class or portfolio holding, it would not be sufficient, for example, to simply state that private equity investments are valued using a discounted cash flow model, or that options are valued using a Black-Scholes model, without providing any additional detail on the specific qualitative and quantitative factors to be considered, the sources of the methodology's inputs and assumptions, and a description of how the calculation is to be performed (which may, but need not necessarily, take the form of a formula).

[46] Different methodologies may be appropriate for different asset classes. Accordingly, this requirement would not require that a single methodology be applied in all cases, but instead that any methodologies selected be applied consistently to the asset classes for which they are relevant.

[47] *See supra* footnote 44.

[48] *See* ASR 118 (''Methods which are in accord with this principle may, for example, be based on a multiple of earnings, or a discount from market of a similar freely traded security, or yield to maturity with respect to debt issues, or a combination of these and other methods.''). Consistent with the principles in ASC Topic 820, under the proposal, the methodologies selected should maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

[49] Proposed rule 2a–5(a)(2)(i). For example, the board or adviser, as applicable, generally should address, prior to the fund's investing in a new type of investment, whether readily available market quotations will be used or if the investment may need to be fair valued on occasion or at all times. For certain types of investments, it should be clear that the asset will require a fair value at all times. For others, however, market quotations may sometimes be readily available and sometimes not, so that periodically a fair value will need to be determined. The board or adviser generally should seek to identify sources of price inputs before the fund invests in such asset classes, if possible, in addition to determining an appropriate fair value methodology, and generally should document these decisions.

[50] Proposed rule 2a–5(a)(2)(ii). ASC Topic 820–10–35–25 provides a non-exhaustive list of events that may warrant a change or an adjustment to a valuation technique, including where (1) new markets develop, (2) new information becomes available, (3) information previously used is no longer available, (4) the valuation technique improves, and (5) market conditions change. Boards or advisers generally should seek to account for such occurrences and consider specifying alternative sources.

[51] *See* ASC Topic 820–10–35–25.

[52] Records supporting any such methodology changes would be required to be maintained under the proposed recordkeeping provisions. *See* proposed Rule 2a–5(a)(6).

[53] Proposed rule 2a–5(a)(2)(iii). As discussed below, we are also proposing to define when market quotations are readily available for purposes of section 2(a)(41).

[54] Proposed rule 2a–5(a)(2)(iv).

[55] *See* ASC Topic 820–10–35–41C(b).

fund may ''intend'' to invest in? Should we provide any further guidance on this? What processes do funds currently follow before investing in new types of investments to help to ensure that, after making the investment, the board will be in a position to determine fair value if required?

3. Testing of Fair Value Methodologies

The proposed rule would require the testing of the appropriateness and accuracy of the methodologies used to calculate fair value.[56] This requirement is designed to help ensure that the selected fair value methodologies are appropriate and that adjustments to the methodologies are made where necessary. We believe that the specific tests to be performed and the frequency with which such tests should be performed are matters that depend on the circumstances of each fund and thus should be determined by the board or the adviser. The proposed rule would require the identification of (1) the testing methods to be used, and (2) the minimum frequency of the testing.[57] We believe that the results of calibration and back-testing can be particularly useful in identifying trends, and also have the potential to assist in identifying issues with methodologies applied by fund service providers, including poor performance or potential conflicts of interest.[58] For example, if a specific methodology consistently over-values or under-values one or more fund investments as compared to observed transactions, the board or adviser should investigate the reasons for this difference. We recognize, however, that back-testing may be less useful for portfolio holdings that trade infrequently.[59]

We request comment on the proposed rule's requirement to test the appropriateness and accuracy of the fair value methodologies.

7. Should the rule require particular testing types or minimum testing frequencies? For example, should we require tests to occur at least weekly, monthly, or quarterly? If so, should the frequency required be dependent upon the type of instrument? Should the rule require all funds to use certain types of testing, such as back testing and calibration, at a minimum? Are certain types of methodology testing inappropriate or irrelevant for certain investment types?

8. What other types of testing of fair value methodologies are commonly used?

9. Should the rule require specified actions based on the results of the testing? If so, what would those actions be?

4. Pricing Services

To obtain valuation information, particularly for thinly traded or more complex assets, pricing services, may be used. Pricing services are third-parties that regularly provide funds with information on evaluated prices, matrix prices, price opinions, or similar pricing estimates or information to assist in determining the fair value of fund investments.[60] Accordingly, the proposed rule would provide that determining fair value in good faith requires the oversight and evaluation of pricing services, where used.[61] This provision is designed to help ensure that pricing information received from pricing services serves as a reliable input for determining fair value in good faith.

For funds that use pricing services, the proposed rule would require that the board or adviser establish a process for the approval, monitoring, and evaluation of each pricing service provider. The board or adviser generally should take into consideration factors such as (i) the qualifications, experience, and history of the pricing service; (ii) the valuation methods or techniques, inputs, and assumptions[62] used by the pricing service for different classes of holdings, and how they are affected as market conditions change; (iii) the pricing service's process for considering price ''challenges,''[63] including how the pricing service incorporates information received from pricing challenges into its pricing information; (iv) the pricing service's potential conflicts of interest and the steps the pricing service takes to mitigate such conflicts; and (v) the testing processes used by the pricing service.

In addition, there may be times when pricing information from a pricing service differs materially from the board's or adviser's view of the fair value of the investment, and the board or adviser may seek to contact the pricing service to question the basis for the pricing information. As such, the proposed rule would require the establishment of criteria for the circumstances under which price challenges typically would be initiated (*e.g.,* establishing objective thresholds).

We request comment on the proposed rule's requirement to oversee pricing services.

10. Do commenters agree that the proposed rule should require oversight of pricing service providers, if used? Should the rule cover any service providers other than pricing services? If so, which service providers should be included? Should the rule further clarify who qualifies as a pricing service?

11. Should there be a specific requirement in the rule to periodically review the selection of the pricing services used and to evaluate other pricing services?

5. Fair Value Policies and Procedures

Proposed rule 2a–5 would require written policies and procedures addressing the determination of the fair value of the fund's investments (''fair value policies and procedures'').[64] The proposed rule would require the fair value policies and procedures to be reasonably designed to achieve compliance with the requirements of proposed rule 2a–5 discussed above. Requiring fair value policies and procedures that would be tailored to the proposed rule's requirements would help to ensure that a board or adviser, as applicable, determines the fair value of fund investments in compliance with the rule. Under the proposed rule, where the board determines the fair value of investments, the board-approved fair value policies and procedures would be adopted and implemented by the fund. Where the

[56] Proposed rule 2a–5(a)(3).

[57] *Id.* Calibration can assist in assessing whether the fund's valuation technique reflects current market conditions, and also whether any adjustments to the valuation technique are appropriate. ''Calibration'' for these purposes is the process for monitoring and evaluating whether there are material differences between the actual price the fund paid to acquire portfolio holdings that received a fair value under the Act and the prices calculated for those holdings by the fund's fair value methodology at the time of acquisition.

[58] Back-testing involves a comparison of the fair value ascribed to the fund's investment against observed transactions or other market information, such as quotes from dealers or data from pricing services. One common form of back-testing is ''disposition analysis,'' which compares a fair value as determined using a fair value technique with the price obtained for the security upon its disposition by the fund.

[59] *See* In re Morgan Asset Management, *supra* footnote 9 (back-testing by the fund ''only covered securities after they were sold; thus, at any given time, the Valuation Committee never knew how many securities' prices could ultimately be validated by it.'').

[60] *See* 2014 Money Market Fund Release, *supra* footnote 14, at section III.D.2.b.

[61] Proposed rule 2a–5(a)(4).

[62] In considering a pricing service's valuation methods or techniques, inputs, and assumptions, the fair value policies and procedures generally should address whether the pricing service is relying on inputs or assumptions provided by the adviser.

[63] Price challenges involve, for example, the fund disagreeing with an evaluated price provided by a pricing service and providing additional information to the service suggesting that the provided evaluated price is not correct.

[64] Proposed rule 2a–5(a)(5).

board assigns fair value determinations to the adviser under proposed rule 2a–5(b), as discussed in section II.B, the fair value policies and procedures would be adopted and implemented by the adviser, subject to board oversight under rule 38a–1.[65]

Rule 38a–1 also would apply to a fund's obligations under the proposed rule. Rule 38a–1 requires a fund's board, including a majority of its independent directors, to approve the fund's policies and procedures, including those on fair value, and those of each investment adviser and other specified service providers, based upon a finding by the board that the policies and procedures are reasonably designed to prevent violation of the federal securities laws.[66] Rule 38a–1 also requires that the fund's CCO provide an annual report to the fund's board[67] that must address any material changes to compliance policies and procedures.[68] Rule 38a–1 would encompass a fund's compliance obligations with respect to proposed rule 2a–5, if adopted, and would require a fund's board to oversee compliance with the rule.[69] To the extent that adviser policies and procedures under proposed rule 2a–5 would otherwise be duplicative of fund valuation policies under rule 38a–1,[70] a fund could adopt the rule 2a–5 policies and procedures of the adviser in fulfilling its rule 38a–1 obligations.

We request comment on the proposed fair value policies and procedures requirement.

12. Are there specific elements that the proposed fair value policies and procedures should include other than the required elements of proposed rule 2a–5(a)?

13. Are we sufficiently clear on the interaction between rule 38a–1 and the policies and procedures under proposed rule 2a–5? Should we provide any further guidance on their interaction?

6. Recordkeeping

Proposed rule 2a–5 would require that the fund maintain certain records.[71] Specifically, the proposed rule would require the maintenance of:

- *Supporting Documentation.* Appropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations, as well as any necessary or appropriate adjustments in methodologies, for at least five years from the time the determination was made, the first two years in an easily accessible place; and
- *Policies and Procedures.* A copy of policies and procedures that would be required under the proposed rule that are in effect, or that were in effect at any time within the past five years, in an easily accessible place.

Funds and advisers currently are required to retain certain documentation related to fund valuation.[72] Documents often provide the primary means to demonstrate whether portfolio holdings have been valued in a manner consistent with applicable law, any valuation compliance policies and procedures, and any disclosures. They also provide evidence to the fund's auditors in performing their duties related to the audit of the fund's financial statements and assist the fund's CCO in the preparation of compliance reports to the board. The Commission has brought enforcement actions in cases where it alleged that appropriate documentation relating to valuation was not maintained by a fund or adviser or obtained by auditors.[73]

The proposed requirement to maintain appropriate documentation to support fair value determinations would include documentation that would be sufficient for a third party to verify the fair value determination. We understand that advisory personnel currently produce working papers supporting fair value determinations that include, for example, calibration and back-testing data as well as other information such as stale price analysis.[74] These records would be required to be maintained as supporting fair value determinations.[75]

We believe that it is appropriate for the proposed rule to include a recordkeeping provision to facilitate compliance with the proposed rule and to permit effective regulatory oversight. The proposed retention periods are designed to be consistent with the recordkeeping requirements in rule 38a–1(d), the compliance rule. As discussed above, the compliance rule requires the retention of, among other things, compliance policies and procedures (which would include those relating to valuation) and certain records.[76] We believe that this recordkeeping requirement would provide important investor protections and, because it would be consistent with current record retention practices under to rule 38a–1(d), would not impose overly burdensome recordkeeping costs.

We request comment on the proposed recordkeeping provisions.

[65] Proposed rule 2a–5(b).

[66] Rule 38a–1(a)(2).

[67] For UITs, the fund's principal underwriter or depositor conducts the functions assigned to management company boards under rule 38a–1. Rule 38a–1(b). This would continue if we adopt the proposed rule.

[68] *See* rule 38a–1(a)(4)(iii)(A). *See also* Compliance Rules Adopting Release, *supra* footnote 26, at n.33. ''Material'' in this context is a change that a fund director would reasonably need to know in order to oversee fund compliance. *See* rule 38a–1(e)(2). We have also said that ''serious compliance issues'' must be raised with the board immediately. *See* Compliance Rules Adopting Release, *supra* footnote 26, at n.33.

[69] If adopted, rule 2a–5's requirements would supersede the Compliance Rules Adopting Release's discussion of specific policies and procedures required regarding the pricing of portfolio securities and fund shares. *Cf.* Compliance Rules Adopting Release, supra footnote 26, at nn.39–47 and accompanying text.

[70] *See generally* footnote 108.

[71] Proposed rule 2a–5(a)(6). Under the proposed rule, the fund would maintain the required records both where the board itself determines the fair value of investments and where it assigns fair value determinations to an adviser under proposed rule 2a–5(b), as discussed at *infra* section II.B.6.

[72] Rule 38a–1(d) requires the maintenance of certain records, including copies of: All compliance policies and procedures adopted by the fund that are in effect or were in effect at any time during the last five years; materials provided to the board in connection with their approval of fund and service provider policies and procedures under the rule; the CCO's annual report to the board; and any records documenting the board's annual review of fund and service provider compliance policies and procedures under the rule. Rule 204–2 under the Advisers Act similarly requires an adviser to maintain copies of the adviser's compliance policies and procedures that are in effect or were in effect at any time during the last five years and any records documenting its annual review of such policies and procedures. *See* 17 CFR 275.204–2. *See also* Compliance Rules Adopting Release, *supra* footnote 26, at section II.D. The funds' and advisers' records may be retained electronically. *See id.* (discussing rule 31a–2(f) under the Investment Company Act and rule 204–2(g) under the Advisers Act).

Other provisions of the federal securities laws require, among other things, that registered investment companies maintain appropriate books and records in support of the fund's financial statements and preserve for a specified period (generally six years) all schedules evidencing and supporting each computation of NAV. *See* Investment Company Act section 31(a) and rules 31a–1 and 31a–2. In addition, funds reporting under the Exchange Act must make and keep books, records, and accounts that accurately and fairly reflect their transactions and dispositions of their assets in reasonable detail. 15 U.S.C. 78m(b)(2)(A).

[73] *See* In re Allied Capital Corp., Securities Exchange Act Release No. 55931 (June 20, 2007) (settlement) (fund failed to maintain documentation required under the Exchange Act). *See also* In the Matter of Carroll A. Wallace, Securities Exchange Act Release No. 48372 (Aug. 20, 2003) (Commission opinion) (partner of accounting firm engaged in improper professional conduct in recklessly failing to obtain sufficient competent evidential material to support statements in the auditors' reports); In the Matter of Morgan Stanley, Securities Exchange Act Release No. 50632 (Nov. 4, 2004) (settlement) (financial services firm failed to maintain sufficient underlying documentation supporting certain valuations).

[74] Stale price analysis can include an evaluation of whether a price quote that may be used to support a fair value price is sufficiently timely to be useful.

[75] Proposed rule 2a–5(a)(6)(i).

[76] *See supra* footnote 72.

14. Are there any additional types of records that we should require? If so, which records and why?

15. Where the board assigns fair value determinations to an adviser under proposed rule 2a–5(b), should the rule require the adviser, rather than the fund, to maintain these records?

16. Are the proposed retention periods sufficient to evidence compliance? Why or why not? Should we require a longer (*e.g.,* six years) or shorter (*e.g.,* four years) retention period?

17. Are key terms used in this aspect of the proposal sufficiently understandable? For example, as stated above, ''appropriate documentation to support fair value determinations'' under the proposed recordkeeping requirement would include documentation that would be sufficient for a third party to verify the fair value determination. Should we define these or other terms or provide further guidance relating to them?

B. Performance of Fair Value Determinations

The Act assigns boards a critical role in connection with determinations of fair value.[77] Although the Commission has previously taken the position that a fund's board may not delegate the determination of fair value to anyone else,[78] the Commission has also recognized that compliance with the Act does not require the board to perform each of the specific tasks required to calculate fair value itself.[79] We believe that the Commission's prior guidance recognized that determinations of fair value often require significant resources and specialized expertise, and that in many cases it may be impracticable for directors themselves to perform every one of the necessary tasks without assistance. We expect that today determining fair value requires even greater resources and expertise than when ASR 113 and ASR 118 were issued. For this reason, in addition to providing requirements for determining fair value in good faith generally, the proposed rule also is designed to provide boards and advisers with a consistent, modern approach to the allocation of fair value functions, while also preserving a crucial role for boards to fulfill their obligations under section 2(a)(41) of the Act.

Under the proposed rule, a board may choose to determine fair value in good faith for any or all fund investments by carrying out all of the functions required in paragraph (a) of the proposed rule, including, among other things, monitoring for circumstances that necessitate fair value, selecting valuation methodologies, and applying those methodologies.[80] However, a board would not be required to take this approach. We understand that, for practical reasons, few boards today are directly involved in the performance of the day-to-day valuation tasks required to determine fair value. Instead they enlist the fund's investment adviser to perform certain of these functions, subject to their supervision and oversight.[81]

This allocation of functions is consistent with the framework created by the ASRs. We continue to believe that allocating day-to-day responsibilities to an investment adviser, subject to robust board oversight, is appropriate and consistent with the requirements of Act. The proposed rule is designed to provide a consistent framework for this allocation between boards and advisers, and to provide enhanced protections which we believe are consistent with the more modern approaches to fair value and compliance with the federal securities laws described below.

Accordingly, the proposed rule would permit a fund's board of directors to assign the fair value determination relating to any or all fund investments to an investment adviser of the fund, which would carry out all of the functions required in paragraph (a) of the proposed rule, subject to certain requirements enumerated in proposed paragraph (b).[82] A fund's board could make this assignment to a fund's primary adviser or one or more sub-advisers. For example, for a fund with a sub-adviser responsible for managing a portion of the fund's portfolio, the board could assign the determination of fair value for the investments in that portion of the fund's portfolio to that sub-adviser. As a result, a multi-manager fund could have multiple advisers assigned the role of determining fair value of the different investments that those advisers manage. Where the board assigns fair value determinations to multiple advisers, the fund's policies and procedures adopted under rule 38a–1 should address the added complexities of overseeing multiple assigned advisers in order to be reasonably designed to avoid violating the federal securities laws.[83] Any board assignment under the proposed rule would be subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board's ability effectively to oversee the adviser's fair value determinations. We discuss each of these requirements below.

We request comment generally on the role of the board of directors when it does not assign the fair value determination to an adviser to the fund.

18. For boards that elect to conduct fair value determinations themselves, should we provide any guidance on the level of assistance they can receive from service providers, while fulfilling their obligations under section 2(a)(41)? Do we need to provide any guidance on how a board should obtain and oversee such assistance if needed? If so, what guidance should we provide?

[77] Section 2(a)(41)(B)(ii) provides that, when market quotations are not readily available, ''value'' means ''fair value as determined in good faith by the board of directors.'' Rule 2a–4 contains the same definition of fair value as section 2(a)(41)(B)(ii). 17 CFR 270.2a–4. The Commission has discussed the board's role in determinations of fair value in a number of Commission releases, including ASR 113, ASR 118, the Compliance Rules Adopting Release, *supra* footnote 26, and the 2014 Money Market Fund Release, *supra* footnote 14.

In addition to their role under the Act, boards may have liability under antifraud provisions of the federal securities laws if a fund's prospectus or other disclosures regarding valuation are not consistent with the fund's valuation practices. *See, e.g.,* 15 U.S.C. 77k(a)(1).

[78] *See, e.g.,* 2014 Money Market Fund Release, *supra* footnote 14, at nn.890 and 896 and accompanying text; In the Matter of Seaboard Associates, Inc. (Report of Investigation Pursuant to Section 21(a) of the Exchange Act), Investment Company Act Release No. 13890 (Apr. 16, 1984) (''The Commission wishes to emphasize that the directors of a registered investment company may not delegate to others the ultimate responsibility of determining the fair value of any asset not having a readily ascertainable market value, such as oil and gas royalty interests.'').

[79] The Commission stated in ASR 118 that the board ''may appoint persons to assist them in the determination of [fair] value, and to make the actual calculations pursuant to the board's direction''; however, ''the findings of such individuals must be carefully reviewed by the directors in order to satisfy themselves that the resulting valuations are fair.'' *See also* ASR 113 (''The actual calculations may be made by persons acting pursuant to the direction of the board.'').

[80] As discussed above, in this circumstance, the fund would, on behalf of the board, adopt and implement policies and procedures and keep records consistent with the requirements of paragraph (a) of the proposed rule. *See* proposed rule 2a–5(b).

[81] For example, for a fund that issues redeemable securities, value must be calculated at least once each business day for each portfolio holding in order to calculate the fund's NAV. 17 CFR 270.22c–1(b)(1). Making these fair value determinations by themselves would therefore likely be impracticable for most, if not all, boards of such funds.

[82] As noted above, because a UIT does not have a board of directors or an investment adviser, a UIT's trustee would conduct fair value determinations under the proposed rule. *See* proposed rule 2a–5(d). *See also supra* footnote 38.

[83] *See* rule 38a–1. These challenges include, for example, how to address reconciling differing opinions on the same investment (if applicable) and establishing clear reporting structures.

1. Board Oversight

Where the board assigns fair value determinations to an adviser, the proposed rule would require the board to satisfy its statutory obligation with respect to such determinations by overseeing the adviser. Boards should approach their oversight of fair value determinations assigned to an investment adviser of the fund with a skeptical and objective view that takes account of the fund's particular valuation risks, including with respect to conflicts, the appropriateness of the fair value determination process, and the skill and resources devoted to it.[84] Further, in our view effective oversight cannot be a passive activity. Directors should ask questions and seek relevant information. The board should view oversight as an iterative process and seek to identify potential issues and opportunities to improve the fund's fair value processes.[85] The proposed rule would require the adviser to report to the board with respect to matters related to the adviser's fair value process, in part to ensure that the board has sufficient information to conduct this oversight.[86] Boards should also request follow up information when appropriate and take reasonable steps to see that matters identified are addressed.[87]

We would expect that boards engaged in this process would use the appropriate level of scrutiny based on the fund's valuation risk, including the extent to which the fair value of the fund's investments depend on subjective inputs. For example, a board's scrutiny would likely be different if a fund invests in publicly traded foreign companies than if the fund invests in private early stage companies. As the level of subjectivity increases and the inputs and assumptions used to determine fair value move away from more objective measures, we expect that the board's level of scrutiny would increase correspondingly.[88]

We also believe that, consistent with their obligations under the Act and as fiduciaries, boards should seek to identify potential conflicts of interest, monitor such conflicts, and take reasonable steps to manage such conflicts.[89] In so doing, the board should serve as a meaningful check on the conflicts of interest of the adviser and other service providers involved in the determination of fair values.[90] In particular, the fund's adviser may have an incentive to improperly value fund assets in order to increase fees, improve or smooth reported returns, or comply with the fund's investment policies and restrictions.[91] Other service providers, such as pricing services or broker-dealers providing opinions on prices, may have incentives (such as maintaining continuing business relationships with the adviser) or may otherwise be subject to pressures to provide pricing estimates that are favorable to the adviser.[92] In overseeing the adviser's process for making fair value determinations, the board should understand the role of, and inquire about conflicts of interest regarding, any other service providers used by the adviser as part of the process, and satisfy itself that any conflicts are being appropriately managed.

Boards should probe the appropriateness of the adviser's fair value processes. In particular, boards should periodically review the financial resources, technology, staff, and expertise of the assigned adviser, and the reasonableness of the adviser's reliance on other fund service providers, relating to valuation.[93] In addition, boards should consider the adviser's compliance capabilities that support the fund's fair value processes, and the oversight and financial resources made available to the CCO relating to fair value.

Boards should also consider the type, content, and frequency of the reports they receive. The proposed rule would require reporting to the board (both periodically and promptly) regarding many aspects of the adviser's fair value determination process as a means of facilitating the board's oversight as discussed below. While a board can reasonably rely on the information provided to it in summaries and other materials provided by the adviser and other service providers in conducting its oversight, it is incumbent on the board to request and review such information as may be necessary to be fully informed of the adviser's process for determining the fair value of fund investments. Further, if the board becomes aware of material matters (whether the board identifies the matter itself or the fund's CCO or adviser or another party identifies the issue), we believe that in fulfilling its oversight duty the board must inquire about such matters and take reasonable steps to see that they are addressed.[94]

We request comment on this aspect of the proposal:

19. Should we permit boards to fulfill the statutory function to fair value one or more fund investments in good faith by assigning that fair value determination to an adviser to the fund as described above? Would the proposed rule change the services provided by advisers with respect to valuation and, if so, would such a change have any implications for the board's consideration of the advisory contract under section 15(c) of the Act (*e.g.,* changes in compensation)? If so, are there additional responsibilities under the proposed rule for which advisers would seek additional compensation?

[84] *See generally* Investment Company Governance, Investment Company Act Release No. 26520 (July 27, 2004) (''Governance Release'').

[85] *See, e.g.,* Derivatives Release, *supra* footnote 17, at section II.C.

[86] Proposed rule 2a–5(b)(1).

[87] For example, we have stated that independent directors should ''bring to the boardroom 'a high degree of rigor and skeptical objectivity to the evaluation of management and its plans and proposals,' particularly when evaluating conflicts of interest.'' *See* Governance Release, *supra* footnote 84.

[88] For a discussion of fund fair value risks generally, see *supra* section II.A.1.

[89] *See, e.g.,* Governance Release, *supra* footnote 87 (''. . . state law duties of loyalty and care . . . oblige directors to act in the best interest of the fund when considering important matters the Act entrusts to them, such as approval of an advisory contract and the advisory fee.'').

[90] *See, e.g., id.* (''. . . the Act and our rules rely heavily on fund boards of directors to manage the conflicts of interest that advisers have with funds they manage.''). *See also* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation, 252 (1992) (''the [Investment Company] Act . . . imposes requirements that assume the standard equipment of a corporate democracy: a board of directors . . . whose function is to oversee the operations of the investment company and police conflicts of interest. . . [W]e believe that independent directors perform best when required to exercise their judgment in conflict of interest situations''); *see also* Investment Company Institute Independent Directors Council, Fair Valuation Series: The Role of the Board at 10 (2006) (''IDC Role of the Board''), available at *http://www.ici.org/pdf/06_fair_valuation_board.pdf* (''Investment professionals, for example, can be important sources of information about the value of securities. At the same time, conflict of interest concerns may be raised when investment professionals assign fair valuations that dramatically boost a fund's performance. These concerns may be heightened when the compensation of the investment professionals is based on the fund's performance. To address these potential concerns, boards may want to consider whether investment professionals responsible for managing a particular fund should have sole or primary authority for determining securities valuations for that fund.'').

[91] *See, e.g.,* Piper, *supra* footnote 7. For conflicts of the fund's portfolio manager, see *infra* footnote 120 and accompanying text.

[92] *Cf.* In re Morgan Asset Management, *supra* footnote 9, at 7 (broker-dealer ''induced to provide interim price confirmations that were lower than the values at which the Funds were valuing certain bonds, but higher than the initial confirmations that the [broker-dealer] had intended to provide'').

[93] *See* In re Morgan Asset Management, *supra* footnote 9 (''the Valuation Committee left pricing decisions to lower level employees in Fund Accounting who did not have the training or qualifications to make fair value pricing determinations'').

[94] Proposed rule 2a–5(b)(1)(ii).

20. The rule would permit boards to assign the determination of fair value only to an adviser to the fund. Are there other parties to which we should permit boards to assign such determinations? For example, would it be appropriate to allow boards to assign these determinations to pricing vendors or accounting firms? Are there any parties that fund boards currently rely upon to help make fair value determinations that could adequately be relied upon in the same way as a fund adviser? If we do permit other parties to be assigned the determination of fair value under the final rule, what safeguards, if any, should we include to ensure that the determinations of fair value in good faith are conducted consistent with the proposed rule? For example, should we only permit assignment to non-advisers if they have a fiduciary duty to the fund or if they are regulated by the Commission? Why or why not?

21. As proposed, the rule would require that an assignment to an investment adviser cover all elements of paragraph (a) for a given investment or investments. Should we permit the assignment of particular elements of paragraph (a) to an investment adviser or different advisers? If so, what safeguards should we include to ensure that the determinations of fair value in good faith are conducted consistent with the proposed rule?

22. The proposed rule would permit boards to assign the determination of fair value in good faith to the fund's primary investment adviser or one or more sub-advisers. Should we allow boards to assign this process to sub-advisers, or only allow the fund's primary investment adviser to fulfill this role? Why or why not? Should we impose any obligations for the adviser to oversee any assigned sub-adviser? If so, what obligations? For example, should we require in the rule that a fund must establish reconciliation procedures to address situations where sub-advisers have differing views on the fair value of a fund investment?

23. Should we limit the assignment to a single adviser in order to minimize the issues relating to having multiple advisers assigned determinations of fair value under the Act? If so, why? Conversely, should we require additional safeguards in the case of multiple assigned advisers? If so, what should they be? For example, should we require specific policies and procedures or reports, beyond those already required, or those that would be required, under rule 38a–1 or the proposed rule?

24. Should we permit or require anyone other than the trustee of a UIT to perform the functions described in paragraph (a), such as a person appointed by the trustee? Should we, for example, allow the trustee to assign these determinations to the UIT's sponsor, principal underwriter, or depositor? Would these or any other parties be better equipped to determine the fair value of investments? If the rule were to permit the trustee to assign these determinations to another person, should we require that person to report to the trustee like the adviser would to a board for management companies? What kind of oversight responsibilities should the trustee have? Are there other modifications to the proposed rule that we should make to apply it to UITs given their unmanaged nature and different governance structure compared to other funds?

25. Is our proposed requirement that a board ''oversee'' the adviser sufficient? Should we prescribe in rule 2a–5 additional steps to mitigate the risk of conflicts of interest and other issues related to the fair value process, such as a third party review of the fair value process, or an attestation by the adviser? If so, what should those steps be? What additional costs would they add, and who would bear those costs?

26. As noted above,[95] the proposed rule would define ''board'' as either the fund's entire board of directors or a designated committee of such board composed of a majority of directors who are not interested persons of the fund.[96] Are there any actions required in the proposed rule that we should require the full board, rather than a committee, to perform?

27. Would boards assign the fair value determination to an investment adviser with respect to some investments and determine the fair value of other investments themselves? If so, what types of investments would boards most likely assign to an adviser and under what circumstances, and which would they fair value themselves? Should we provide any additional guidance as to how boards would determine the fair value of fund investments where the board does not assign those determinations to an adviser?

2. Board Reporting

Effective information flow is a critical part of a board's oversight of an adviser to whom it has assigned fair value determinations. We understand that boards currently receive a variety of reports from the adviser outlining the operation of the fund's valuation process.[97] While some of the reports currently provided may be useful for boards, others may contain detailed trade-by-trade information, or other day-to day operational data that may not be effective in facilitating the board's oversight. We believe that it is important for the board to receive relevant and tailored information from the adviser to ensure that the board has sufficient insight and data to exercise the oversight contemplated by the proposed rule. We also believe that these reports should familiarize directors with the salient features of the adviser's process and provide them with an understanding of how that process addresses the requirements of rule 2a–5. Therefore we are proposing the board reporting requirements discussed below.[98] These requirements are intended to help ensure that boards receive the amount and type of information that they find most valuable in overseeing the adviser.[99]

The proposed rule would require the adviser's reports to include such information as may be reasonably necessary for the board to evaluate the matters covered in the reports.[100] This requirement is designed to provide the fund's board with sufficient context for the matters covered in the report. This context is necessary in order to facilitate the board's oversight by providing them with enough information to determine whether to ask additional questions or request additional information, as appropriate. For example, we do not believe that it would be consistent with the proposed rule for the adviser to report that there is a new material conflict of interest without the context necessary for the board to evaluate what effect the conflict would have on the adequacy and effectiveness of the adviser's process for determining fair value. The content of the periodic or prompt reports and supplemental information under the proposal could take the form of narrative summaries,

[95] *See supra* footnote 33.

[96] Proposed rule 2a–5(e)(3).

[97] *See* ''Practical Guidance for Fund Directors on Valuation Oversight,'' Report of the Mutual Fund Directors Forum (June 2012) (available at *https://mfdf.org/images/Newsroom/Valuation-web.pdf*) (''MFDF Valuation Report'') at 14–15.

[98] This would be in addition to any reports required under rule 38a–1. *See* Compliance Rules Adopting Release, *supra* footnote 26, at section II.A.2.c.

[99] The requirements we propose in this document would be minimum requirements and fund boards could always ask for additional reporting from advisers. *See infra* footnote 110 and accompanying text.

[100] Proposed rule 2a–5(b)(1). This is similar to the approach we have adopted with regard to money market stress testing and proposed with regard to board oversight of derivatives risk managers. *See* 2014 Money Market Fund Release, *supra* footnote 14, and Derivatives Release, *supra* footnote 17.

graphical representations, statistical analyses, dashboards, or exceptions-based reporting, among other methods.

a. Periodic Reporting

Proposed rule 2a–5 would require the adviser, at least quarterly, to provide the board a written assessment of the adequacy and effectiveness of the adviser's process for determining the fair value of the assigned portfolio of investments.[101] We understand that the materials currently prepared for boards for purposes of board meetings can include detailed information regarding the fair value process, including a list of each individual portfolio holding that received a fair value since the prior board meeting (*e.g.,* during the quarter).[102] Although some boards may find this specific information useful, we are not proposing to mandate this level of detailed reporting because we believe that the board's oversight may be better facilitated through the use of more targeted forms of reporting designed to identify trends, exceptions, or outliers, and generally provide a sufficient overview of the current state of the fair value process.[103] Accordingly, the proposed rule would require the adviser's periodic reports to provide the adviser's evaluation of the adequacy and effectiveness of its process for determining fair value. The periodic reports would be required to, at a minimum, include a summary or description of the following information:

- *Material Valuation Risks.* The assessment and management of material valuation risks that would be required under the proposed rule. This would include any material conflicts of interest of the investment adviser and any other service provider.[104] As discussed above, we believe that assessing and managing identified valuation risks is an important element for determining fair value in good faith because valuation risks that are not effectively managed can make it more likely that the adviser has incorrectly valued an investment.
- *Material Changes to or Material Deviations from Methodologies.* Any material changes to, or material deviations from, the fair value methodologies established under the proposed rule.[105] This requirement would keep boards informed of such changes or deviations, which may show that the methodologies need to be updated or adjusted, and provide an opportunity for a board to ask questions regarding the reasons for any change or deviation.
- *Testing Results.* The results of any testing of fair value methodologies as part of the required fair value policies and procedures.[106] As discussed above, the requirement to test the appropriateness and accuracy of the methodologies used to calculate fair value is designed to help ensure that the selected fair value methodologies are appropriate and that adjustments to the methodologies are made where necessary.
- *Resources.* The adequacy of resources allocated to the process for determining the fair value of the fund's assigned investments, including any material changes to the roles or functions of the persons responsible for determining the fair value.[107] The adviser's assessment of the adequacy of these resources may inform a board in determining the level of scrutiny to apply in overseeing an adviser's fair value determinations.
- *Pricing Services.* Any material changes to the adviser's process for overseeing pricing services,[108] as well as any material events related to its oversight of such services, such as changes of service providers used or price overrides.[109] This information is designed to help the board oversee the adviser's use of pricing services, if applicable, and to help ensure that pricing information received from service providers serves as a reliable input for determining fair value in good faith.
- *Other Requested Information.* Any other materials requested by the board related to the adviser's process for determining the fair value of fund investments.[110]

These requirements collectively are designed to help ensure that boards obtain the information that they need to exercise their statutory and fiduciary duties and to oversee an adviser. They are intended to supplement, not replace, this oversight. Boards should critically review the information provided to them, particularly with regard to an adviser's reporting on its own conflicts of interest, and request any information that they feel is necessary to conduct that oversight. For example, in addition to the specific items listed above,[111] a board could review and consider, if relevant:

- Summaries of adviser price challenges to pricing information provided by third-party vendors and of price overrides, including back-testing results related to the use of price challenges and overrides;
- Specific calibration and back-testing data, including in the case of back-testing whether fair value prices moved in the same direction (relative to the prior market prices) as the portfolio holdings' next actual market prices, whether fair value prices were closer to the portfolio holdings' next actual market prices than the prior market prices (regardless of the direction), and whether the difference between the fair value prices and the subsequent prices was greater than pre-established tolerance levels;[112]
- Reports regarding portfolio holdings for which there has been no change in price or for which investments have been held at cost for an extended period of time (''stale prices'');
- Reports regarding portfolio holdings whose price has changed outside of

[101] Proposed rule 2a–5(b)(1)(i).

[102] *See* MFDF Valuation Report, *supra* footnote 97, at 14.

[103] Fund boards could always request additional information if they so choose. Proposed rule 2a–5(b)(1)(i)(F).

[104] Proposed rule 2a–5(b)(1)(i)(A). *See supra* section II.A.1 discussing this process. For example, the adviser could discuss instances where it challenged the pricing information provided by an affiliated or third party vendor.

[105] Proposed rule 2a–5(b)(1)(i)(B). For example, a report could discuss when key inputs or assumptions are changed and the reasons for the changes. We believe that both a material change and the reason for it would be information that may be reasonably necessary for the board to evaluate such changes.

[106] Proposed rule 2a–5(b)(1)(i)(C).

[107] Proposed rule 2a–5(b)(1)(i)(D). For example, an adviser should disclose to the board when the adviser seeks to hire a new pricing service to cover a new asset type or when replacing a person with a background in valuation with a person without that background in a position of authority regarding the adviser's fair value process. *See also* proposed rule 2a–5(b)(2).

[108] If the board assigns the fair value determination to an adviser under the proposed rule, the board would generally be aware of an adviser initially appointing, and the establishment of the process for overseeing, a pricing service as part of its oversight and approval of the adviser's policies and procedures under rule 38a–1. As a result, we are not specifically proposing to require that information be included in these periodic reports.

[109] Proposed rule 2a–5(b)(1)(i)(E). There may be times when pricing information from a pricing vendor differs materially from the adviser's view of the then-current fair value of the portfolio holding, and the adviser may seek to contact the pricing vendor to question the basis for the pricing information. Because this difference in pricing suggests that further inquiry is needed to assess the adequacy of the fair value process when these conflicts occur, we are proposing to require this reporting.

[110] Proposed rule 2a–5(b)(1)(i)(F).

[111] Boards and fund CCOs may also consider requesting or including items such as the examples given in the bullet list below, if relevant, as part of the CCO's annual reports to the board under rule 38a–1(a)(4)(iii).

[112] *See supra* footnote 57. In these cases, reports on back-testing could indicate whether fair value is being compared to actual sales prices or to pricing information from pricing services and dealers. In the latter case, the reports could state whether dealer prices are actual bids or firm commitments or are indicative or accommodation quotes that merely represent the opinion of the dealer.

predetermined ranges over a set period of time;

- Narrative summaries or reports on pricing errors, including the date of any error, the cause, the impact on the fund's NAV, and any remedial actions taken in response to the error;
- Reports on the adviser's due diligence of pricing services used by the fund;
- The results of testing by the fund's independent auditor provided to the audit committee;
- Reports analyzing trends in the number of the fund's portfolio holdings that received a fair value, as well as the percent of the fund's assets that received a fair value; and
- Reports on the number and materiality of securities whose fair values were determined based on information provided by broker-dealers; the broker-dealers most frequently used for this purpose; and the results of back-testing on the information they provided.

We request comment on our proposed requirement that advisers periodically provide a written evaluation of the adequacy and effectiveness of the adviser's process for determining the fair value of the assigned portfolio of investments, including, at a minimum, certain specified summaries or descriptions.

28. Is the proposed periodic reporting requirement appropriate? What resources would be required for an adviser to provide the required quarterly assessment of the adequacy and effectiveness of the adviser's process? Are there additional or different matters that we should require advisers to address in the periodic reports? Are there some items that we should not require? If so, which, and why?

29. Should we require a different minimum reporting frequency for periodic reports? Should we, for example, require advisers to provide these reports monthly or in connection with each regularly scheduled board meeting? Should we require some or all of the specified information to be provided less frequently, such as annually?

30. Is what should be included in an assessment clear? Should we include additional guidance to explain what this entails? Are the other key terms used in the proposal, such as ''assess,'' and ''material'' sufficiently understood or is further guidance advisable for those terms? Should they be defined in the rule, and, if so, how? Should the rule use different terms, and, if so, which terms?

31. Are there circumstances in which boards should receive specific information on each individual portfolio holding that received a fair value during the quarter or certain such holdings?

32. We are proposing to require that all price overrides be reported as supplemental information to the board as part of the periodic report. Should we limit which price overrides must be reported, and, if so, how? Alternatively or in addition, should we require reporting regarding all price challenges, even those that do not lead to overrides?

33. Is there additional specific information that we should require to be part of these periodic reports? Are there any other reports that some boards currently receive that should be required under the proposed rule?

34. In light of their importance, should the rule impose specific requirements beyond reporting regarding pricing services? For example, should any pricing services used be explicitly approved by the board? Should there be a required finding or report by the adviser as to pricing services' adequacy and effectiveness?

b. Prompt Board Reporting

We also believe that it is important for the adviser to notify the board of certain issues as they arise that may require their immediate attention. Proposed rule 2a–5 would require that the adviser promptly report to the board in writing on matters associated with the adviser's process that materially affect, or could have materially affected, the fair value of the assigned portfolio of investments, including a significant deficiency or a material weakness in the design or implementation of the adviser's fair value determination process or material changes [113] in the fund's valuation risks.[114] These reports, like the periodic reports discussed above, also must include such information as may be reasonably necessary for the board to evaluate the matter covered in the report.

''Could have materially affected'' is intended to capture certain circumstances where, for example, a matter was detected which affected one security and which may not be material on its own, but, had the matter not been identified, could have materially affected the larger assigned portfolio of investments or some subset of that portfolio.[115] This concept is not intended to mandate reporting in circumstances where, at the time the matter was detected, it did not seem that the matter would materially affect the fair value of the assigned portfolio but the matter later ended up having such an effect.

We are proposing to require the adviser to provide these reports promptly, but in no event later than three business days after the adviser becomes aware of the matter, rather than waiting until the next periodic report.[116] We believe it is appropriate that the board receive prompt reports regarding matters that materially affect fair value determinations because the proposed rule would allow the board to assign to an adviser fair value determinations otherwise allocated to the board under the Act, and there may arise an issue of such importance that requires prompt board attention. We recognize that the kind of matters that may require this prompt reporting (*i.e.,* outside of the periodic reports) may vary. Some situations may warrant an immediate report, while in other cases it may be appropriate for the adviser to take some additional time to evaluate how to address the matter before engaging the board. We believe that requiring such a report to be ''prompt,'' but in no event later than three business days after the adviser becomes aware, balances the need for the board to be timely informed of material valuation issues, while allowing the adviser to evaluate and respond appropriately.

We also understand, however, that there may be some circumstances when an adviser becomes aware of an issue that may affect fair value of the portfolio but that the materiality of a given event may be in question. In such a case, an adviser may need additional time to determine and verify whether an event has or could materially affect the fair value of the portfolio assigned to the adviser. Accordingly, we believe that if an adviser needs some reasonable amount of time after becoming aware of the matter to verify and determine its materiality, that verification period would not be counted as part of the ''prompt'' trigger period. In general, we believe that this verification and final determination process should be completed within three business days or less, including the day that the adviser became aware of the triggering event. Therefore, any prompt reports generally should occur no more than three business days after the adviser becomes

[113] For example, a significant increase in price challenges or overrides likely would reflect a material change to the fund's valuation risks that should be promptly reported to the board,

[114] Proposed rule 2a–5(b)(1)(ii).

[115] *See* PCAOB AS 2201 An Audit of Internal Control Over Financial Reporting That is Integrated with An Audit of Financial Statements, Appendix A—Definitions .A7 (defining ''material weakness'' and ''reasonable possibility''). *See also* Sarbanes-Oxley Act, *supra* footnote 21, at Title III Sec. 302(a)(5).

[116] *Id.*

aware of the event, but the adviser may, to the extent necessary, take limited additional time (but in no event more than three business days) for the verification and final determination process.

We request comment on our proposed requirement regarding prompt reporting on certain matters associated with the adviser's process that materially affect, or could have materially affected, the fair value of the assigned portfolio of fund's investments.

35. Are the proposed prompt reporting requirements appropriate? Are there additional or different matters that we should require advisers to address in their prompt reports?

36. Should the trigger for prompt reporting be tied to a specific bright line or instead be dependent on facts and circumstances? For example, instead of the trigger being when the adviser becomes aware of the matter should it instead be when the event occurs? If so, would advisers reasonably be able to know when such events occur such that they could report in a timely fashion? Alternatively, should it be when the adviser determines and verifies the impact of the event regardless of how long it takes after the adviser becomes aware of the matter?

37. Are the standards of ''materially affecting'' or ''could have materially affected'' sufficiently understood? Should we provide more context on what these terms mean, specifically as they relate to the context of material weaknesses? Should we instead adopt a different standard, such as one that uses specific triggers, to identify matters for prompt reporting? If so, which triggers? For example, should we instead require reporting when a specific number of price overrides have occurred?

38. Should we identify any other issues that the adviser should report promptly to the board? For example, instead of requiring any changes to the fund's fair value methodologies to be reported during the periodic reports, should we instead require that they also be reported promptly? Alternatively, are there matters that would be required to be reported promptly that should instead be reported as part of the periodic report?

39. Is the specified timeline for prompt reporting appropriate or should we consider different time frames? For example, should we require that an adviser report to the board within 1 or 10 business days? Should the time frame be different for certain types of circumstances? If so, which ones?

40. Will advisers be able to make the appropriate determinations in the limited time discussed above? Will advisers need more than three business days to make such a materiality decision? Is three days too long? Should we specify a time for making materiality decision in the rule?

41. The proposed rule would require all reports to be in writing, including prompt reports. Should we provide that in the case of prompt reports, advisers could make oral reports so long as adequate records are kept?

42. Should we require that, if the report is not made to the full board, the designated board committee make a report to the full board within a specified time frame, such as at the next regularly scheduled meeting?

43. Should we permit the adviser to make prompt reports to a pre-identified individual director? What controls should we require if we did permit this? For example, should that director be required to be one of the independent directors?

3. Specification of Functions

If the board assigns the fair value determination requirements for one or more fund investments to an adviser, the proposed rule would require the adviser to specify the titles of the persons responsible for determining the fair value of the assigned investments, including by specifying the particular functions for which the persons identified are responsible.[117] If the adviser uses a valuation committee or similar body to assist in the process of determining fair value, the fair value policies and procedures generally should describe the composition and role of the committee, or reference any related committee governance documents as appropriate. In addition, the fair value policies and procedures also should identify the specific personnel with duties associated with price challenges, including those with the authority to override a price, and the roles and responsibilities of such persons, and establish a process for the review of price overrides.[118]

In addition, the proposed rule would require the adviser to reasonably segregate the process of making fair value determinations from the portfolio management of the fund.[119] One significant source of potential adviser conflicts of interest in the fair value determination process is the level and kinds of input that fund portfolio managers or persons in related functions have in the design or modification of fair value methodologies, or in the calculation of specific fair values.[120] In many circumstances, the fund's portfolio manager may be the most knowledgeable person at an investment adviser regarding a fund's portfolio holdings. For this reason, it may be appropriate for portfolio managers to provide input into the process for determining the fair value of fund investments. On the other hand, because portfolio management personnel are often compensated in part based on the returns of the fund, a portfolio manager's incentives may not be fully aligned with the fund's with respect to determination of fair value, and a portfolio manager therefore should not be making the fair value determinations.[121]

Further, we believe that a fund generally should consider the extent of influence portfolio managers may have on administration of the fair value process, and seek to provide independent voices and administration of the process as a check on any potential conflicts of interest to the extent appropriate.[122] Separation of functions facilitates these important checks and balances, and funds could institute this proposed requirement through a variety of methods, such as independent reporting chains, oversight arrangements, or separate monitoring systems and personnel. The proposed rule would require reasonable segregation of functions, rather than taking a more prescriptive approach, such as requiring funds to implement strict protocols regarding communications between specific personnel, to allow funds to structure their fair value determination process and portfolio management functions in ways that are tailored to each fund's facts and circumstances, including the size and resources of the fund's adviser. In this regard, the reasonable segregation requirement is not meant to indicate that portfolio management must necessarily be subject to a communications ''firewall.'' We recognize the important perspective and insight regarding the value of fund holdings that portfolio management

[117] Proposed rule 2a–5(b)(2).

[118] *See also* proposed rule 2a–5(a)(4).

[119] *See* In re Morgan Asset Management, *supra* footnote 9.

[120] *Id.* at 4 (fund's portfolio manager ''actively screened and influenced a broker-dealer to change the price confirmations [and] failed to advise . . . when he received information indicating that the Fund's prices for certain securities should be reduced.'').

[121] In addition, as the person most directly responsible for the fund's investments, the portfolio manager may also be concerned about the reputational or career implications of the fund's performance, or its compliance with investment limitations, which can provide an incentive to smooth returns or otherwise misvalue portfolio holdings.

[122] *See* Liquidity Risk Management Release, *supra* footnote 3, at section III.H.1.

personnel can provide. Accordingly, this segregation requirement would not prevent portfolio managers from providing inputs that are used in the fair value determination process, as noted above. Instead, this reasonable segregation requirement is designed to help reduce and manage potential conflicts of interest. Keeping the functions reasonably segregated in the context of fair value determinations should help mitigate the possibility that these competing incentives diminish the effectiveness of fair value determinations.

We request comment on this proposed requirement.

44. Should the rule require assigned advisers to reasonably segregate the process of making fair value determinations from the portfolio management of the fund? Would this pose any difficulty for particular types of entities, for example funds managed by small advisers?

45. Is there a better way to prevent conflicts between a portfolio manager's incentives and a fund's interest, for example, in determination of investment values that do not result in dilution of purchasing or redeeming investors? Should we provide any additional clarification regarding the proposed reasonable segregation requirement? If so, what changes should we make? Should we add or change any specific requirements? For example, should we prohibit portfolio management from having any involvement in the fair value process or should we generally prohibit their involvement outside of certain situations beyond making fair value determinations? If so, what level of involvement should we permit? Further, should we exempt smaller advisers from this requirement or clarify that this is a key risk and thus, where feasible, such personnel should be segregated, without making segregation an explicit regulatory requirement? Are there effective steps, other than segregation, that funds currently use to manage the potential conflicts of portfolio management personnel that the rule should require instead of segregation? If so, what are they and why should they be required instead?

4. Records of Assignment

Under the proposed rule, in addition to the records that would need to be kept as part of a good faith determination of fair value generally, a fund must also keep records related to the fair value determinations assigned to the adviser. Specifically, the fund would be required to: (1) Keep copies of the reports and other information provided to the board required by the rule and (2) a specified list of the investments or investment types whose fair value determinations have been assigned to the adviser pursuant to the requirements of the proposed rule.[123] In each case, these records would be required to be kept for at least five years after the end of the fiscal year in which the documents were provided to the board or the investments or investment types were assigned to the adviser, the first two years in an easily accessible place.[124]

As discussed above, funds must create and retain certain documentation, including the reports that advisers make to the fund board.[125] Further, we believe that a clear identification of the investments or investment types that the board has assigned to the adviser would facilitate the board's oversight of the adviser's fair value determinations.[126] These proposed recordkeeping requirements are designed to achieve these objectives and to facilitate compliance, and related regulatory oversight, with the proposed rule.

We request comment on these proposed additional recordkeeping requirements.

46. Are there any additional types of records that we should require the fund to maintain in connection with the assignment process? Why or why not?

47. Should we apply any or all of the proposed recordkeeping requirements of this section to the adviser, rather than the fund? If so, which requirements?

48. Are the holding periods sufficient to evidence compliance? Why or why not? Should they be different (*e.g.,* six years)?

C. Readily Available Market Quotations

The board's role in the valuation of a portfolio holding for purposes of fair value depends on whether or not market quotations are readily available for such a holding. Under section 2(a)(41) of the Investment Company Act, if a market quotation is readily available for a portfolio holding, it must be valued at the market value. Conversely, if market quotations are ''not readily available,'' the holding's value must be fair value as determined in good faith by the board.[127]

Neither the Investment Company Act nor the rules thereunder currently define ''readily available.'' However, we understand that industry practice has developed to incorporate many of the concepts of ASC Topic 820 when evaluating whether market quotations are readily available.[128]

The proposed rule would provide that a market quotation is readily available for purposes of section 2(a)(41) of the Investment Company Act with respect to an investment only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.[129] Fair value, as defined in the Act, therefore must be used in all other circumstances.[130] As discussed previously, we believe that for a fair value methodology to be appropriate under the proposed rule, it must be determined in accordance with U.S. GAAP. As mentioned above, U.S. GAAP requires funds to maximize the use of relevant observable inputs and minimize the use of unobservable inputs. However, under U.S. GAAP there are circumstances where otherwise relevant observable inputs become unreliable.[131] Consistent with this, a quote would be considered unreliable under proposed rule 2a–5(c) in the same circumstances where it would require adjustment under U.S. GAAP or where U.S. GAAP would require consideration of additional inputs in determining the value of the security. For example, under current U.S. GAAP, funds looking to the proposed rule would use previous closing prices for securities that principally trade on a closed foreign market to calculate the value of that security, except when an event has occurred since the time the value was established that is likely to have resulted in a change in such value.[132] In

[123] Proposed rule 2a–5(b)(3).

[124] Proposed rule 2a–5(b)(3).

[125] *See supra* section II.A.6.

[126] Proposed rule 2a–5(b)(3).

[127] Section 2(a)(41).

[128] We acknowledge that specific references and principles in U.S. GAAP may change over time. When referencing ASC Topic 820 throughout this release, we intend to reference the accounting topic on Fair Value Measurements within U.S. GAAP and the principles therein.

[129] Proposed rule 2a–5(c). ASC Topic 820 defines level 1 inputs as ''[q]uoted prices (unadjusted) in active markets for *identical* assets . . . that the reporting entity can access at the measurement date.'' ASC Topic 820–10–20 (emphasis added). In ASR 113, the Commission interpreted ''readily available market quotations'' to refer ''to reports of current public quotations for securities similar in all respects to the securities in question.'' Despite the respective references to ''securities similar in all respects'' in the Commission's prior guidance and ''identical assets'' in ASC Topic 820, we view these respective definitions as being substantively the same.

[130] Proposed rule 2a–5(e)(2). *See also supra* section II.A.2.

[131] *See* ASC Topic 820–10–35–41C (outlining circumstances when a reporting entity shall make an adjustment to a Level 1 input).

[132] *See id.* at b.

such circumstances, the fund would need to fair value the security.

As we have stated previously, evaluated prices are not, by themselves, readily available market quotations.[133] In addition, ''indications of interest'' and ''accommodation quotes,'' for example, would not be ''readily available market quotations'' for the purposes of proposed rule 2a–5.[134]

We request comment on our proposed definition of when market quotations are readily available for purposes of section 2(a)(41) and rule 2a–4.

49. Is the proposed definition of when market quotations are readily available under the Investment Company Act appropriate? Should we look elsewhere than or in addition to ASC Topic 820?

50. How should we address investments in pooled vehicles, such as registered investment companies, that are valued at NAV, not at a market price? Do funds currently treat such investments as securities that are fair valued? What would be the burdens on boards of funds that invest substantially in such vehicles (*e.g.,* funds of funds)? To the extent that a board assigned the determination of fair values of such investments to a fund's adviser, would the adviser's use of NAV involve the conflicts of interest or other concerns underlying paragraph (b) of the proposed rule?

51. Would this provision cause any compliance issues with other elements of the proposed rule, ASC Topic 820, or any other provision of the federal securities laws?

52. This definition is designed to track concepts in U.S. GAAP. Should we instead expressly refer to U.S. GAAP in the rule text to ensure that consistency with U.S GAAP in case of changes over time? For example, should the rule instead provide that ''market quotations are readily available for purposes of section 2(a)(41) of the Act with respect to an investment only when the investment's value is determined under generally accepted accounting principles of the United States based solely on quoted, unadjusted prices in active markets for identical investments that the fund can access at the measurement date?''

53. Should the Commission define readily available market quotations via rulemaking as proposed, or should we instead provide interpretive guidance?

54. Do practitioners understand what it means in this context for the fund to have access to identical investments at the measurement date? Should some other standard be used, such as ''readily access'' or ''reasonably access''?

D. Rescission of Prior Commission Releases

In ASR 113 and ASR 118, the Commission provided specific guidance for funds regarding the ''inclusion'' (or recognition), ''valuation'' (or measurement), and disclosure of investment securities.[135] Since the Commission issued that guidance, we believe that developments in the FASB accounting standards have modernized the approach to accounting topics addressed in ASR 113 and ASR 118. Further, as noted above, market and fund investment practices have evolved considerably.[136] As a result, the fund-specific accounting guidance for recognition, measurement, and disclosure provided in those statements may no longer be necessary.

Several examples illustrate how FASB accounting standards have addressed the topics covered in the ASRs. First, ASR 118 provides guidance related to the ''inclusion,'' or recognition, of securities in a portfolio. Today, U.S. GAAP provides authoritative standards applicable to the recognition of investments by investment companies for financial reporting purposes.[137] For example, ASC Topic 946: *Financial Services—Investment Companies* (''ASC Topic 946'') requires that an investment company recognize security purchases and sales as of the date on which the investment company agrees to purchase or sell the investment.[138] It also provides that securities acquired in private placements and tender offers are required to be recognized as of the date the investment company obtained legal rights and obligations relating to the transferred securities.[139]

In addition, ASRs 113 and 118 provide guidance related to the valuation and disclosure of securities for financial reporting purposes. Again, U.S. GAAP provides authoritative standards applicable to the measurement of fund investments and related disclosures for financial reporting purposes. For example, ASC Topic 946 requires that investment companies measure investments in debt and equity securities, as well as other investments, at fair value.[140] ASC Topic 820, in turn, defines ''fair value'' as ''the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.'' [141] ASC Topic 820 also provides a framework for measuring fair value as well as principles for financial statement disclosures.[142]

The Commission historically has recognized FASB pronouncements as authoritative for financial reporting purposes in the absence of any contrary Commission determination.[143] In Financial Reporting Release No. 70,[144] the Commission stated its determination that the FASB and its parent organization, the Financial Accounting Foundation, satisfied the criteria in section 19(b) of the Securities Act and, accordingly, FASB financial accounting and reporting standards are recognized as ''generally accepted'' under the federal securities laws.[145] As a result, registrants are required to comply with those standards for recognition, measurement and disclosure in preparing financial statements filed with the Commission, unless the Commission provides otherwise.[146] Accordingly, we believe ASR 113 and ASR 118 are not necessary to clarify fund obligations with respect to these accounting topics. We further believe that, because the guidance contained in ASR 113 and ASR 118, on the one hand, and U.S. GAAP, on the other, require funds to reach similar results with respect to the recognition, measurement, and disclosure of fund portfolio holdings, such guidance is not necessary to supplement the requirements of U.S. GAAP. We believe that the measurement concepts under

[133] *See* 2014 Money Market Fund Release *supra* footnote 14, at text accompanying n.895.

[134] *See* Liquidity Risk Management Release, *supra* footnote 3, at nn.800–801 and accompanying text.

[135] *See* ASR 113 (''1. The Problems of Valuation'' and ''2. The Problems of Portfolio Management''); ASR 118. ASR 118 refers to the concepts of ''inclusion'' and ''valuation'' of securities in the portfolio, which we believe are equivalent to the U.S. GAAP concepts of recognition and measurement, respectively.

[136] *See supra* section I.

[137] Rule 2a–4(a)(2) under the Investment Company Act provides that, for purposes of calculating the NAV of a redeemable security, ''changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first business day following the trade date.'' The ''first business day following the trade date'' is commonly referred to as T+1. We believe that our proposed rescission of ASR 113 and ASR 118 is consistent with the provisions of rule 2a–4.

[138] *See* ASC 946–320–25–1.

[139] *See* ASC 946–320–25–2.

[140] *See* ASC 946–320–35–1 and ASC 946–325–35–1.

[141] As noted above, the term ''fair value'' is used in sections II.A and II.B as defined in ASC Topic 820. *See supra* footnote 13.

[142] ASC Topic 820 defines fair value at ASC 820–10–20. *See also* ASC Topic 820–10–50.

[143] *See* Rule 4–01(a)(1) of Regulation S–X [17 CFR 210.4–01(a)(1)]. *See also* ASR 150 (Dec. 20, 1973) and ASR 4 (Apr. 25, 1938).

[144] Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Investment Company Act Release No. 26028 (Apr. 25, 2003) [68 FR 23333 (May 1, 2003)] (''FR–70'').

[145] 15 U.S.C 77s(b).

[146] *See* FR–70, *supra* footnote 144; rule 4–01(a)(1) of Regulation S–X.

ASC Topic 820 are consistent with the Investment Company Act and the Commission's prior statements that fair value is the amount that an owner of a portfolio holding might reasonably expect to receive upon its ''current sale.'' [147] As a result, we propose to rescind the Commission's prior guidance in ASR 113 and ASR 118.[148] Additionally, in light of the Sarbanes-Oxley Act giving the PCAOB the authority to establish or adopt professional standards for auditors, subsequent to the release of the Commission guidance in ASR 118, we no longer believe that it is necessary to retain the specific requirement in ASR 118 for an independent accountant of a fund to verify all quotations for securities with readily available market quotations at the balance sheet date. Accordingly, we are proposing to rescind ASR 118, including this specific requirement.[149]

In addition to the discussions in ASR 113 and ASR 118 regarding accounting, auditing, and the role of the board in determining fair value, these releases also discuss other matters. Because we believe that many of these statements would be superseded by the rule we are proposing here, or have also been superseded by subsequent requirements under U.S. GAAP, we propose to rescind ASR 113 and ASR 118 in their entirety.[150] We continue to believe that the improper valuation of fund investments that materially affects the NAV of the shares being offered or, in the case of an open-end fund, redeemed, could violate the anti-fraud provisions of the federal securities laws.[151]

We do not propose to modify the Commission's prior guidance regarding the use of the amortized cost method because the Commission recently considered this topic in the 2014 Money Market Fund Release, and we do not believe that further guidance in this area is required at this time.[152]

55. Do commenters agree that all of the guidance provided in ASR 113 and ASR 118 has been rendered unnecessary by subsequent developments, including developments in the fund industry, subsequent Commission statements, rulemakings, and developments related to U.S. GAAP, and the requirements of the proposed rule, if adopted? Is there any guidance contained in either of ASR 113 and ASR 118, accounting or otherwise, that commenters believe it is necessary or desirable to retain?

56. To the extent prior guidance has not already been incorporated into U.S. GAAP, is there any prior guidance that should be recommended for incorporation into U.S. GAAP by the FASB?

57. We have previously stated that fair value is what ''the owner might reasonably expect to receive . . . upon [a] current sale.'' [153] Are the concepts of ''current sale'' in ASR 118 and ''exit price'' in U.S. GAAP identical? If not, what are the differences between the two standards and how should we address such gap?

58. The proposal does not address the views the Commission has expressed related to the use of amortized cost in valuing portfolio securities with maturity dates of 60 days or less.[154] Is there other valuation guidance that the proposal should address? Do funds or advisers look to any other guidance on valuation that would be relevant for the Commission to address?

59. Our proposal to rescind ASR 118 would eliminate the Commission's statement in that release regarding verification by an independent accountant of all quotations for securities with readily available market quotations at the balance sheet date. Should we maintain that position regarding independent verification of quotations for all securities for which market quotations are available? What are the benefits or costs associated with independent verification of quotations for all portfolio investments?

60. Is there any other Commission valuation rule (such as rule 6.02(b) of Regulation S–X) or guidance that we should consider rescinding or amending in light of the proposal? If so, why?

E. Existing Staff No-Action Letters, Other Staff Guidance, and Proposed Transition Period

In addition to the proposal to rescind ASR 113 and ASR 118, certain staff letters and other staff guidance addressing a board's determination of fair value and other matters covered by proposed rule 2a–5 would be withdrawn or rescinded in connection with any adoption of this proposal. Upon the adoption of any final rule, some letters and other guidance, or portions thereof, would be moot, superseded, or otherwise inconsistent with the final rule and, therefore, would be withdrawn or rescinded. If commenters believe that additional letters or other guidance, or portions thereof, should be withdrawn or rescinded, they should identify the letter or guidance, state why it is relevant to the proposed rule, how it or any specific portion thereof should be treated, and the reason therefor. Based on the proposed rule, staff letters and guidance that would be withdrawn or rescinded would include, but would not necessarily be limited to, all of the staff letters and other staff guidance listed below.

[147] In ASR 118 the Commission stated that, as a general principle, fair value of a security would be the amount that a fund might reasonably expect to receive for the security upon its current sale. (The ''current sale'' standard also is referred to as the ''exit price'' standard.) In U.S. GAAP, ASC Topic 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability between market participants at the measurement date under current market conditions (an exit price).

[148] We also are proposing to make conforming amendments to 17 CFR 210.6–03 (rule 6–03 of Regulation S–X).

[149] The proposed rescission would eliminate the Commission's auditing guidance to verify all quotations of securities with readily available market quotations at the balance sheet date, implicating the auditor's requirement to test the valuation assertion for all securities. This proposal does not impact the statutory requirement in section 30(g) of the Investment Company Act, which requires the independent public accountant to verify securities owned, either by actual examinations, or by receipt of a certificate from the custodian, which implicates the auditor's requirement to test the existence assertion for all securities. The statutory requirement under section 30(g) of the Investment Company Act remains distinct from the requirements in auditing standards established by the PCAOB.

[150] The discussion of liquidity in ASR 113 under the heading ''2. The Problems of Portfolio Management'' has been rendered moot by the adoption of rule 22e–4 on liquidity risk management programs. The discussion in ASR 113 under the heading ''3. The Problem of Disclosure'' has been rendered obsolete by the repeal of Form N–8B–1 and the adoption of our current disclosure forms. *See, e.g.,* Investment Company Registration and Report Forms and Reporting Requirements, Revision of Forms, Reports and Regulations, Investment Company Act Release No. 10378 (Aug. 28, 1978) (''Forms N–1 and N–2 . . . replace Form N–8B–1''); Registration Form Used by Open-End Management Investment Companies; Guidelines, Investment Company Act Release No. 13436 (Aug. 22, 1983) (Form N–1A replaces Form N–1); Form N–1A; Form N–2.

[151] *See also* ASR 113.

[152] *See* 2014 Money Market Fund Release *supra* footnote 14. *See also* Accounting Series Release No. 219, Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, (May 31, 1977) (stating that, under certain circumstances, funds may determine the fair value of debt securities that mature in 60 days or fewer by using the amortized cost method).

[153] ASR 118.

[154] *See* 2014 Money Market Fund Release, *supra* footnote 14. These views were codified in the ''Codification of Financial Reporting Policies'' at section 404.05.c.

Name	Date	Topic
Paul Revere Investors, Inc.	Feb. 21, 1973	Delegation to a board valuation committee.
The Putnam Growth Fund and Putnam International Equities Fund, Inc..	Jan. 23, 1981	Fair value of portfolio securities which trade on a closed foreign exchange.
Form N–7 for Registration of Unit Investment Trusts under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Release No. 15612, Appendix B, Guide 2.	Mar. 17, 1987	Fair value for UITs to be determined by the trustee or its appointed person.
Investment Company Institute	Dec. 8, 1999	Fair value generally.
Investment Company Institute	Apr. 30, 2001	Fair value generally.
Valuation Guidance Frequently Asked Questions (FAQ 1 *only*).	2014	Fund directors' responsibilities when determining whether an evaluated price provided by a pricing service, or some other price, constitutes fair value.

We also are proposing a one-year transition period to provide time for funds and their advisers to prepare to come into compliance with proposed rule 2a–5. Accordingly, we propose that the effective date of any adoption of this proposal would be one year following the publication of the final rule in the **Federal Register**. We propose to rescind ASR 113 and 118 at that time, and the identified guidance would be withdrawn.

We request comment on the proposed rescissions and transition period.

61. Are there any other staff letters or guidance pieces that should be rescinded or withdrawn should proposed rule 2a–5 be adopted?

62. Alternatively, should the Commission codify any staff letters or other staff guidance pieces, for example, FAQ 2 in the 2014 Valuation Guidance Frequently Asked Questions? If so, commenters should identify the positions and explain why commenters believe they should be codified.

63. Do commenters agree that a one-year transition period to provide time for funds and their advisers to prepare to come into compliance with proposed rule 2a–5 is appropriate? Should the period be shorter or longer?

64. Should the transition period be the same for all funds that would be subject to proposed rule 2a–5, as proposed? Alternatively, should we adopt tiered transition periods for smaller entities? For example, should we provide an additional six months in the transition period for smaller entities (or some other shorter or longer period)?

65. Instead of a fixed transition period of one year, should we tie the transition period to the fiscal year end of funds? For example, should the transition period instead start for each fund at the beginning of its fiscal year end after the one-year period following adoption of any rule?

III. Economic Analysis

A. Introduction

The proposed rule would provide requirements for determining fair value in good faith for purposes of section 2(a)(41) of the Act and rule 2a–4 thereunder. This determination would involve assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; evaluating any pricing services used; adopting and implementing certain written policies and procedures; and maintaining certain records.[155] The proposed rule would permit a fund's board of directors to assign the fair value determination relating to any or all fund investments to an investment adviser of the fund, which would carry out all of the functions required under the rule, subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board's ability to effectively oversee the adviser's fair value determinations.[156] Finally, the proposed rule would define when market quotations are readily available for purposes of section 2(a)(41) of the Act.[157] We are sensitive to the economic effects that may result from the proposed rule, including the benefits, costs, and the effects on efficiency, competition, and capital formation.[158] Section 2(c) of the Investment Company Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is consistent with the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed rule would provide a consistent framework for boards to comply with their obligations under section 2(a)(41) of the Investment Company Act and would permit boards to assign fair value determinations to an investment adviser, which would carry out all of the functions required under the proposed rule, subject to oversight and other conditions. Permitting a fund's board to assign fair value determinations to an investment adviser recognizes the developments discussed in Section I above, including the increased complexity of many fund portfolios and the in-depth expertise needed to accurately fair value such complex investments. The proposed rule also recognizes the important role that fund investment advisers now play and the expertise they provide in the fair value determination process given market and regulatory developments over the past fifty years. Permitting a fund's board to assign fair value determinations to the adviser would allow the board to focus its time and attention on other matters related to the fund, such as the oversight of the investment adviser. This could lead to a more efficient use of boards' resources and therefore improve funds' governance for the benefit of fund investors. The proposed rule would impose one-time costs to funds to review the proposed rule's requirements and modify their fair value practices, policies and procedures, reporting, and recordkeeping to comply with the proposed rule. Further, to the extent that fair value determinations would be assigned to a fund's investment adviser, the investment adviser may have to incur ongoing costs to satisfy the new fair value obligations. The investment adviser ultimately may pass through some of these ongoing costs to funds and their investors.

We discuss the potential effects of the proposed rule as well as possible alternatives to the proposed rule in

[155] *See* proposed rule 2a–5(a).

[156] *See* proposed rule 2a–5(b).

[157] *See* proposed rule 2a–5(c).

[158] Our analysis of the proposed rule takes into account the rescission of ASR 113 and ASR 118 as well as the withdrawal and rescission of certain staff letters and other guidance addressing a board's determination of fair value and other matters covered by proposed rule 2a–5 (*see* Sections II.D. and II.E. above).

more detail below. Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reliable estimate. Where we are unable to quantify the economic effects of the proposed rule, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed rule on efficiency, competition, and capital formation.

B. Economic Baseline

1. Current Regulatory Framework

To understand the effects of the proposed rule, we compare the proposed rule's requirements to the current regulatory framework and current industry practices. As discussed in greater detail in Section I above, the regulatory framework regarding fair value determinations and the role of the board of directors in the determination of fair value is set forth in the Investment Company Act and the rules thereunder. The Commission has also expressed its views on the role of the board regarding fair value under the Investment Company Act in several releases, including ASR 113 and ASR 118, the 2014 Money Market Fund Release, and the Compliance Rules Adopting Release.[159]

Section 2(a)(41) of the Investment Company Act defines the value of assets for which market quotations are not readily available as fair value as determined by the board of directors in good faith. As discussed above, the Commission acknowledged in ASR 113 and ASR 118 that the board need not itself perform each of the specific tasks required to calculate fair value in order to perform its role under section 2(a)(41). However, ASR 113 and ASR 118 stated that the board should choose the methods used to arrive at fair value and continuously review the appropriateness of such methods.[160] In addition, the Commission stated that boards should consider all appropriate factors relevant to the fair value of securities for which market quotations are not readily available.[161] Finally, the Commission stated that whenever technical assistance is requested from individuals who are not directors, the findings of such individuals must be carefully reviewed by the directors in order to satisfy themselves that the resulting valuations are fair.[162] The 2014 Money Market Fund Release stated that funds ''may consider evaluated prices from third-party pricing services, which may take into account these inputs as well as prices quoted from dealers that make markets in these instruments and financial models.'' [163] The 2014 Money Market Fund Release also stated that ''evaluated prices provided by pricing services are not, by themselves, 'readily available' market quotations or fair values 'as determined in good faith by the board of directors' as required under the Investment Company Act.'' [164] In addition, the Commission discussed in that release the factors that the fund's board of directors may want to consider ''before deciding to use evaluated prices from a pricing service to assist it in determining the fair values of a fund's portfolio securities.'' [165]

Finally, the Compliance Rules Adopting Release stated the Commission's view that rule 38a–1 requires compliance policies and procedures with respect to fair value.[166]

2. Current Practices

Our understanding of boards' current fair value practices is based on fund disclosures, staff discussions with industry representatives, staff's experience, and review of relevant industry publications and academic papers.[167] We expect that fund's policies and procedures generally reflect their fair value practices.[168] We discuss below our understanding of current practices but acknowledge that practices may vary across funds and through time. We lack detailed data on the fair value practices of each individual fund and fund board, but, based on available inputs, we preliminarily believe that many of the requirements of the proposed rule are generally similar to current practice. We request data and other information on current fund practices in Section III.E below.[169]

Fair Value Calculation. Most fund boards do not play a day-to-day role in the pricing of fund investments.[170] Typically, an investment adviser to the fund or other service providers perform the actual day-to-day fair value calculations.[171] In addition to performing day-to-day calculations, investment advisers also typically assist the board in developing the fund's fair value methodologies.[172]

Fair Value Practices—Assess and manage risks. It is our understanding that boards play an important role in identifying and managing the fund's valuation risks.[173] Examples of valuation risks that funds often address include changes in market liquidity, reliance on a single source for pricing data, reliability of data obtained from pricing services for securities that are not traded on exchanges, reliability of data provided by credit rating agencies, use of internal information provided by portfolio managers to estimate fair values, use of internally developed

[159] *See supra* footnotes 1, 12, 14, and 26. *See also* Section I for a discussion of other aspects of funds' regulatory framework that are related to boards' fair value role (*e.g.,* the Sarbanes-Oxley Act and ASC Topic 820).

[160] *See supra* footnote 14.

[161] *See supra* footnote 15.

[162] ASR 118 *supra* footnote 16.

[163] 2014 Money Market Fund Release, *supra* footnote 14.

[164] *Id.*

[165] *Id.*

[166] Compliance Rules Adopting Release, *supra* footnote 26, at 74718.

[167] *See, e.g.,* Investment Company Institute, Independent Directors Council, ICI Mutual Insurance Company, The Role of the Board, Spring 2005 (''ICI and IDC Report''); K&L Gates, Mutual Fund Valuation and Liquidity Procedures, 2013 (''K&L Report''); K&L Gates, Mutual Fund Pricing and Fair Valuation, 2016; MFDF Valuation Report, *see supra* footnote 97.

[168] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 6–7.

[169] Funds have discretion in the type of disclosures they provide regarding their fair value determinations. Our review of N–1A, 485APOS, 485BPOS, N–2, and POS 8C Forms filed with the Commission between January 1, 2019 and December 31, 2019 showed that only 13% of the open-end funds and closed-end funds disclose information related to board's fair value practices, out of which 37% explicitly state that the investment adviser assists the board in the fair value determinations. Nevertheless, the results of our review should be interpreted with caution because funds' disclosures of fair value practices are unstructured and results may be sensitive to the algorithm used to identify those disclosures.

[170] *See, e.g.,* Investment Company Institute, Independent Directors Council, ICI Mutual Insurance Company, An Introduction to Fair Valuation, Spring 2005 (''ICI Fair Valuation Report''), at 7. Nevertheless, ''[t]here may be circumstances at a particular fund group that leads a board and adviser to determine that it is desirable for an independent director to be involved in day-to-day decision-making, whether as part of the adviser's valuation committee or by reviewing and ratifying the committee's decisions daily.'' *See* MFDF Valuation Report, *supra* footnote 97, at 9.

[171] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 4.

[172] *See, e.g.,* K&L Report, *supra* footnote 167, at 14; MFDF Valuation Report, *supra* footnote 97, at 11.

[173] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 6–8; Deloitte Insights, 2019. Fair valuation pricing survey, 17th edition, executive summary (''Deloitte Survey''), at 10. We lack information on how the Deloitte survey sample was constructed or how the survey data was collected and so we cannot speak to the representativeness of the sample or the unbiasedness of the survey responses. Nevertheless, the results of the survey are largely consistent with the Commission staff's experience and in line with practices as described in prior Commission staff's letters. *See, e.g.,* staff letters in Section II.E.

models to value securities, extensive use of matrix pricing, the process surrounding the adviser's price overrides, timely identification of material events, and valuation risks arising from new investments.[174] Funds' valuation practices generally focus on mitigating potential conflicts of interest of the investment adviser as well as conflicts of interest of other parties that assist the board with fair value determinations (*e.g.,* portfolio managers).[175] In particular, some investment advisers currently have in place processes to address potential conflicts of interest when portfolio management personnel provides input regarding valuation for a fund.[176]

Valuation risks can change with changes in market conditions and changes in fund investments. Hence, funds may periodically review any previously-identified valuation risks.[177] Some boards meet with the fund's chief risk officer or members of the risk committee on a periodic basis to discuss the valuation of the portfolio securities as part of the assessment and management of previously identified risks.[178]

Fair Value Practices—Establish fair value methodologies. Further, it is our understanding that funds that invest in securities that are fair valued have in place written policies and procedures that detail the methodologies used when calculating fair values.[179] The methodologies often establish a suggested ranking of the pricing sources that an adviser should use when valuing securities, and different rankings can be established for different types of securities.[180] Many funds periodically review the appropriateness and accuracy of the methodologies used in valuing securities and make any necessary adjustments.[181] Further, funds generally monitor the circumstances that may necessitate the use of fair values.[182] For example, many funds establish triggering mechanisms in their policies and procedures to monitor circumstances that require the use of fair value methodologies, and third-party pricing services may be used to identify those triggering events.[183]

Fair Value Practices—Test fair value methodologies. We understand that funds generally test the appropriateness and accuracy of the internally selected methodologies used to value securities. Funds may utilize methods such as back-testing to review the appropriateness and accuracy of the methodologies used.[184] We understand that many funds use systems to identify security valuations that may require additional attention, such as security prices that have not changed over a period of time and changes in prices beyond a certain threshold.[185]

Fair Value Practices—Identify responsibilities. Based on our understanding of current industry practices, we believe that funds generally allocate fair value functions,[186] which may be reflected in a written charter or the fund's valuation policies and procedures.[187] As discussed above, an investment adviser to the fund assists the board with the day-to-day fair-value process. This allocation of valuation functions can help boards understand and monitor the level of involvement of portfolio managers in the valuation process. Portfolio managers can provide valuable inputs to the valuation of fund securities, but they are subject to conflicts of interest. Some boards create separate valuation committees with clearly established functions that help the board provide oversight of the investment advisers' valuation practices.[188] If used, the structure of the valuation committees can differ across funds. Finally, fund policies and procedures may include ''escalation procedures'' that describe the circumstances under which certain investment adviser personnel or board members should be notified when fair value issues arise that are not addressed in existing fair value policies and procedures.[189]

Fair Value Practices—Evaluate Pricing Services. We understand that funds frequently use third-party pricing service providers to assist in determining fair values.[190] Before engaging a pricing service, boards may review background information on the vendor, such as the vendor's operations and internal testing procedures, emergency business continuity plans, and methodologies and information used to form its recommended valuations.[191] Boards may develop an understanding of the circumstances in which third-party pricing services would provide assistance in securities valuation.[192] In reviewing the performance of these pricing services, boards also may seek input from the fund's adviser or the pricing service itself, including probing whether the investment adviser performed adequate due diligence when selecting the service.[193] In particular, boards may consider whether the adviser tests prices received from pricing services against subsequent sales or open prices, whether the pricing services are periodically reviewed, and to what extent the pricing service considers adviser input. Funds may establish procedures for ongoing monitoring of the pricing services—including pricing service's presentations to the board, investment adviser's due diligence, and on-site visits to the pricing service—to determine whether the pricing service continues to have competence in valuing particular securities and maintains an adequate control

[174] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 6–8.

[175] According to a Deloitte survey, ''22 percent of survey participants noted that their boards seek to identify areas in the valuation process where there might be a conflict of interest and provide oversight relative to these conflicts.'' *See* Deloitte Survey, *supra* footnote 173, at 10. The cited statistic does not imply that the remaining funds do not have policies in place to manage conflicts of interest of investment advisers but it means that any such policies may not be valuation specific.

[176] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 9.

[177] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 8.

[178] According to a Deloitte Survey, 34% of survey participants reported that the board or one of its subcommittees met with the chief risk officer or members of the risk committee to discuss valuation matters. *See* Deloitte Survey, *supra* footnote 173, at 10.

[179] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 6–7; MFDF Valuation Report, *supra* footnote 97, at 5.

[180] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 5.

[181] According to the Deloitte survey, 72% of survey participants performed periodic reviews of valuation models relating to private equity investments to determine the appropriateness and accuracy relative to the investment being valued, and 56% of participants reported that the valuation models used for private equity investments are explicitly subject to internal control policies and procedures. According to the same survey, 63% of survey participants made a change or revision to their valuation policies over the last year. *See* Deloitte Survey, *supra* footnote 173, p. 9 and 14.

[182] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 5.

[183] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 6–7 and 10–11; MFDF Valuation Report, *supra* footnote 97, at 5.

[184] *See, e.g.,* ICI Fair Valuation Report, *supra* footnote 170, at 17–18.

[185] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 6–78.

[186] *See generally* MFDF Valuation Report, *supra* footnote 97, at 9; ICI and IDC Report, *supra* footnote 167, at 8–10.

[187] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 10.

[188] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 8–10.

[189] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 7.

[190] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 10; ICI and IDC Report, *supra* footnote 167, at 10–11.

[191] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 11.

[192] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 10.

[193] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 11.

environment.[194] Further, boards may seek to understand the circumstances under which the adviser may override the prices obtained by the pricing service provider.[195]

Board Reporting. As part of their current fair value practices, boards may review on a periodic basis reports regarding the fair value of fund securities.[196] Many boards review fair value determinations quarterly but some boards review the determinations more or less frequently depending on the type of fund securities and the market conditions.[197] Boards also may have ad-hoc discussions on valuation matters outside of their regular meetings.[198] Boards may consider the information they want in valuation reports, and, in some circumstances, a board member may play an active role in shaping the content of the valuation reports given to the board.[199] The content of reports the boards receive depends on the type of fund and fund investments.[200] The type of general information that the boards may receive include a summary of back-testing data and an analysis of the impact of fair values on the fund's NAV.[201] The reports also may include more specific information about securities that are more difficult to value, such as the fair values assigned to each security, the size of the holding, the effect of the fair value on the fund's NAV, and the rationale for the decision to fair value.[202] Some board reports may also include security-specific information in cases where investment advisers override prices provided by pricing services.[203] Finally, some funds also include in board reports the minutes of, or summary memoranda and other written documentation from, valuation committee meetings held during the prior period.[204]

Valuation reports may vary depending on the volume and complexity of fair value determinations.[205] For example, some boards require a case-by-case review of each asset that received fair value, whereas other boards require the adviser to provide a report on an asset that was assigned a fair value and this report is intended to provide a sample of the methodology that is used by the investment adviser.[206]

Recordkeeping. It is our understanding that most funds currently retain records related to fair value determinations as required by section 31 and the rules thereunder of the Investment Company Act. These records generally include identifying information for each portfolio security, data used for pricing, and any other information related to price determinations and fund valuation policies and procedures.

3. Affected Parties

The proposed rule would affect all funds that invest in securities that must be fair valued under the Act, those funds' boards of directors, investment advisers, and investors. Table 1 below presents descriptive statistics for the funds that could be affected by the proposed rule. As of January 2020, there were 13,733 registered investment companies: (i) 12,379 open-end funds; (ii) 666 closed-end funds; (iii) 674 UITs; and (iv) 14 variable annuity separate accounts registered as management companies.[207] As of the same date, (i) open-end funds held total net assets of $28,184 billion; (ii) closed-end funds held total net assets of $301 billion; (iii) UITs held total net assets of $1,883 billion; and (iv) variable annuity separate accounts registered as management companies held total net assets of $234 billion. As of September 2019, there were 98 BDCs with $64 billion in total net assets.[208] Not all funds hold investments that must be fair valued under the Act. In addition, for those funds that hold investments that must be fair valued under the Act, the extent of those investments varies. Hence, the proposed rule would affect only a subset of the funds listed in Table 1 below.

TABLE 1—DESCRIPTIVE STATISTICS FOR FUNDS

	Number of funds (1)	Total net assets (in billion $) (2)
Open-end funds	12,379	28,184
Closed-end funds	666	301
UITs	674	1,883
Management company separate accounts	14	234
BDCs	98	64
Total	13,831	30,666

Sources: Form 10–K; Form 10–Q; Form N–CEN

[194] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 11.

[195] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 10–11.

[196] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 12–13.

[197] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 10. *See also* Deloitte Survey, *supra* footnote 173, at 10, stating that 26% of the participants mentioned that the board held a valuation discussion in the prior 12 months with management outside of a regularly scheduled meeting to address a valuation matter or question.

[198] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 14.

[199] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 14.

[200] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 14.

[201] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 12.

[202] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 12–13.

[203] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 13. *See also* Deloitte Survey, *supra* footnote 173, at 10, noting that 74% of the participants in the 2019 survey reported that their boards receive price challenge information as part of the valuation reports.

[204] *See, e.g.,* ICI and IDC Report, *supra* footnote 167, at 13.

[205] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 14.

[206] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 14.

[207] We estimate the number of registered investment companies by reviewing the most recent filings of Forms N–CEN filed with the Commission as of January 2020. Open-end funds are series of trusts registered on Form N–1A. Closed-end funds are trusts registered on Form N–2. UITs are variable annuity separate accounts organized as UITs registered on Form N–4, variable life insurance separate accounts organized as UITs registered on Form N–6, or series, or classes of series, of trusts registered on Form N–8B–2. Separate accounts registered as management companies are trusts registered on Form N–3.

[208] Estimates of the number of BDCs and their net assets are based on a staff analysis of Form 10–K and Form 10–Q filings as of September 2019, which are the most recent available filings. Our estimates include BDCs that may be delinquent or have filed extensions for their filings, and they exclude 8 wholly-owned subsidiaries of other BDCs and feeder BDCs in master-feeder structures.

To understand the extent of current boards' involvement in the valuation of funds' investments and the extent to which the proposed rule would affect funds' operations, we examine funds' investments under the U.S. GAAP fair value hierarchy.[209] For purposes of this economic analysis, we treat investments that are valued using Level 1 inputs as investments for which readily available market quotations would be available, and investments valued using Level 2 and 3 inputs as investments that would be fair valued in good faith by the fund's board of directors.[210] We therefore expect that funds that hold more securities that are measured using Level 2 and 3 inputs would be more affected by the proposed rule than funds that do not invest in these kinds of securities or hold fewer of them.

Table 2 provides descriptive statistics on funds' investments in securities measured based on Levels 1, 2, and 3 inputs using Form N–PORT data as of January 2020.[211] As Table 2 shows, there are 11,436 funds with $24,338 billion in net assets that filed Form N–PORT.[212] About 63% of fund assets are valued using Level 1 inputs. Nevertheless, the average percentage of securities valued using Level 1 inputs varies with the type of fund, ranging from 26% for closed-end funds to 99% for ETFs registered as UITs. About 33% of fund assets are valued using Level 2 inputs, and this percentage varies with the type of fund. Only a small percentage of fund assets are valued using Level 3 inputs.[213]

Finally, untabulated analysis shows that 28% of the funds only report securities valued using Level 1 inputs.[214] Consequently, we estimate that approximately 9,986 funds could be affected by the proposal, of which 9,501 are not UITs.[215] Nevertheless, even though the proposed rule would be relevant for all funds with investments valued using non-Level 1 inputs, not all of those funds would have to materially change their practices under the proposed rule. As discussed in more detail below, the effects of the proposed rule would depend on the extent to which funds' current practices differ from the requirements of the proposed rule.

TABLE 2—DESCRIPTIVE STATISTICS FOR FUNDS BY ASC 820 FAIR VALUE HIERARCHY

	Number of funds	Total net assets (in billion $)	Average level 1 Inputs	Average level 2 Inputs	Average level 3 Inputs	Average "N/A" Inputs
	(1)	(2)	(3)	(4)	(5)	(6)
Open-end funds	10,841	23,429	63%	33%	0.2%	1%
Closed-end funds	577	303	26%	60%	4%	9%
ETFs registered as UITs	5	389	99%	0%	0%	0%

[209] According to ASC 820, assets and liabilities are classified as using Level 1, Level 2, or Level 3 inputs. Level 1 inputs are "quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity can assess at the measurement date." Level 2 inputs are "inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly." Level 3 inputs are "unobservable inputs for the asset and liability." *See* Financial Accounting Standards Board, Fair Value Measurement (Topic 820).

[210] *See* proposed rule 2a–5(c). *See also supra* Section II.C.

[211] UITs (other than the ETFs registered as UITs) and BDCs do not file Form N–PORT, and thus are excluded from Table 2.

We estimate the statistics in Table 2 by reviewing the most recent filings of Forms N–PORT filed with the Commission as of January 2020. The average ratio of securities by fair value hierarchy (*i.e.,* Columns 3 to 6 in Table 2) is retrieved from Item C.8 of Form N–PORT. Our analysis excludes funds with non-positive net assets and funds with total assets less than net assets because these observations are likely data errors. The Average Level 1, Level 2, and Level 3 Inputs is the average ratio of Level 1, Level 2, or Level 3 long positions divided by the fund's total gross assets across all funds within each fund category. Open-end funds are series of trusts registered on Form N–1A. Closed-end funds are trusts registered on Form N–2. ETFs registered as UITs are series, or classes of series, of trusts registered on Form S–6. Separate accounts registered as management companies are trusts registered on Form N–3.

The last row in Table 2 represents the sum of the previous rows within the same column for Columns 1 and 2, and it represents the asset-weighted average of the previous rows within the same column for columns 3 to 6.

[212] The number of open-end funds, closed-end funds, ETFs registered as UITs, and separate accounts registered as management companies that filed Form N–PORT (*i.e.,* 11,436 in Table 2) is smaller than the number of open-end funds, closed-end funds, ETFs registered as UITs, and separate accounts registered as management companies that filed Form N–CEN (*i.e.,* 13,067 in Table 1) because, as of the N–PORT data collection date, N–PORT only covered large fund groups. Large fund groups are funds that together with other investment companies in the same "group of related investment companies" have net assets of $1 billion or more as of the end of the most recent fiscal year of the fund. Filing Form N–PORT will begin in April 2020 for small fund groups. *See* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Interim Final Rule, Release No. IC–33384; File No. S7–02–19. Nevertheless, large fund groups represent 84% of all open-end funds, closed-end funds, ETFs registered as UITs, and separate accounts registered as management companies in terms of total net assets (84% = $24,338 billion total net assets in Table 2/$29,093 billion total net assets for open-end funds, closed-end funds, ETFs registered as UITs, and variable annuity separate accounts registered as management companies in Table 1).

Total net assets in Form N–CEN also may be different than total net assets in Form N–PORT because Form N–CEN reports average net assets estimated over the reporting period while Form N–PORT reports point-in-time net assets as of the reporting date.

[213] Securities that are valued at NAV, and thus do not have a level associated with them, are classified as "N/A" in Form N–PORT. These investments have no level under the U.S. GAAP fair value hierarchy and for purposes of this analysis we assume they are securities for which there are no readily available market quotations. Nevertheless, the valuation of those securities arguably requires less effort than the valuation of securities valued using Level 2 and 3 inputs because funds' NAVs are easily obtainable. About 1% of the fund assets are classified as "N/A" securities.

The sum of the average using Level 1, 2, 3, and "N/A" within each fund category may not sum up to one hundred percent due to rounding error.

[214] 28% = (3,209 open-end funds with securities valued using only Level 1 inputs that filed Form N–PORT + 29 closed-end funds with securities valued using only Level 1 inputs that filed Form N–PORT + 5 ETFs registered as UITs with securities valued using only Level 1 inputs that filed Form N–PORT + 3 variable annuity separate accounts registered as management companies with securities valued using only Level 1 inputs that filed Form N–PORT)/11,436 funds that filed Form N–PORT. *See supra* footnote 211.

[215] 9,986 funds = 13,733 registered investment companies that filed Form N–CEN from Table 1 above − 3,845 registered investment companies that filed Form N–CEN and are estimated to hold securities valued using only Level 1 inputs + 98 BDCs from Table 1 above. 3,845 = 28% * 13,733 registered investment companies that filed Form N–CEN from Table 1 above. *See supra* footnote 214 for the estimation of the 28%.

This calculation assumes that the distribution of securities valued using Level 1 inputs for registered investment companies that filed Form N–PORT is similar to the distribution of securities valued using Level 1 inputs for registered investment companies that filed Form N–CEN. This calculation also assumes that all 98 BDCs in our sample hold a non-zero amount of securities valued using Level 2 and Level 3 inputs because BDCs are required to invest at least 70% of their assets in private or public U.S. firms with market values of less than $250 million, and these investments usually are securities valued using Level 2 or Level 3 inputs. *See* 15 U.S.C. 80a–54(a).

Under the proposed rule 2a–5(d), if the fund is a unit investment trust, the fund's trustee must carry out the requirements related to fair value determinations. Hence, UITs would not bear one-time costs associated with oversight and reporting (*see* proposed rule 2a–5(b)) because the trustees of UITs would perform all fair value determinations. 9,501 = 9,986 affected funds×485 affected UITs. 485 = 674 UITs that filed Form N–CEN − (1×28% of funds that only report securities valued using Level 1 inputs).

TABLE 2—DESCRIPTIVE STATISTICS FOR FUNDS BY ASC 820 FAIR VALUE HIERARCHY—Continued

	Number of funds (1)	Total net assets (in billion $) (2)	Average level 1 Inputs (3)	Average level 2 Inputs (4)	Average level 3 Inputs (5)	Average "N/A" Inputs (6)
Management company separate accounts	13	217	73%	26%	0%	0%
Total/Average	11,436	24,338	63%	33%	0%	1%

Source: Form N–PORT

As of January 2020, there were 1,921 investment advisers that provide portfolio management services to funds and these investment advisers managed assets equal to $28,517 billion.[216]

Finally, as of December 2018, there were 57.2 million U.S. households and 101.6 million individuals owning U.S. registered investment companies that could be affected by the proposed rule.[217]

C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation of Proposed Rule

1. General Economic Considerations

Unbiased and accurate valuation of fund investments is important because it affects the prices at which fund securities are purchased or sold in the secondary market and also affects the prices at which fund securities are purchased or redeemed in the primary market. The valuation of fund securities is also important because it can affect funds' fee and performance calculations, and also can affect funds' compliance with regulatory requirements. Finally, properly valuing a fund's investments is a critical component of the accounting and financial reporting for investment companies.[218]

Under the Investment Company Act, whenever market quotations are readily available, these market quotations must be used to determine fund asset values.[219] Whenever market quotations are not readily available, the value must be the fair value of fund holdings as determined by the board in good faith. This fair value determination can involve the use of complex methodologies, multiple data sources, and various assumptions. Today, we understand that, typically, boards determine the methodologies used to fair value fund investments, but rely on the adviser for the day-to-day calculation of fair values.[220]

Nevertheless, fund investment advisers have conflicts of interest, which could bias the fair value process.[221] In particular, investment advisers have incentives to inflate fund asset values (or deflate fund liability values) because they typically receive a management fee that is calculated as a percentage of the value of assets under management.[222] Relatedly, investment advisers have incentives to inflate fund asset values because investors tend to invest more in funds that performed well in recent periods, which would increase assets under management and ultimately increase investment advisers' compensation.[223] Investment advisers also have incentives to mismeasure fund investments in a way that would result in smooth reported fund performance over time to lower the funds' perceived risk.[224] Finally, investment advisers may mismeasure fund investments as a result of expending less effort to value assets than the effort required to ensure accurate and unbiased valuations.[225]

The degree of conflicts of interest may vary across funds. In particular, investment advisers' incentives to misreport fund investments may be more pronounced for funds that face higher competition to attract new investors and for actively managed funds that face higher demands from investors to beat certain benchmarks. Relatedly, investment advisers' incentives to underinvest in effort may be higher for funds whose performance is more difficult to measure and evaluate, and thus investment advisers' performance is also more difficult to measure and evaluate (*e.g.,* funds that hold complex investments).[226] Boards of directors currently serve as a check on the conflicts of interest of the adviser

[216] Based on Item 5.D. of Forms ADV filed with the Commission as of January 2020.

[217] Investment Company Institute, 2019 Fact Book: A Review of Trends and Activities in the Investment Company Industry, available at *https://www.ici.org/pdf/2019_factbook.pdf,* accessed on December 5, 2019.

[218] *See* Section I above for more discussion on the importance of accurate and unbiased valuation of fund securities.

[219] *See* section 2(a)(41) and rule 2a–4.

[220] *See, e.g.,* MFDF Valuation Report, *supra* footnote 97, at 2.

[221] Some academic literature suggests that fund fair values are not always measured in an accurate and unbiased way. *See, e.g.,* Vikas Agarwal et al., Private Company Valuations by Mutual Funds, (Working Paper, 2019) available at *https://ssrn.com/abstract=3066449;* Rahul Bhargava et al., Exploiting International Stock Market Correlations with Open-End International Mutual Funds, 25 J. Bus. Fin. & Acct. 765 (1998); Scott Cederburg & Neal Stoughton, Discretionary NAVs, (Working Paper, 2019) available at *https://www.wu.ac.at/fileadmin/wu/d/i/finance/BBS-Papers/SS2019/20190515_STOUGHTON.pdf;* John M. R. Chalmers et al., On the Perils of Financial Intermediaries Setting Security Prices: The Mutual Fund Wild Card Option, 56 J. Fin. 2209 (2001); Nandini Chandar & Robert Bricker, Incentives, Discretion, and Asset Valuation in Closed-End Mutual Funds, 40 J. Acct. Res., 1037 (2002) (''Chandar and Bricker 2002''); Jaewon Choi et al., Sitting Bucks: Zero Returns in Fixed Income Funds, (Working Paper, 2019) available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3244862;* Cici et al. 2011, supra footnote 7; *Vladimir* Atanasov et al., Mismarking Fraud in Mutual Funds, (Working Paper, 2019) available at *http://www.fmaconferences.org/Glasgow/Papers/Fraud_in_OpenEndMutualFunds_2018_1126.pdf.*

[222] *See, e.g.,* Joseph Golec, Regulation and the Rise in Asset-Based Mutual Fund Management Fees, 26 J. Fin. Res. 19 (2003) for evidence on the percentage of mutual funds that use asset-based management fees.

In addition to explicit contracts that link investment advisers' compensation to fund size, there may be implicit contracts that provide incentives to investment advisers to mismeasure fund investments. For example, investment advisers may mismeasure fund investments to meet or beat certain benchmarks. *See, e.g.,* Chandar and Bricker 2002, *supra* footnote 221.

[223] *See, e.g.,* Judith Chevalier & Glenn Ellison, Risk Taking by Mutual Funds as a Response to Incentives, 105 J. Pol. Econ. 1167 (1997); Erik R. Sirri & Peter Tufano, Costly Search and Mutual Fund Flows, 53 J. Fin. 53, 1589 (1998).

Portfolio managers also have incentives to inflate fund asset values and thus increase fund performance because fund performance is positively related to the portfolio managers' compensation and negatively related to the probability that a portfolio manager will be terminated. *See, e.g.,* Judith Chevalier & Glenn Ellison, Career Concerns of Mutual Fund Managers, 114 Q.J. Econ. 389 (1999); Linlin Ma et al., Portfolio Manager Compensation in the U.S. Mutual Fund Industry, 74 J. Fin. 587 (2018).

[224] *See, e.g.,* Cici et al. 2011, *supra* footnote 7.

[225] Investment advisers may have incentives to underinvest in effort (or ''shirk'') because they do not internalize the benefits accruing to the fund board of directors and fund investors from the expenditure of effort to estimate accurate and unbiased fair values. *See, e.g.,* David Brown & Shaun Davies, Moral hazard in asset management, 125 J. Fin. Econ. 311 (''Brown and Davies 2017'').

[226] *See, e.g.,* Brown and Davies 2017, *supra* footnote 225.

and the other service providers involved in the calculations of fair values.[227]

As discussed in Section I above, since ASR 113 and 118 were first issued roughly fifty years ago, funds' investment practices have changed, the regulatory framework under which funds operate has evolved, and there have been significant advances in technology and communication. The proposed rule would provide an updated framework for valuation under the Investment Company Act that is more suitable to current market realities. The proposed rule retains the important safeguard of board oversight of fair value determinations, while making more efficient use of boards' time and expertise and recognizing the important role of fund investment advisers in the fair value determination process.

The proposed rule differs from the current regulatory framework and funds' current practices in the following ways. First, under the current regulatory framework, funds have flexibility to determine their fair value policies and procedures, reporting, and recordkeeping requirements. The proposed rule would differ from the current regulatory framework because it would mandate more specific fair value practices, policies and procedures, reporting, and recordkeeping requirements and those requirements would be explicitly imposed on funds and performed by boards or advisers.[228] In particular, the proposed rule would prescribe more specific elements that fair value policies and procedures adopted under the rule must address as compared to the current framework under rule 38a–1.[229] For example, in addition to the fair value policies and procedures that are required pursuant to rule 38a–1, the proposed rule would require the written policies and procedures to be reasonably designed to address, in the context of methodologies, the selection and application of a methodology in a consistent manner, the specification of which methodologies apply to new types of fund investments in which a fund intends to invest, and testing of the appropriateness and accuracy of the selected methodology, including identifying the testing methods and minimum frequency of testing.[230] In addition, unlike under proposed rule 2a–5, there is currently no requirement regarding the frequency and content of periodic valuation reports and the promptness and content of ad hoc valuation reports the board receives. The proposed rule would require quarterly periodic reporting as well as prompt reporting no later than three business days after the adviser becomes aware of certain matters relevant to fair value. Also, the proposed rule specifies the matters that the adviser must, at a minimum, cover in its periodic reporting to the board. Finally, rule 38a–1 requires the maintenance of records related to the fund's compliance policies and procedures for five years.[231] The proposed rule would apply the same retention period, but it would require the maintenance of records that are specific to fair value determinations.[232] Further, the proposed rule would require the adviser to maintain copies of the reports and other information provided to the board under the rule whenever the board assigns the determination of fair value to an investment adviser to the fund.

Second, we understand that funds' current practices regarding their fair value policies and procedures, reporting, and recordkeeping are generally consistent with the requirements of the proposed rule. Nevertheless, there is variation in funds' fair value practices, and the practices of certain funds may be more or less extensive and thorough than the requirements of the proposed rule. Consequently, the proposed rule would impose uniform minimum requirements on all affected funds related to their fair value policies and procedures, reporting, and recordkeeping.

Third, under the current regulatory framework, boards choose the methodologies used to determine the fair value of the funds' investments, continuously review the appropriateness of such methods, consider all appropriate factors relevant to the fair value of securities for which market quotations are not readily available, and carefully review the findings of individuals that are not directors whenever technical assistance is requested from those individuals.[233] In addition, it is our understanding that some boards currently ratify all or some of the fair value calculations of an investment adviser to the fund. Under the proposed rule, boards may assign a fair value determination to an investment adviser of the fund, who would carry out all of those functions.[234] It is our understanding that funds' investment advisers already assist the board with respect to many of those functions subject to the board's oversight.

Under the proposed rule, fund boards would have discretion to assign the fair value determination to an investment adviser to the fund, who would carry out all of the functions that would be required under the rule. When deciding whether to assign fair value determinations to an investment adviser to the fund, a board would consider certain trade-offs. In particular, fund boards' decisions to oversee investment advisers' fair value determinations instead of determining fair value themselves would depend on the amount of investments that must be fair valued, the nature and complexity of the valuation of those investments, the type of fund, the investment adviser's willingness to assume additional fair value responsibilities, and the fund's current practices. Boards of funds that hold more securities that must be fair valued and harder-to-value securities may be more likely to assign these fair value determinations to an adviser and oversee the process of determining fair value by the assigned adviser because investment advisers may be better suited to value certain investments. It may also depend on the type of fund. For example, a board of an open-end fund that must calculate NAVs on a daily basis may be more likely to assign to an investment adviser the determination of fair values (on which fund's NAV is based) than the board of a fund that calculates value less regularly. The decision to oversee investment advisers' fair value determinations would also depend on investment advisers' willingness to assume the assigned responsibilities. Such willingness would depend on investment advisers' valuation expertise and experience, whether the investment advisers have available resources to satisfy their new obligations, and the extent to which the investment advisers could pass through to the fund and its investors any higher costs associated with the increased responsibilities. Finally, a board's decision to assign responsibilities under the proposed rule would depend on the expected costs of compliance, which would ultimately depend on how different funds' current practices and policies and procedures are from the requirements of the proposed rule.

We lack detailed and representative information on funds' current fair value practices and we do not have visibility into boards' decision-making processes when seeking the investment advisers' assistance with fair value

[227] *See supra* footnote 175.

[228] *See* proposed rule 2a–5(a) and (b).

[229] *Compare* proposed rule 2a–5(a)(1)–(5) *with* Compliance Rules Adopting Release, *supra* footnote 26. *See also supra* footnote 28 and accompanying text.

[230] *See* proposed rule 2a–5(a)(2), (3), and (5).

[231] *See* rule 38a–1(d). *See also supra* footnote 72.

[232] *See* proposed rule 2a–5(a)(6) and (b)(3).

[233] *See supra* Section III.B.1.

[234] *See* proposed rule 2a–5(b).

determinations.[235] Further, boards' decision-making processes with respect to seeking the investment advisers' assistance with fair value determinations is complex. Hence, we are unable to accurately estimate the number of fund boards that would assign responsibilities to an adviser under the proposed rule instead of the boards making fair value determinations in good faith themselves. Nevertheless, we believe that most boards would assign these responsibilities to an investment adviser to the fund because the investment adviser has valuation experience and expertise and is involved with the fund's operations on a daily basis and, thus, may be better suited than the board to deal with fair value matters that arise on a daily basis. Further, advisers already provide significant assistance with the fair value determinations to the board of directors and so funds would not be required to significantly modify their operations if they choose to assign fair value determinations to an investment adviser to the fund under the proposed rule. As a result, for the purpose of our economic analysis, we assume that all funds that have some securities that would need to be fair valued would be affected parties.

We expect that the effects of the proposed rule could differ across funds. In particular, under the proposed rule, if the fund is a unit investment trust, the fund's trustee must carry out the fair value determinations.[236] Hence, UITs would not bear any costs associated with oversight and reporting. We expect the effects of all other aspects of the rule to be similar for UITs and other funds. Further, the proposed rule would have larger effects on funds that currently do not utilize advisers in the fair value process but would choose under the proposed rule to assign the fair value determination of fund investments to an investment adviser to the fund. In addition, the proposed rule would also have a larger effect on funds for which a larger percentage of their investments do not have readily available market quotations because those funds would be required to determine the fair value of a larger percentage of their investments in compliance with the rule. The proposed rule would also have larger effects on funds whose current fair value policies and procedures, reporting, and recordkeeping requirements differ more from the proposed rule's requirements. The proposed rule could have a larger effect on smaller funds because of economies of scale in the adoption and implementation of the proposed rule's requirements. In particular, as discussed in detail in Section III.C.3 below, there are certain fixed costs associated with the implementation of the proposed rule's requirements, such as testing and preparing methodologies, policies and procedures, and training materials, and those fixed costs would be less burdensome for larger funds, who could spread those costs across a larger amount of assets under management. Finally, whenever the fair value determinations would be assigned to the fund's investment adviser, the requirement to reasonably segregate the investment adviser's process of making fair value determinations from the portfolio management could be more costly for smaller investment advisers than for larger ones. The reason is that smaller investment advisers could lack the staff and resources to segregate portfolio management personnel from those making fair value determinations as efficiently as larger advisers or might only be able to meet this requirement by hiring additional personnel.

We discuss the benefits and costs of the proposed rule as well as the effects on efficiency, competition, and capital formation in detail below.

2. Benefits

The proposed rule would mandate specific fair value functions, including written policies and procedures, reporting, and recordkeeping that funds would have to have in place to comply with the statute, and would define which securities are considered to have readily available market quotations under section 2(a)(41) of the Act. This increased specificity could reduce compliance costs in that funds may expend less effort and time to design policies and procedures, reporting, and recordkeeping under the proposed rule than trying to determine appropriate compliance under the statute alone.[237] For funds whose current practices are more burdensome than the proposed rule's requirements, this increased specificity also could reduce compliance costs to the extent that funds might be less likely to put in place overly burdensome and unnecessary policies and procedures, reporting, and recordkeeping to comply with the statute.[238] Relatedly, the proposed rule and the rescission of existing no-action letters and guidance would increase certainty because funds would follow a single rule rather than following various no-action letters and guidance when determining fair values, which could ultimately reduce compliance costs.[239] Lower costs of compliance for funds ultimately could benefit fund investors to the extent that any cost savings would be passed down to them in the form of lower fund operating expenses.

In addition, the proposed rule would benefit funds and their investors because it would allow boards to allocate more fair value responsibilities to an investment adviser to the fund, and thus could free board resources tied to valuation and redirect them to oversight or other matters in which board action may be more valuable.[240] In particular, for funds whose boards of directors would assign the fair value determinations to an investment adviser to the fund, the boards would no longer be required to choose the methodologies used to determine the fair value of the funds' investments, continuously review the appropriateness of such methods, consider all appropriate factors relevant to the fair value of securities for which market quotations are not readily available, and carefully review the findings of individuals that are not directors whenever technical assistance is requested from those individuals. We lack detailed data on boards' current practices and so we are unable to estimate these cost savings but we request comment on this point in Section III.E. below.[241]

Finally, the proposed rule would require all funds to adopt specific policies and procedures related to fair value determinations. In addition, whenever the board assigns the fair value determination relating to a fund investment to an investment adviser, the

[235] The industry reports cited in Section III.B.2 above only provide qualitative information on certain aspects of funds' current practices. *See also supra* footnote 173 for a discussion of limitations of the Deloitte survey data. Finally, funds have discretion in the type of disclosures they provide regarding their fair value determinations. *See supra* footnote 169.

[236] *See* proposed rule 2a–5(d).

[237] Any such benefits could be at least partially limited by the fact that mandating specific fair value functions for all funds could lead to the adoption of fair value functions that are appropriate for most but not all funds.

[238] Nevertheless, we acknowledge that because the proposed rule is principles based, the possibility still exists that some funds may put in place additional policies and procedures, reporting, and recordkeeping that are not required by the proposed rule.

[239] Academic literature provides evidence consistent with the idea that uncertainty has negative effects on investment and growth. *See, e.g.,* Nicholas Bloom et al., Uncertainty and Investment Dynamics, 74 Rev. Econ. Stud. 391 (2007); Nicholas Bloom, The Impact of Uncertainty Shocks, 77 Econometrica, 623 (2009); Scott R. Baker et al., Measuring Economic Policy Uncertainty, 131 Q. J. Econ. 1593 (2016).

[240] This benefit would not accrue to UITs because under the proposed rule the trustees of UITs would carry out the requirements of the proposed rule. *See* proposed rule 2a–5(d).

[241] *See supra* footnote 235.

proposed rule would require the board's effective oversight of the investment adviser's conflicts of interest related to fair value determinations. To the extent that certain funds' fair value policies and procedures currently are less thorough than the policies and procedures of the proposed rule and certain boards' oversight of the investment advisers' conflicts of interest is less effective than under the proposed rule, the proposed rule could decrease the likelihood that fund investments would be inaccurately fair valued.[242] This is because the proposed rule could create a more robust valuation framework and could help to address any conflicts of interest of the investment adviser, which could result in more accurate and unbiased asset prices. Any such effects likely would be more pronounced for investors of funds that are not publicly traded (*e.g.,* open-end funds and BDCs) because there is no secondary market for the shares of those funds and fund investors can only trade at NAV, which is determined by the fund's fair value determinations. Nevertheless, this may not have a significant effect because it is our understanding that many funds currently have in place fair value practices that are similar to the proposed rule's requirements and boards oversee the investment adviser's assistance with fair value calculations.

3. Costs

The proposed rule would impose one-time costs on funds and their investors.[243] We expect that funds would incur one-time costs to review the proposed rule's requirements and modify, as necessary, their fair value practices, policies and procedures, and recordkeeping to comply with the proposed rule. Funds whose boards would assign the fair value determinations to the investment adviser would also incur one-time costs to review the proposed rule's requirements and modify their oversight and reporting procedures to comply with the rule. Even though we understand that most funds currently have in place practices related to fair value determinations, those practices differ across funds and also may differ from the proposed rule's requirements. In particular, the types of policies and procedures that funds have in place related to fair value determinations, the frequency and content of periodic board reporting, the promptness and content of ad hoc board reporting, and the extent and duration of recordkeeping may differ under the proposed rule compared to current practices.

Our staff estimates that the one-time incremental costs necessary to ensure compliance with the proposed rule would range from $100,000 to $600,000 per fund, depending on the current fair value practices of the fund.[244] These estimated costs are attributable to the following activities: (i) Reviewing the proposed rule's requirements; (ii) developing new (or modifying existing) policies and procedures, reporting, and recordkeeping requirements to align with the requirements of the proposed rule; (iii) integrating and implementing those policies and procedures, reporting, and recordkeeping requirements to the rest of the funds' activities; (iv) preparing new training materials and administering training sessions for staff in affected areas; and (v) independent board members consulting their independent counsel on whether fair value determinations should be assigned to the fund's investment adviser and how to set up appropriate policies and procedures, reporting, and recordkeeping requirements. We expect that the one-time incremental cost necessary to ensure compliance with the proposed rule would depend on the fund's current fair value practices and the amount and valuation complexity of fund investments that must be fair valued. In particular, the one-time costs would be closer to the lower end of the range for funds whose current practices are more similar to the requirements of the proposed rule and funds with fewer and easier-to-value fund investments. Further, the one-time costs would be closer to the lower end of the range for funds that belong to fund complexes because certain aspects of the one-time costs are fixed costs that could be spread across multiple funds in the case of fund complexes.

As discussed above, out of the 13,831 funds, we estimate that 9,986 would be affected the proposed rule, and thus incur the one-time costs associated with the proposed rule.[245] We estimate that 70% of the one-time costs would be attributable to funds reviewing and updating the current practices and related policies and procedures to comply with the proposed rule's requirements; 15% of those costs would be attributable to funds reviewing and updating current recordkeeping processes to align with the proposed rule's requirements; and the remaining 15% of those costs would be attributable to funds reviewing and updating the current board reporting processes to comply with the proposed rule's requirements. Hence, we estimate the aggregate one-time costs of the proposed rule to range between $991.3 million and $5.9 billion.[246]

For funds whose boards would assign the fair value determinations to the funds' investment advisers, those one-time costs would be borne by the investment adviser, and could be ultimately passed through to the fund shareholders in the form of higher management fees. For funds whose boards determine the fair values themselves, those one-time costs could be ultimately passed through to the fund shareholders in the form of higher operating expenses. We expect that the vast majority of the boards would assign fair value determinations relating to an investment adviser to the fund, and so the majority of the one-time costs would be borne by the fund's investment adviser, and ultimately could be passed through to the fund shareholders in the form of higher management fees.

The proposed rule also could impose ongoing costs on all funds that hold securities without readily available market quotations because those funds

[242] *See supra* Section III.C.1. for a discussion related to investment advisers' conflicts of interest.

[243] The proposed rule requires funds to evaluate any pricing services that assist funds with the fair value determinations. *See* proposed rule 2a–5(a)(4). To the extent that the proposed rule's requirements related to pricing services differ from funds' current practices, the proposed rule could have second-order effects on pricing services' operations because pricing services could adjust their operations to cater to their clients' new demands. Because we believe that funds' current practices are generally similar to the proposed rule's requirements related to the evaluation of pricing services, we believe that the proposed rule would not have significant effects on pricing services.

[244] The one-time cost estimates used in the economic analysis may differ from the cost estimates in Section IV below because (i) the cost estimates in the economic analysis capture all costs associated with the proposed rule while the cost estimates in Section IV capture only costs related to information collection burdens and (ii) the cost estimates in the economic analysis capture incremental costs associated with the proposed rule while the cost estimates in Section IV capture total costs. Hence, the cost estimates in Section IV below serve as an upper bound of costs related to information collection burdens for funds that do not have in place currently any practices that are similar to the proposed rule's requirements.

[245] *See supra* footnote 215.

[246] 991.3 million = (485 UITs that would be affected by the proposed rule × $100,000 minimum one-time costs of the proposed rule × 85%) + (9,501 open-end funds, closed-end funds, variable annuity separate accounts, and BDCs that would be affected by the proposed rule × $100,000 minimum one-time costs of the proposed rule). 85% = 70% of the one-time costs attributable to reviewing fair value practices and policies and procedures + 15% of the one-time costs attributable to reviewing recordkeeping practices. *See supra* footnote 215.

5.9 billion = (485 UITs that would be affected by the proposed rule × $600,000 maximum one-time costs of the proposed rule × 85%) + (9,501 open-end funds, closed-end funds, variable annuity separate accounts, and BDCs that would be affected by the proposed rule × $600,000 maximum one-time costs of the proposed rule).

would be required to comply with the proposed rule's policies and procedures, reporting, and recordkeeping requirements. Nevertheless, we believe that funds' incremental ongoing costs associated with this aspect of the proposed rule would be limited to the extent that, as discussed in Section III.B.2. above, funds currently have in place practices, policies and procedures, reporting, and recordkeeping associated with fair value determinations that are similar to the proposed rule's requirements. Certain funds might put in place policies and procedures, reporting, and recordkeeping to comply with the proposed rule that are more costly than the funds' current practices, while other funds might set up policies and procedures, reporting, and recordkeeping as a result of the proposed rule that would result in lower ongoing costs than the costs of current practice. We acknowledge that funds whose practices, policies and procedures, reporting, and recordkeeping are less costly than the proposed rule's requirements would bear additional ongoing costs under the proposed rule. We lack detailed data on funds' fair value practices, policies and procedures, reporting, and recordkeeping, and so we are unable to estimate the net incremental ongoing costs of the proposed rule on funds, but we request comment on this topic in Section III.E. below.[247]

The proposed rule also would mandate more detailed and specific policies and procedures, reporting, and recordkeeping than the current regulatory framework, which could decrease funds' flexibility to design policies and procedures, reporting, and recordkeeping that better meet their preferences. Consequently, funds could bear costs to implement practices (*e.g.,* quarterly periodic reporting) that are incompatible with the way they would approach these matters absent rule 2a–5. Any such costs could be borne ultimately by fund investors in the form of higher operating expenses.

For funds whose boards would assign the fair value determinations to the funds' investment advisers, the proposed rule could impose additional ongoing costs associated with boards' oversight of the investment adviser's fair value determinations and review of board reports. Nevertheless, we believe that funds' incremental ongoing costs associated with this aspect of the proposed rule would be limited to the extent that boards or funds currently have in place policies to ensure appropriate oversight of an investment adviser's assistance with fair value calculations and boards currently review periodic and ad-hoc reports related to fair value determinations prepared by the fund's investment adviser. Hence, we do not believe that this aspect of the proposed rule would impose any significant incremental ongoing costs on boards and fund investors compared to the ongoing costs under current practices.[248] We acknowledge, however, that to the extent boards' current oversight of investment advisers' fair value calculations and boards' current practices with respect to review of valuation reports is inconsistent with the proposed rule's requirements, funds would bear ongoing costs to comply with the proposed rule.

Relatedly, to the extent that fair value determinations would be assigned to an investment adviser to the fund, such investment advisers would incur ongoing costs to satisfy their new fair value obligations. Those costs would be attributable to adopting and implementing policies and procedures, reporting, and recordkeeping to ensure compliance with the proposed rule's requirements. The magnitude of those costs would depend on how investment advisers' current practices compare to the requirements of the proposed rule. Investment advisers could demand higher fees as a compensation for the increased valuation responsibilities. Depending on the level of competition in the fund investment adviser industry, those higher fees could be passed on to fund investors in the form of higher fund fees. We lack data to estimate any cost increases and the pass-through rate of those cost increases to fund investors but we request comment on this issue in Section III.E. below.

Finally, to the extent that the board would assign the fair value determinations relating to any or all of fund investments to the investment adviser, the proposed rule would provide the adviser—which has conflicting interests—a greater role in fair value determinations relative to current practices.[249] Nevertheless, we believe that any impact from such conflicts would be limited because the proposed rule contains explicit requirements related to the identification, assessment, and management of any material conflicts of interest of the investment adviser, including the requirement to reasonably segregate the investment adviser's process of making fair value determinations from the portfolio management, and funds currently have in place policies to manage conflicts of interest of investment advisers that may not be valuation specific.

4. Effects on Efficiency, Competition, and Capital Formation

Under the proposed rule, boards may assign fair value determinations to an investment adviser and oversee the investment adviser's fair value determinations instead of determining fair value themselves, which could free board resources tied to valuation and redirect them to oversight or other matters. As a result, the proposed rule could lead to more efficient use of boards' resources and therefore improve funds' governance for the benefit of fund investors. The proposed rule also could improve the efficiency of fund operations because it would allow boards more flexibility to oversee the investment advisers' fair value determinations instead of determining fair values themselves.

As discussed above, the proposed rule would mandate specific fair value policies and procedures and effective oversight of an assigned investment adviser, which could ultimately improve the efficiency of funds' asset prices. The proposed rule could improve the efficiency of asset prices because it could create a more robust valuation framework and it could help mitigate any conflicts of interest of the investment adviser, which ultimately could result in more accurate and unbiased asset prices. A potential increase in asset price efficiency could improve boards' monitoring of funds' and investment advisers' performance and could benefit capital formation because more accurate and unbiased prices permit the allocation of resources to their most efficient use. Nevertheless, we believe that any such effects likely would be small because many funds currently have in place fair value practices that are generally similar to the proposed rule's requirements and boards oversee the investment adviser's assistance with fair value calculations.

We do not believe that the proposed rule would have any material effects on competition because the effects of the rule likely would be small in light of the proposed rule's similarities to current practices. In particular, as discussed in Section III.C.3. above, the main costs arising from the proposed rule are the one-time costs to comply with the rule.

[247] *See supra* footnote 235.

[248] We do not believe that the proposed rule would result in cost savings associated with boards' involvement in the determination of fair values because we believe that boards would reallocate time and attention to overseeing the adviser's fair value determinations or other activities unrelated to fair valuing fund investments.

[249] *See supra* Section III.C.1. for a discussion related to investment advisers' conflicts of interest.

Even though these costs could be more burdensome for smaller fund complexes, we believe that these costs would not affect competition in the fund industry, especially when considering that these are one-time costs that can be amortized over a number of years and because we believe that only few funds would incur costs at the higher end of the cost range estimate (*i.e.,* between $100,000 and $600,000). Consequently, we believe that the proposed rule would not affect competition in the fund industry.

In addition, the proposed rule's requirement to reasonably segregate the investment adviser's process of making fair value determinations from the portfolio management likely would more significantly affect those smaller investment advisers that lack the staff and resources necessary to effect such segregation as efficiently as larger advisers and would otherwise need to hire additional personnel. Nevertheless, we do not believe that this requirement of the proposed rule would have a material effect on competition in the fund investment adviser industry because many smaller investment advisers to funds currently have in place processes to address the potential conflicts of interest whenever portfolio management personnel provides input to valuation.

D. Reasonable Alternatives

1. More Principles-Based Approach

The proposed rule mandates the performance of certain prescribed functions to determine the fair value of fund investments in good faith. As an alternative to the proposed rule, we considered a more principles-based approach that would not specify the types of fair value functions that must be performed, but instead would only state that funds should have in place policies and procedures, reporting, and recordkeeping that would allow fair values to be determined in good faith by the board of directors or the investment adviser. The benefits of such an approach would be that funds would have more flexibility to tailor their policies and procedures, reporting, and recordkeeping to their valuation needs. Nevertheless, under such an approach funds could be less certain on how to comply with the proposed rule. To the extent this alternative would reduce certainty for funds, it could increase compliance costs to the detriment of fund investors, and it would not adequately ensure that the board provides sufficient oversight over the investment adviser's fair value determinations.[250] In addition, if certain funds within a fund complex would use the additional flexibility afforded by a more principles-based approach to set up policies and procedures, reporting, and recordkeeping arrangements that are different from one another, such flexibility could increase the cost of board oversight. This could occur because a board that is shared across funds within a fund complex would not be able to apply a similar framework across the various funds it oversees. Further, a more principles-based approach would not mandate a minimum prescribed set of fair value policies and procedures, reporting, and recordkeeping, unlike the proposed rule that would provide a consistent framework for funds to apply. Consequently, not all funds necessarily would put in place adequate policies and procedures, reporting, and recordkeeping to achieve accurate and unbiased fair value determinations.

2. Assignment of Responsibilities to Service Providers Other Than Investment Advisers

Under the proposed rule, the board may assign the fair value determinations to an investment adviser to the fund, which would carry out all of the functions required under the rule. As an alternative, we considered allowing the board to assign the fair value determinations to service providers other than the investment adviser, such as a pricing service provider. Such an approach would provide additional flexibility to the board to assign the fair value determinations to appropriate persons. As a result, this alternative could free up board resources tied to the determination of fair value and redirect them to oversight, in situations where an adviser was unwilling or unable to accept the responsibility to determine the fair value of fund investments and another third party was available to accept the assignment. Nevertheless, such an approach potentially could limit a board's ability to effectively oversee the service provider that performs the fair value determinations because the board does not have the same level of visibility, access to information, and control over the actions of service providers other than the investment adviser. Further, even though service providers may have a contractual obligation to perform valuation services for the fund, those service providers, unlike an adviser to a fund, may not owe a fiduciary duty to the fund, and thus their obligation to serve the fund's and its shareholders' best interests is limited. Hence, such an alternative approach could compromise the integrity of the fair values.

3. Not Permit Boards To Assign Fair Value Determinations to an Investment Adviser

As discussed in more detail above, unlike the current regulatory framework, the proposed rule would permit fund boards to assign the fair value determinations to an investment adviser. In addition, relative to the current regulatory framework, the proposed rule would mandate more specific fair value policies and procedures, reporting, and recordkeeping. As an alternative to the proposed rule, we considered not permitting fund boards to assign the fair value determinations to an investment adviser to the fund but instead only requiring funds to adopt the policies and procedures, reporting, and recordkeeping as described in the proposed rule. We also considered requiring boards periodically to ratify the fair value determinations calculated by the fund's adviser using the methodology determined by the board. Such an approach could prescribe minimum requirements with respect to valuation policies and procedures, reporting, and recordkeeping. Nevertheless, such an approach would not allow funds the flexibility to leverage the fair value expertise of the investment adviser and assign a role to the fund's board that is more in line with the board's experience and expertise. Relatedly, we believe that such an approach would not result in more efficient use of boards' time and more efficient fund operations, and would not result in improvements in fund governance, which would ultimately benefit fund investors.

E. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rule and alternatives thereto, and whether the proposed rule, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. In addition, we request comment on the following:

58. Is our understanding regarding boards' current fair value practices

[250] We acknowledge that under the proposed rule, funds could face some uncertainty regarding how to comply with the proposed rule's requirements. Nevertheless, we believe that a more principles-based approach than the proposed rule would increase further any uncertainty regarding how to comply with the proposed rule's requirements.

correct? If not, please describe boards' current fair value practices. In particular, how do boards determine the fair values of fund investments in good faith? What type of assistance do boards receive with respect to fair value determinations? Who assists the board with the fair value determinations? To what extent and under what circumstances does information from pricing services assist the board with fair value determinations? What kinds of services do pricing services provide? What percentage of fund boards receive assistance with the fair value determinations? Does this percentage differ with the type of fund or with the type of fund investments? What types of fair value practices and policies and procedures do funds have in place? What types of reports related to valuation do fund boards currently receive and how frequently do they receive these reports? What types of records related to valuation do funds retain? For how long do they retain these records? Do these practices differ with the type of fund or with the type of fund investments?

59. Is our assumption correct that the vast majority of current and prospective fund boards would assign fair value determinations to an investment adviser under the proposed rule? If not, what percentage of current and prospective funds would assign the fair value determinations to an investment adviser to the fund? Do these percentages vary with the type of fund or with the type of fund investments? What factors would boards consider when deciding whether to assign the fair value determinations to an investment adviser to the fund?

60. What percentage of fund independent board members have valuation experience and expertise? Please provide data on the percentage of fund independent board members that have valuation experience and expertise by fund type.

61. Are there any entities affected by the proposed rule that are not discussed in the economic analysis? In which ways would those entities be affected by the proposed rule? Please provide an estimate of the number and size of those affected entities and of the nature and magnitude of the effect. Is our assessment correct that the effects of the proposed rule on UITs would be similar to the effects of the proposed rule on other funds, except for the fact that UITs would not bear any costs associated with oversight and reporting and their trustees would not receive any of the benefits associated with assigning fair value determinations to an investment adviser? Is our understanding correct that the proposed rule would not have significant effects on pricing services? If not, please describe any effects the proposed rule would have on pricing services.

62. Do UITs' exposures to investments that use Level 1, 2, and 3 inputs differ from the exposure of other registered investment companies? What percentage of UITs hold investments that use Level 1, 2, and 3 inputs respectively?

63. In which ways do funds' current practices differ from the policies and procedures, reporting, and recordkeeping and other activities mandated by the proposed rule? Is our understanding correct that current funds' practices are largely similar to the policies and procedures, reporting, and recordkeeping and other requirements of the proposed rule?

64. Are there any costs and benefits of the proposed rule that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits.

65. Please provide any estimates of the board time and other savings arising from the assignment of fair value determinations to an investment adviser to the fund under the proposed rule. What is the source of these savings? How would the board utilize any savings as the result of the assignment of the fair value determinations to an investment adviser to the fund under the proposed rule? Would the boards engage in additional activities at meetings or would the boards instead spend less time on fund matters? Please provide dollar estimates (mean, median, standard deviation, minimum, and maximum) of these savings? Would these savings differ by fund? If yes, in which way?

66. Please provide a list of activities that would give rise to one-time costs for funds under the proposed rule. Also please provide dollar estimates (mean, median, standard deviation, minimum, and maximum) of the one-time costs that funds would incur. Would these costs differ by fund? If yes, in which ways? What percentage of these costs would be borne by the board and what percentage by an investment adviser to the fund? What percentage of these costs would be passed on to fund investors in the form of higher operating expenses or higher management fees?

67. Is our understanding correct that the incremental ongoing operating costs for funds would be minimal under the proposed rule? If not, please provide an estimate of the number of funds that would bear ongoing costs under the proposed rule. Also, please describe the activities that would give rise to ongoing costs for funds under the proposed rule, and an estimate of the costs associated with each activity. Would these costs differ by fund? If yes, in which ways? Which of these costs would be borne by the board and which by the investment adviser to the fund? What percentage of these costs would be passed down to fund investors in the form of higher operating expenses or higher management fees?

68. Would the proposed rule increase the fees of investment advisers or trustees of UITs? If yes, why and how? Please provide an estimate of the increase in the investment advisers' or trustees' fees.

69. What would be the effects of the proposed rule, including any effects on efficiency, competition, and capital formation? Would the proposed rule be beneficial or detrimental to funds and their investors? Would the proposed rule affect competition in the fund industry? If yes, why? Would the proposed rule affect the efficiency of the prices of fund investments? If so, in which way?

70. Would a more principles-based approach relative to the proposed rule be preferable? If yes, why? If we did adopt such an approach, what safeguards would be necessary to ensure that fair value determinations are not influenced by conflicts of interest?

71. Would it be preferable to allow the board to assign the fair value determinations to service providers other than the investment adviser, such as a pricing service provider? If yes, why?

72. Would it be preferable to not permit boards to assign fair value determinations to an investment adviser to the fund but only mandate fair value policies and procedures, reporting, and recordkeeping requirements that are similar to the proposed rule's requirements? If yes, why?

IV. Paperwork Reduction Act Analysis

A. Introduction

Proposed rule 2a–5 would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[251] The title for the new collection of information would be ''Rule 2a–5 under the Investment Company Act of 1940, Fair Value.'' The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency

[251] 44 U.S.C. 3501–3520.

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid control number.

The proposed rule would provide requirements for determining fair value in good faith for purposes of section 2(a)(41) and rule 2a–4 thereunder. This determination would involve assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records. The proposed rule would permit a fund's board of directors to assign the fair value determination relating to any or all fund investments to an investment adviser of the fund, which would carry out all of these requirements, subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board's ability effectively to oversee the adviser's fair value determinations. As relevant here, the rule would require, on a per fund basis, the adoption and implementation of certain policies and procedures designed to address the process for determining fair value in good faith, keeping of certain records regarding the fair value process, and, if the board assigns the adviser to determine fair value, adviser reporting to the board in both periodic and as needed reports with some extra recordkeeping.[252]

The respondents to proposed rule 2a–5 would be registered investment companies and BDCs.[253] We estimate that 9,986 funds would be affected by rule 2a–5, of which 9,501 are not UITs.[254] Compliance with rule 2a–5 would be mandatory for any fund that would need to determine fair value under the Act. To the extent that records would be required to be created and maintained under the rule are provided to the Commission in connection with examinations or investigations, such information would be kept confidential subject to the provisions of applicable law.

B. Policies and Procedures

Proposed rule 2a–5 would require the adoption and implementation of fair value policies and procedures, which would address the process for the determination of the fair value of the fund's investments under the proposed rule.[255] The fair value policies and procedures are designed to help ensure that the determination of fair value is carried out effectively and to facilitate board oversight. The policies and procedures, as proposed, must be reasonably designed to achieve compliance with the certain requirements of the proposed rule, which are: (1) Periodically assessing any material risks associated with the determination of the fair value, including material conflicts of interest, and managing those identified valuation risks; (2) selecting and applying in a consistent manner methodologies for determining and calculating the fair value; (3) testing the appropriateness and accuracy of the fair value methodologies that have been selected; and (4) selecting and overseeing pricing service providers, if used.

We believe that the fund's board or adviser likely would establish the fair value policies and procedures by adjusting the current systems for implementing and enforcing the compliance policies and procedures of the fund (if the requirements are not assigned) or the adviser's (if the requirements are assigned). While funds and advisers have policies and procedures in place to address compliance with the federal securities laws (among other obligations), including fair value determinations, they would need to update their existing policies and procedures to account for the specific requirements of proposed rule 2a–5. To comply with this obligation, we believe that fund boards or advisers (by assignment by the board) would use in-house legal and compliance counsel to update existing policies and procedures to account for the requirements of proposed rule 2a–5. For purposes of these PRA estimates, we assume that either the fund or the adviser would review the fair value policies and procedures annually (for example, to assess whether the fair value methodology requires adjustments). We therefore have estimated initial and ongoing burdens associated with the proposed policies and procedures requirement. As discussed above, we estimate that approximately 9,986 funds may rely on the proposed rule and therefore would require these funds or their advisers to adopt and implement fair value policies and procedures.

Table 1 below summarizes the proposed PRA initial and ongoing burden estimates associated with the policies and procedures requirements under proposed rule 2a–5.

TABLE 1—FAIR VALUE POLICIES AND PROCEDURES PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
Establishing and implementing rule 2a–5 policies and procedures.	6 hours	2 hours	×	$329 (senior manager)	$658.00	$3,000.00	$1,000.00
	6 hours	2 hours	×	466 (ass't general counsel)	932.00		
	3 hours	1 hour	×	530 (chief compliance officer)	530.00		
	3 hours	1 hour	×	365 (compliance attorney)	365.00		
Reviewing and updating rule 2a–5 policies and procedures.		3 hours	×	329 (senior manager)	987.00		1,000.00
		3 hour	×	466 (ass't general counsel)	1,398.00		
		1 hour	×	530 (chief compliance officer)	530.00		

[252] Proposed rule 2a–5(a) and (b).

[253] *See* proposed rule 2a–5(e)(1) (defining ''fund'').

[254] *See supra* footnote 215 and accompanying text.

The Commission's estimates of the relevant wage rates in the tables below are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report'').

[255] *See supra* Section II.E.2.

TABLE 1—FAIR VALUE POLICIES AND PROCEDURES PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
Total annual burden per fund.	.....	13 hours	.....	.....	5,400.00	.....	2,000.00
Number of affected funds	.....	9,986	.....	.....	9,986	.....	9,986
Total annual burden	.....	129,818 hours	.....	.....	53,924,400	.....	19,972,000

Notes:
1. Includes initial burden estimates annualized over a three-year period.
2. *See* SIFMA Report, *supra* footnote 254.

C. Board Reporting

The proposed rule would require, if the board assigns the fair value determinations to an adviser of the fund, that the adviser report to the fund's board in writing (1) a quarterly report containing an assessment of the adequacy and effectiveness of the adviser's process for determining the fair value of the assigned portfolio of investments and (2) promptly (but in no event later than three business days after the adviser becomes aware of the matter) on matters associated with the adviser's process that materially affect or could have materially affected the fair value of the assigned portfolio of investments. These reports would be required to include such information as may be reasonably necessary for the board to evaluate the matters covered in the report.[256] The periodic reports that would be required by the proposed rule would have a minimum of five items required as part of the report,[257] and the prompt reports must include material weaknesses in the design or implementation of the adviser's fair value determination process or material changes in the fund's risks as would be required elsewhere under the proposal.[258] UITs could not assign fair value determinations to an adviser under the proposed rule because they are unmanaged and therefore would not be subject to this collection of information.[259] We estimate that 9,501 funds would utilize the proposed rule and therefore be subject to these requirements.[260]

Table 2 below summarizes the proposed PRA initial and ongoing burden estimates associated with the board reporting requirements under proposed rule 2a–5.

TABLE 2—BOARD REPORTING PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours		Wage rate [1]	Internal time costs	Initial external cost burden	Annual external cost burden
PROPOSED ESTIMATES							
Adviser written reports [2]	0 hours	8 hours	×	$329 (senior manager)	$2,632	$2,000	$2,000
	0 hours	1 hour	×	17,860 (combined rate for 4 directors).	17,860	.....	.....
	0 hours	1 hour	×	365 (compliance attorney)	365	.....	.....
Total annual burden per fund.	.....	10 hours	.....	.....	20,857	.....	2,000
Number of funds	.....	× 9,501	.....	.....	× 9,501	.....	× 9,501
Total annual burden	.....	95,010 hours ...	.....	.....	198,162,357	.....	19,002,000

Notes:
1. *See* SIFMA Report, *supra* footnote 254.
2. *See supra* footnotes 245–247 and accompanying text.

D. Recordkeeping

Proposed rule 2a–5 would require the maintenance of certain records, specifically (1) appropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations and (2) copies of the policies and procedures as required elsewhere under the proposed rule.[261] Further, if the board assigns fair value determinations to an adviser, the fund must maintain copies of (3) the reports and other information provided to the board as required elsewhere under the proposed rule and (4) a specified list of the investments or investment types whose fair value determination has been assigned to the adviser.[262] We estimate that 9,986 funds would be subject to the proposed rule and therefore to these requirements.[263]

Table 3 below summarizes the proposed PRA initial and ongoing

[256] *See* proposed rule 2a–5(b)(1); *supra* section II.B.2 (discussing the proposed board reporting requirements).

[257] *See* proposed rule 2a–5(b)(1)(i).

[258] *See* proposed rule 2a–5(b)(1)(ii).

[259] *See* proposed rule 2a–5(d).

[260] *See supra* footnote 215.

[261] *See* proposed rule 2a–5(a)(6); *supra* section II.A.6.

[262] *See* proposed rule 2a–5(b)(3); *supra* section II.B.6.

[263] While only 9,501 of these 9,986 funds would be subject to the last two of these recordkeeping requirements, we believe that this distinction is immaterial for this purpose and would result in only a de minimis lowering of the estimate. *See also supra* footnote 215 and accompanying text.

burden estimates associated with the recordkeeping requirements under proposed rule 2a–5.

TABLE 3—RECORDKEEPING PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
PROPOSED ESTIMATES							
Establishing recordkeeping policies and procedures.	1.5	.5		$62 (general clerk)	$31	$1,800	$1,800
	1.5	.5		95 (senior computer operator)	47.50		
Recordkeeping	0 hours	2 hours	×	62 (general clerk)	31	0	0
	0 hours	2 hours	×	95 (senior computer operator)	47.50		
Total annual burden per fund.		5 hours			157		600
Number of funds		× 9,986			× 9,986		× 9,986
Total annual burden		49,930 hours			1,567,802		5,991,600

Notes:
1. For "Establishing Recordkeeping Policies and Procedures," these estimates include initial burden estimates annualized over a three-year period.
2. *See* SIFMA Report, *supra* footnote 254.

E. Proposed Rule 2a–5 Total Estimated Burden

As summarized in Table 4 below, we estimate that the total hour burdens and time costs associated with proposed rule 2a–5, including the burden associated with the adoption and implementation of fair value policies and procedures, board reporting, and recordkeeping requirements, amortized over three years, would result in an average aggregate annual burden of 274,758 hours and an average aggregate annual monetized time cost of $253,654,559. We also estimate that, amortized over three years, there would be external costs of $44,965,600 associated with this collection of information. Therefore, each fund required to comply with the rule would incur an average annual burden of approximately 27.51 hours, at an average annual monetized time cost of approximately $25,401, and an external cost of $4,503 to comply with proposed rule 2a–5.

TABLE 4—PROPOSED RULE 2A–5 TOTAL PRA ESTIMATES

	Internal hour burden	Internal burden time cost	External cost burden
Policies and Procedures	129,818 hours	$53,924,400	$19,972,000
Board reporting	95,010 hours	198,162,357	19,002,000
Recordkeeping requirements	49,930 hours	1,567,802	5,991,600
Total annual burden	274,758	253,654,559	44,965,600
Number of funds	÷ 9,986	÷ 9,986	÷ 9,986
Average annual burden per fund	27.51 hours	25,401	4,503

F. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules and amendments should direct them to the OMB: *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy of their comments to, Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–07–20. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–07–20, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility

Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[264] It relates to proposed rule 2a–5.

A. Reasons for and Objectives of the Proposed Actions

The Commission is proposing new rule 2a–5 in order to address practices and the role of the board of directors with respect to the fair value of the investments of fund. Under section 2(a)(41), the board must determine in good faith the fair value of fund assets for which no market quotations are readily available. The proposed rule is designed to specify how a board or adviser must make good faith determinations of fair value as well as when the board can assign this function to an adviser to the fund, while still ensuring that fund investments are valued in a way consistent with the Investment Company Act.

The proposed rule would provide requirements for determining fair value in good faith for purposes of section 2(a)(41) of the Act and rule 2a–4 thereunder. This determination would involve assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records. The proposed rule would permit a fund's board of directors to assign these requirements to an investment adviser to the fund for some or all of the fund's investments, subject to board oversight and certain reporting, recordkeeping, and other requirements designed to facilitate the board's ability effectively to oversee the adviser's fair value determinations. The proposed rule would also define when market quotations are readily available under section 2(a)(41) of the Act. Lastly, the proposed rule would have the trustee of a UIT carry out the requirements of the proposed rule. The requirements associated with the fair value as determined in good faith and readily available market quotations are designed to protect investors from improper valuations and reflect our view of current market best practices.[265] The requirements associated with the assignment of responsibilities to an adviser are designed to ensure that the board effectively oversees an assigned adviser, including receiving sufficient information to do so.[266] The policies and procedures and recordkeeping requirements are designed to help ensure compliance with the other requirements.[267]

All of these requirements are discussed in detail in section II of this release. The costs and burdens of these requirements on small funds and investment advisers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the applicable costs and burdens on all funds and investment advisers.[268]

B. Legal Basis

The Commission is proposing new rule 2a–5 under the authority set forth in sections 2(a), 6(c), 31(a), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a), 80a–6(c), 80a–30(a), 80a–30(c), and 80a–37(a)].

C. Small Entities Subject to Proposed Rules

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year (a ''small fund'').[269] Commission staff estimates that, as of December 2019, approximately 38 registered open-end mutual funds, 8 registered ETFs, 30 registered closed-end funds, 2 UITs, and 14 BDCs (collectively, 92 funds) are small entities.[270]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Proposed rule 2a–5 would require fair value determinations under the Act be made according to a specific process for affected funds, including those that are small entities. This process would include the adoption of policies and procedures reasonably designed to achieve compliance with the requirements of the proposed rule and certain recordkeeping requirements. Further, the proposed rule would permit certain fund boards to assign fair value determinations to an adviser to the fund if the adviser, in addition to the above, adopts certain policies and procedures, makes certain reports to the fund's board regarding the fair value process in writing. Funds would also be required to keep certain additional records in such circumstances. We therefore believe that there are three principal reporting, recordkeeping, or other compliance requirements associated with the proposed rule: (1) The establishment and implementation of policies and procedures, including establishing and applying fair value methodologies, (2) recordkeeping requirements, and (3) board reporting requirements.

1. Policies and Procedures

The policies and procedures that would be required under the proposed rule would need to be reasonably designed to achieve compliance with the requirements of the rule. Specifically, these requirements include (1) the assessment and management of risks associated with the determination of fair value, (2) establishing and applying fair value methodologies, (3) testing fair value methodologies, and (4) evaluating pricing services.[271] Further, if the board assigns fair value determinations under the proposed rule to an investment adviser to the fund, the adviser's policies and procedures must meet certain requirements. In addition to the other requirements above, these policies and procedures must specify the titles of the persons responsible for determining the fair value of assigned investments, including by specifying the particular functions for which they are responsible, and reasonably segregating the process of making fair value determinations from the portfolio management of the fund.[272]

These requirements are designed to implement the proposed rule's requirements effectively which, in turn, are designed to protect investors from improper valuations. They are also designed to facilitate the board's oversight of these functions when they are assigned to an adviser to the fund. These requirements will impose burdens on all funds, including those that are small entities. The specifics of these burdens are discussed in the Economic Analysis and Paperwork Reduction Act sections above.[273]

There are different factors that would affect whether a smaller fund incurs costs related to this requirement that are on the higher or lower end of the estimated range. For example, we would expect that smaller funds—and more specifically, smaller funds that are not

[264] 5 U.S.C. 603(a).

[265] *See supra* sections I, II.A, and II.C.

[266] *See supra* section II.B.

[267] *See supra* sections II.A.6 and II.B.4.

[268] *See supra* section III and IV. These sections also discuss the professional skills that we believe compliance with the proposed rule would entail.

[269] *See* rule 0–10(a) under the Investment Company Act [17 CFR 270.0–10(a)].

[270] This estimate is derived an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending December 2019.

[271] Proposed rule 2a–5(a)(1)–(5).

[272] *See* proposed rule 2a–5(b)(2).

[273] *See supra* section III.C.3. This section, along with section IV, also discusses the professional skills that we believe compliance with this aspect of the proposal would entail.

part of a fund complex—may not have existing policies and procedures that include all of the elements that would be required of policies and procedures under the proposed rule. Also, while we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale.[274]

2. Recordkeeping

The recordkeeping requirements of the proposed rule are designed to help ensure compliance with the rule's requirements and aid in oversight. The proposed rule would require the fund to keep the following records: (1) Appropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations for at least five years from the time the determination was made, the first two years in an easily accessible place and (2) A copy of the fair value policies and procedures that are in effect, or were in effect at any time within the past five years, in an easily accessible place.[275] Further, should the board assign the fair value determination, the fund must keep, in addition to the records above, copies of the reports and other information provided to the board for at least five years after the end of the fiscal year in which the documents were made, the first two years in an easily accessible place and a specified list of the investments or investment types whose fair value determination has been assigned to the adviser, in each case for at least five years after the end of the fiscal year in which the determinations were provided to the board or the investments or investment types were assigned to the adviser, the first two years in an accessible place.[276]

These requirements will impose burdens on all funds, including those that are small entities. The specifics of these burdens are discussed in the Economic Analysis and Paperwork Reduction Act sections above.[277] There are different factors that would affect whether a smaller fund incurs costs relating to this requirement that are on the higher or lower end of the estimated range. For example, we would expect that smaller funds—and more specifically, smaller funds that are not part of a fund complex—may not have recordkeeping systems that would meet all the elements that would be required under the proposed rule. Also, while we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale.[278]

3. Board Reporting

The requirement for board reporting by the fund's adviser is designed to ensure that the board can exercise sufficient oversight over the fair value process. The proposal would require two general types of reports, a periodic one and a prompt one. Periodic reports would consist of the adviser's quarterly assessment in writing of the adequacy and effectiveness of the adviser's fair value process for determining the fair value of the assigned portfolio of investments, including some specific summaries and descriptions. The prompt reporting requirement would require advisers to promptly inform the board, but in no event later than three business days after the adviser becomes aware of the matter, of matters that materially affect or could materially affect the fair value of the assigned portfolio of investments, including a significant deficiency or material weakness in the design or implementation of the adviser's fair value determination process or material changes in valuation risks.[279]

These requirements will impose burdens on all funds, including those that are small entities. The specifics of these burdens are discussed in the Economic Analysis and Paperwork Reduction Act sections above.[280] There are different factors that would affect whether a smaller fund incurs costs related to this requirement that are on the higher or lower end of the estimated range. For example, we would expect that smaller funds—and more specifically, smaller funds that are not part of a fund complex—may not have an advisory agreement that has a reporting mechanism that would meet all the elements that would be required under the proposed rule. Also, while we would expect larger funds or funds that are part of a large fund complex to incur higher costs, via increased advisory fees for advisers to take on this responsibility on behalf of such funds, related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale.[281]

E. Duplicative, Overlapping, or Conflicting Federal Rules

Other than as discussed below, Commission staff has not identified any federal rules that duplicate, overlap, or conflict with proposed rule 2a–5. As discussed in more detail above,[282] rule 38a–1 also would apply to a fund's obligations under the proposed rule. Rule 38a–1 requires a fund's board, including a majority of its independent directors, to approve the fund's policies and procedures, including those on fair value, and those of each investment adviser and other specified service providers, based upon a finding by the board that the policies and procedures are reasonably designed to prevent violation of the federal securities laws.[283] Rule 38a–1 also requires that the fund's CCO provide an annual report to the fund's board that must address any material changes to compliance policies and procedures.[284]

Ultimately, we do not believe that the proposed rule adds cumulative regulatory burdens on small funds without any gain in regulatory benefits. The proposed rule would differ from the requirements of rule 38a–1 in that proposed rule 2a–5 would mandate that funds, including small funds, adhere to more specific fair value practices as well as policies and procedures, reporting, and recordkeeping requirements not currently required in the text of rule 38a–1. As we state above, however, to the extent that adviser policies and procedures under proposed rule 2a–5 would otherwise be duplicative of fund valuation policies under rule 38a–1, a

[274] *See supra* section III.C.1.

[275] Proposed rule 2a–5(a)(6).

[276] Proposed rule 2a–5(b)(3).

[277] *See supra* section III.C.3. This section and section IV also discuss the professional skills that we believe compliance with this aspect of the proposal would entail.

[278] *See supra* section III.C.1.

[279] *See supra* section II.B.2 and II.B.3.

[280] *See supra* section III.C.3.

[281] *See supra* section III.C.1.

[282] *See supra* section II.A.5.

[283] Rule 38a–1(a)(2).

[284] *See* rule 38a–1(a)(4)(iii)(A). ''Material'' in this context is a change that a fund director would reasonably need to know in order to oversee fund compliance. *See* rule 38a–1(e)(2). We have also said that ''serious compliance issues'' must be raised with the board immediately. *See* Compliance Rules Adopting Release, *supra* footnote 26, at n.33.

fund could adopt the rule 2a–5 policies and procedures of the adviser in fulfilling its rule 38a–1 obligations to avoid any duplication.[285]

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to our proposal: (1) Exempting funds that are small entities from the proposed reporting, recordkeeping, and other compliance requirements, to account for resources available to small entities; (2) establishing different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using performance rather than design standards.

We do not believe that exempting small funds from the provisions in proposed rule 2a–5 would permit us to achieve our stated objectives, principally to protect investors from improper valuations. Further, the board reporting and additional recordkeeping provisions of proposed rule 2a–5 only affect fund boards that assign fair value determinations to a fund adviser and, therefore, the rule would require funds to comply with these specific requirements only if they assigned responsibilities to their adviser. However, we expect that most funds holding securities that must be fair valued will do so. Therefore if a board to a small entity does not do this and instead performs its statutory function directly, then the small entity would not be subject to these provisions of proposed rule 2a–5.

We estimate that 72% of all funds would be subject to the proposed rule in making fair value determinations.[286] This estimate indicates that some funds, including some small funds, would be unaffected by the proposed rule. However, for small funds that would be affected by our proposed rule, providing an exemption for them could subject investors in small funds to a higher degree of risk than investors to large funds that would be required to comply with the proposed elements of the rule.

As discussed throughout this release, we believe that the proposed rule would result in investor protection benefits, and these benefits should apply to investors in smaller funds as well as investors in larger funds. We therefore do not believe it would be appropriate to exempt small funds from the proposed rule's requirements, or to establish different requirements applicable to funds of different sizes under these provisions to account for resources available to small entities. We believe that all of the proposed elements of rule 2a–5 should work together to produce the anticipated investor protection benefits, and therefore do not believe it is appropriate to except smaller funds because we believe this would limit the benefits to investors in such funds.

We also do not believe that it would be appropriate to subject small funds to different reporting, recordkeeping, and other compliance requirements or frequency. Similar to the concerns discussed above, if the proposal included different requirements for small funds, it could raise investor protection concerns for investors in small funds in that small funds face the same conflicts of interest that can lead to mispricing and otherwise harm investors that larger funds do.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the proposal for small funds, beyond that already proposed for all funds, would permit us to achieve our stated objectives. Again, this approach would raise investor protection concerns for investors in small funds. We believe, as outlined above in the discussion of the proposed rule and the guidance contained in this release, that the requirements of the proposed rule are, to some extent, current industry practice under existing rules, with some changes from current practice. As a result, we think that the proposed rule could result in a reduction in the current burdens experienced by small entities to the extent that they are subject to the proposed rule.

The costs associated with proposed rule 2a–5 would vary depending on the fund's particular circumstances, and thus the proposed rule could result in different burdens on funds' resources. In particular, we expect that a fund that does not have policies and procedures, reporting, or recordkeeping practices similar to those proposed in the rule would need to modify those practices. Thus, to the extent a fund that is a small entity already has a fair value process that is consistent with the requirements of the proposed rule, we believe it would incur relatively low costs to comply with it. However, we believe that it is appropriate to correlate the costs associated with the proposed rule with the fund's actual fair value process, and not necessarily with the fund's size in light of our investor protection objectives.

Finally, with respect to the use of performance rather than design standards, the proposed rule generally uses performance standards for all funds subject to the proposed rule, regardless of size. We believe that providing funds with the flexibility permitted in the proposal with respect to designing specific fair value process is appropriate because of the fact-specific nature of making fair value determinations.

G. Request for Comment

73. The Commission requests comment regarding this analysis. We request comment on the number of small entities that would be subject to our proposal and whether our proposal would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to our proposal and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of our proposal and how they would affect small entities.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing new rule 2a–5 under the authority set forth

[285] *See supra* section II.A.5.

[286] *See supra* footnote 214 and accompanying text.

in sections 2(a), 6(c), 31(a), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a), 80a–6(c), 80a–30(a), 80a–31(c), and 80a–37(a)].

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

* * * * *

■ 2. Section 210.6–03 is amended by revising paragraph (d) to read as follows:

§ 210.6–03 Special rules of general application to registered investment companies and business development companies.

* * * * *

(d) *Valuation of investments.* The balance sheets of registered investment companies, other than issuers of face-amount certificates, and business development companies, shall reflect all investments at value, with the aggregate cost of each category of investment reported under §§ 210.6–04.1, 6–04.2, 6–04.3, and 6–04.9 or the aggregate cost of each category of investment reported under § 210.6–05.1 shown parenthetically. State in a note the methods used in determining the value of investments. As required by section 28(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–28(b)), qualified assets of face–amount certificate companies shall be valued in accordance with certain provisions of the Code of the District of Columbia.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 3. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 4. Section 270.2a–5 is added to read as follows:

§ 270.2a–5 Fair value determination and readily available market quotations.

(a) *Fair value determination.* For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and § 270.2a–4, determining fair value in good faith with respect to a fund requires:

(1) *Assess and manage risks.* Periodically assessing any material risks associated with the determination of the fair value of fund investments (''valuation risks''), including material conflicts of interest, and managing those identified valuation risks;

(2) *Establish and apply fair value methodologies.* Performing each of the following, taking into account the fund's valuation risks:

(i) Selecting and applying in a consistent manner an appropriate methodology or methodologies for determining (and calculating) the fair value of fund investments, including specifying:

(A) The key inputs and assumptions specific to each asset class or portfolio holding; and

(B) Which methodologies apply to new types of fund investments in which a fund intends to invest;

(ii) Periodically reviewing the appropriateness and accuracy of the methodologies selected and making any necessary adjustments thereto;

(iii) Monitoring for circumstances that may necessitate the use of fair value; and

(iv) Establishing criteria for determining when market quotations are no longer reliable;

(3) *Test fair value methodologies.* Testing the appropriateness and accuracy of the fair value methodologies that have been selected, including identifying the testing methods to be used and the minimum frequency with which such testing methods are used;

(4) *Evaluate pricing services.* Overseeing pricing service providers, if used, including establishing:

(i) The process for the approval, monitoring, and evaluation of each pricing service provider, and

(ii) Criteria for initiating price challenges;

(5) *Fair value policies and procedures.* Adopting and implementing written policies and procedures addressing the determination of the fair value of fund investments that are reasonably designed to achieve compliance with the requirements described in paragraphs (a)(1) through (4) of this section; and

(6) *Recordkeeping.* Maintaining:

(i) Appropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations, as well as any necessary or appropriate adjustments in methodologies, for at least five years from the time the determination was made, the first two years in an easily accessible place; and

(ii) A copy of policies and procedures as required under paragraph (a)(5) of this section that are in effect, or were in effect at any time within the past five years, in an easily accessible place.

(b) *Performance of fair value determinations.* The board of the fund must determine fair value in good faith for any or all fund investments by carrying out the functions required in paragraph (a) of this section. The board may choose to assign the fair value determination relating to any or all fund investments to an investment adviser of the fund, which would carry out all of the functions required in paragraphs (a)(1) through (5) of this section, subject to the requirements of this paragraph (b). If the board of the fund does not assign fair value determinations to an adviser to the fund, the fund must adopt and implement the policies and procedures required under paragraph (a)(5) of this section and maintain the records required by paragraph (a)(6) of this section.

(1) *Oversight and reporting.* The board oversees the adviser, and the adviser reports to the fund's board, in writing, including such information as may be reasonably necessary for the board to evaluate the matters covered in the report, as follows:

(i) *Periodic reporting.* At least quarterly, an assessment of the adequacy and effectiveness of the investment adviser's process for determining the fair value of the assigned portfolio of investments, including, at a minimum, a summary or description of:

(A) The assessment and management of material valuation risks required

under paragraph (a)(1) of this section, including any material conflicts of interest of the investment adviser (and any other service provider);

(B) Any material changes to, or material deviations from, the fair value methodologies established under paragraph (a)(2) of this section;

(C) The results of the testing of fair value methodologies required under paragraph (a)(3) of this section;

(D) The adequacy of resources allocated to the process for determining the fair value of assigned investments, including any material changes to the roles or functions of the persons responsible for determining fair value under paragraph (b)(2) of this section;

(E) Any material changes to the adviser's process for selecting and overseeing pricing services, as well as material events related to the adviser's oversight of pricing services (such as changes in the service providers used or price overrides); and

(F) Any other materials requested by the board related to the adviser's process for determining the fair value of assigned investments; and

(ii) *Prompt board reporting.* The adviser reports promptly (but in no event later than three business days after the adviser becomes aware of the matter) on matters associated with the adviser's process that materially affect or could have materially affected the fair value of the assigned portfolio of investments, including a significant deficiency or material weakness in the design or implementation of the adviser's fair value determination process or material changes in the fund's valuation risks under paragraph (a)(1) of this section;

(2) *Specify responsibilities.* The adviser specifies the titles of the persons responsible for determining the fair value of the assigned investments, including by specifying the particular functions for which they are responsible, and reasonably segregates the process of making fair value determinations from the portfolio management of the fund; and

(3) *Records when assigning.* In addition to the records required in paragraph (a)(6) of this section, the fund maintains copies of:

(i) The reports and other information provided to the board as required under paragraph (b)(1) of this section; and

(ii) A specified list of the investments or investment types whose fair value determination has been assigned to the adviser pursuant to this paragraph (b), in each case for at least five years after the end of the fiscal year in which the documents were provided to the board or the investments or investment types were assigned to the adviser, the first two years in an easily accessible place.

(c) *Readily available market quotations.* For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)), a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.

(d) *Unit investment trusts.* If the fund is a unit investment trust, the fund's trustee must carry out the requirements of paragraph (a) of this section.

(e) *Definitions.* For purposes of this section:

(1) *Fund* means a registered investment company or business development company.

(2) *Fair value* means the value of a portfolio investment for which market quotations are not readily available under paragraph (c) of this section.

(3) *Board* means either the fund's entire board of directors or a designated committee of such board composed of a majority of directors who are not interested persons of the fund.

By the Commission.

Dated: April 21, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–08854 Filed 5–12–20; 8:45 am]

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2 and 3

Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2017–0062]

RIN 0579–AE35

Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the licensing requirements in the Animal Welfare Act (AWA) regulations to promote compliance, reduce licensing fees, and strengthen safeguards that prevent individuals and businesses with a history of noncompliance from obtaining a license or working with regulated animals. This action will reduce regulatory burden with respect to licensing and help ensure licensees' sustained compliance with the AWA, thus promoting animal welfare. We have also revised the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act.

DATES: Effective November 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3751; *barbara.a.kohn@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties, including licensing requirements for dealers, exhibitors, and operators of auction sales. Dealers, exhibitors, and operators of auction sales are required to comply in all respects with the regulations and standards (§ 2.100(a)) and to allow APHIS officials access to their place of business, facilities, animals, and records to inspect for compliance (§ 2.126). Part 3 provides standards for the humane handling, care, treatment, and transportation of covered animals. Part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

Under the current regulations, an applicant for an initial license is required to submit an application form, an application fee, and an annual license fee to Animal Care (§ 2.1(c)), acknowledge receipt of a copy of the regulations and agree to comply with them by signing the application form (§ 2.2(a)), and demonstrate compliance with the AWA regulations and standards, before APHIS can issue a license (§ 2.3(a)). Once a person receives a license, the licensee may renew his or her license annually by submitting an annual renewal form and license fee (§ 2.1(d)(1)).

On March 22, 2019, we published in the **Federal Register** (84 FR 10721–10735, Docket No. APHIS–2017–0062) a proposal to revise the AWA licensing requirements to promote compliance, reduce licensing fees and burdens, and strengthen existing safeguards that prevent individuals and businesses who are unfit to hold a license (such as any individual whose license has been suspended or revoked or who has a history of noncompliance) from obtaining a license or from buying, selling, transporting, exhibiting, or delivering for transportation regulated animals. We also proposed revisions to the animal health and husbandry standards of part 3, subpart A, to ensure the adequate care and treatment of regulated dogs. Prior to the proposed rule, we published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on August 24, 2017, (82 FR 40077–40078, Docket No. APHIS–2017–0062), in which we solicited comments from the public regarding potential revisions to the AWA regulations.

We solicited comments on the proposed rule for 60 days ending May 21, 2019. On May 28, 2019, we published in the **Federal Register** (84 FR 24403, Docket No. APHIS–2017–0062) a document [1] announcing a reopening of the comment period for an additional 15 days, to June 5, 2019, to allow interested persons additional time to prepare and submit comments.

We received approximately 110,600 comments on the proposed rule via courier, U.S. mail, and *Regulations.gov.* Of this total, 4,619 unique comments were received via *Regulations.gov*, along with approximately 600 unique paper comments delivered to APHIS. Through *Regulations.gov* we also received 25,400 comments in 629 distinct sets of duplicate or near-duplicate comments. An additional 79,978 comments we received consisted of one of three electronic form letters drafted by a national animal welfare organization and endorsed by its supporters, some of whom added their views to the letter. We received comments from members of Congress, animal welfare organizations, animal rescue and sheltering organizations, licensed animal dealers, breeders, and exhibitors, kennel clubs, zoos and aquariums, theme parks, animal reserves, veterinarians and veterinary organizations, and members of the public. Issues raised by commenters are discussed below by topic. We address the issues in the order that they pertain to the regulatory text of the proposed rule.

Definitions

We proposed to amend § 1.1, ''Definitions,'' by removing the term *AC Regional Director,* as Animal Care is no longer organized under regions and regional directors. We proposed replacing references to the AC Regional Director with Animal Care Deputy Administrator and regional offices with the appropriate Animal Care office.

One commenter opposed replacing many tasks that have historically been under the oversight of each Regional Director and stated that placing them under the oversight of the Deputy Administrator would be contrary to APHIS' own strategic plan. A few commenters stated that this proposed change suggests that APHIS is attempting to install an unqualified third party lacking in veterinary experience and credentials.

We disagree with the commenters. The Deputy Administrator of Animal

[1] To view the ANPR, proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0062.*

Care has been delegated the authority by the Administrator of APHIS to direct activities to ensure compliance with, and enforcement of, the AWA.[2] The replacement of the term *AC Regional Director* with *Deputy Administrator* reflects the current organizational structure of Animal Care and not a change in the authority of the Deputy Administrator. The Deputy Administrator of Animal Care is not required to have veterinary experience or credentials in order to be qualified.

Business Hours

We proposed to revise the definition of *business hours* in § 1.1 of the regulations so that the term no longer limits inspection times to ''Monday through Friday, except for legal Federal holidays.'' We changed the definition to mean ''a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year, during which inspections by APHIS may be made.'' We made this change to accommodate persons who are employed in other types of work and are not usually available for inspections during the day on Monday through Friday.

One commenter disagreed with our proposed change to *business hours,* stating that it is unclear what USDA means by ''reasonable.'' The commenter considered ''reasonable'' to be a minimum of 30 hours a week and not just weekends, and noted that not being present at the facility is a tactic on which licensees have often relied to avoid inspections.

The AWA authorizes USDA personnel to have access, at all reasonable times, to the places of business and the facilities, animals, and records of dealers, exhibitors, research facilities, carriers, and intermediate handlers.[3] As discussed in the proposed rule, we have observed a number of licensees who are not available for a reasonable number of hours between 7 a.m. and 7 p.m. Monday through Friday because they are employed full-time elsewhere during the weekdays or because they operate at reduced hours on weekdays to allow customers to visit their business on the weekends. We are therefore making the change as proposed to reflect these business practices and to ensure that such licensees are able to make their place of business and facilities, animals, and records available for inspection at all reasonable times as required by the Act. APHIS will continue to coordinate with licensees and registrants who do not maintain regular public business hours to establish optimal times for inspection.

A commenter stated that removing the business hour designation from Monday through Friday may negatively impact larger zoos and aquariums, as weekend staffs at these businesses are usually smaller than during the week.

A licensee or registrant that is available a reasonable number of hours only Monday through Friday would still meet the definition of *business hours* for the purpose of inspections. It is not our intent to require that licensees and registrants be available for a reasonable number of hours on every day of the week, but rather a reasonable number of hours collectively during the course of a week. Therefore, we are making no changes to the rule in response to this comment.

Additional Definitions

Several commenters asked that we add definitions to § 1.1, including a definition of ''affirmative demonstration of compliance,'' to be defined as the demonstration of compliance with the Act, the regulations, and standards as documented on inspection reports created as part of the application or inspection process for the current period of licensure. In making this request, a few commenters suggested that without such a definition, APHIS hinders licensing by subjectively interpreting what constitutes compliance. Some persons commenting on the ANPR had also asked that we provide such a definition.

We are making no changes to the rule in response to these comments. The rule already specifies that a license applicant must demonstrate that his or her location and any animals, facilities, vehicles, equipment, and other locations used or intended for use in the business comply with the AWA and the regulations. How APHIS inspectors document noncompliances is immaterial to whether the applicant demonstrates compliance.

Several commenters asked that we add a definition for ''breeding female'' to § 1.1. Some commenters also asked that we define ''puppy mill'' in the regulations.

We are making no changes to the rule in response to these comments. However, we note that USDA has explained its thinking on the meaning of the term ''breeding female'' in a previous rulemaking: ''While we recognize that breeders have several reasons for not breeding an intact female, for the purposes of enforcement, APHIS has to assume that a female that is capable of breeding may be bred. However, in determining whether an animal is capable of breeding, an APHIS inspector will take into consideration a variety of factors, including the animal's age, health, and fitness for breeding.''[4] As for the term ''puppy mill,'' we do not use the term, nor will we define it, as it does not appear in the Act or in our regulations.

Licensing Requirements

In § 2.1, we proposed changes to the information required to be submitted in the licensing application, including requiring applicants to indicate the maximum number of animals on hand at any one time, types of animals anticipated to be held or exhibited, information demonstrating that applicants have adequate knowledge of and experience with the animals, and disclosure of any previous animal welfare pleas of no contest or findings of violations. We proposed these changes to help strengthen compliance with the AWA regulations.

Required Information on Application

A few commenters recommended that the license form furnished by the Deputy Administrator in § 2.1(a)(1) be applicable to a person renewing a license as well as a person seeking a license.

We are making no changes in response to this comment because this rulemaking removes the license renewal process from the regulations.

A commenter requested that we add a planned business hours section to the license application form to assist inspectors in gaining entry to operation on first contact. The commenter stated that APHIS inspection reports indicate that inspectors frequently have been unable to enter a facility on arrival due to no one being onsite, which removes the benefit of the unannounced inspection. The commenter asked if more could be done to ensure the unannounced inspection occurs on the first attempt.

We do not believe requiring licensees to put their business hours on the application to be helpful to the inspectors, nor is it necessary for conducting unannounced inspections or scheduling prelicense inspections. We define business hours for inspections to be a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year to provide additional flexibility for inspectors to gain entry on the first contact. As noted above, we have observed that a number of licensees are employed full-time elsewhere during

[2] See 7 CFR 371.7.

[3] 7 U.S.C. 2146(a).

[4] 78 FR 57227 (Sept. 18, 2013); *https://www.federalregister.gov/documents/2013/09/18/2013-22616/animal-welfare-retail-pet-stores-and-licensing-exemptions.*

the weekdays or operate at reduced hours on weekdays. We have additional communication tools to ensure the licensee is available for unannounced inspections. If a licensee or registrant is chronically unavailable for unannounced inspections, we take steps to remedy the situation, including attempting inspections at different times and days of the week. If necessary, we will coordinate with the person to establish an optimal inspection time range that includes multiple blocks of days of the week and multiple blocks of time in which they are available for an unannounced inspection. We will also pursue enforcement and other remedial actions if necessary. Accordingly, we are making no changes to the rule in response to this comment.

A commenter recommended that, in order to ensure that disclosure requirements have the intended impact, APHIS should include warning language on the license application that clearly informs applicants of the consequences of providing false information, including penalty of perjury.

We agree with the commenter. Sections 2.11 and 2.12 of the regulations state that a license applicant who has made false or fraudulent statements or provided false or fraudulent records to USDA may have their application denied or their license terminated, if already issued. We will include this information on the new license application form.

A commenter supported our proposed action to remove the ''intention'' to operate as an exhibitor from § 2.1(a) to make it more difficult for persons to obtain licenses solely for the purpose of circumventing State laws restricting the private possession and sale of exotic and wild animals (by only intending to exhibit but not actually exhibiting them). The commenter stated, however, that APHIS should take even greater steps to prevent this circumvention from occurring by asking applicants about insurance coverage, business advertising, and exhibition travel schedules on the application form in order to identify licensees keeping exotic animals only as pets.

We acknowledge the commenter's concerns but are making no changes to the rule. Should we have concerns that a person is holding an AWA license to circumvent State laws restricting the private possession and sale of exotic and wild animals, we have the authority under § 2.125 of the regulations to request information concerning the business to assess whether the person is engaging in activities for which a license is required.

On the other hand, a commenter opposing the rule said that APHIS' attempt to prevent persons from circumventing State law to keep exotic and wild animals violates statutes enforced by the Federal Trade Commission, and that the Federal Government is not allowed to circumvent State laws.

We disagree with the commenter. This change in the regulations supports, rather than circumvents, State laws. The AWA authorizes and encourages APHIS to cooperate with State and other officials in carrying out the purposes of the AWA and any State, local, or municipal legislation or ordinance on the same subject. Finally, the regulations in §§ 2.11 and 2.12 have long stipulated that any license applicant or holder who is violating or circumventing State law may be subject to the denial or termination of a license.

A commenter asked APHIS to require that any applicant operating under the name of a business disclose the business name in addition to their legal name, and to issue the license under the business name. The commenter also asked us to require disclosure of not only the names of the individual and business applying for a license, but also the names of all business associates and relatives involved in the business at the time of application and after. Finally, a few commenters requested that APHIS add a new field on the application form and require disclosure of any names under which the business formerly operated.

We are making no changes to the rule in response to this comment. The license application form requires that applicants provide any previous USDA license number(s) and any active license numbers in which the applicant has an interest. In addition, the applicant must report any partners or officers, all business names, and locations. Should we require additional information, we have the authority under § 2.125 of the AWA regulations to request information concerning the business.

In proposed § 2.1(a)(1)(v), we required that license applicants disclose the anticipated type of animals to be owned, held, maintained, sold, or exhibited during the period of licensure and whether these include exotic or wild animals. If exotic or wild animals are included, we required that applicants provide information and records demonstrating they have adequate knowledge of and experience with those animals.

A commenter stated that it is unclear why only applicants intending to hold exotic or wild animals need to demonstrate knowledge and experience in caring for those animals. The commenter stated that all applicants should be required to demonstrate knowledge and experience with any species they intend to obtain.

We agree with the commenter. In establishing regulatory standards of care [5] for all covered animals—wild, exotic, or otherwise—APHIS requires that all licensees demonstrate knowledge and experience sufficient to caring for their animals, regardless of species, and we note there are many ways that applicants can demonstrate this. For this reason, we are amending the proposed rule by removing the additional information and records requirement in paragraph (a)(1)(v).

In § 2.1(a)(1)(vii), we proposed requiring license applicants to disclose any plea of no contest or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals. A substantial number of commenters agreed with this provision. We noted in the preamble to the proposed rule that the current regulations already set forth provisions for the denial of a license for persons with animal cruelty convictions and certain other violations of Federal, State, or local laws pertaining to animals, and that this rule further supports this existing licensing restriction by requiring disclosure of such violations on the license application.

A commenter agreed with this provision and recommended that we also require disclosure of animal- or consumer-based legal violations (such as illegal import or export of animals or animal parts or products) and any licensing denial, revocation, or similar actions taken by any State, Federal, or local authority for activity relating to animal husbandry or sales. The commenter also stated that any animal cruelty conviction or plea, whether incurred during the preceding 3 years or otherwise, should disqualify an applicant from obtaining a license. The commenter asked that we include these provisions in § 2.11.

Another commenter supporting disclosure of pleas or convictions of animal cruelty in proposed § 2.1(a)(1)(vii) stated that local cruelty laws vary widely from one jurisdiction to another and that some offenses, such as failure to license an animal or certain tethering violations, do not bear directly on animal welfare or constitute cruelty. For this reason, the commenter

[5] The statutory bases for these standards are located in section 2143 of the AWA, paragraphs (a)(1) and (a)(4).

suggested that the proposed language for disclosing pleas and violations be amended to include only activities like those covered under the Act.

Under § 2.11(a)(5), APHIS will not issue a license to any applicant who has pled or been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 3 years of application, or after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed. We will apply this provision if the applicant meets these conditions. Likewise, under § 2.11(a)(7), APHIS will not issue a license to any applicant who pled or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. In order to make this determination, we require the disclosure of all such pleas and violations as required under § 2.1(a)(1)(vii). Accordingly, we do not consider it necessary to make changes based on this comment.

Locations, Numbers, and Types of Animals

The current regulations do not require a licensee to demonstrate compliance when making changes to his or her animals or locations, including noteworthy changes to the numbers or types of animals used in regulated activity. This allows a licensee to acquire substantially more or different types of animals than what he or she had when the license was originally issued. Therefore, we proposed in revised § 2.1(b)(1) to require licensees to notify Animal Care no fewer than 90 days before making any changes to the name, address, substantial control, or ownership of the business or operation, locations, activities, and number or type of animals described in § 2.1(b)(2). After the licensee demonstrates compliance under the changes and fulfills all other regulatory requirements, APHIS would issue a new license with a new certificate number.

A substantial number of commenters supported this proposed requirement. Among them, one commenter stated that APHIS should also review patterns of small changes not considered noteworthy but which could have significant cumulative impact on animal welfare.

We are making no changes in response to that comment. With respect to evaluating facilities, we note and consider any change, regardless of size, that may have an impact on animal welfare.

On the other hand, some commenters opposed the proposed requirement for new licenses for facilities that change their operations or the type or number of animals they display, claiming that the requirement is overly broad and burdensome and would require facilities that make even minor changes to their facilities or collections of animals to seek new licenses. Many of these commenters supported requiring licensees to notify APHIS of a change in regulated activities only if the change has an actual demonstrable impact on the normal operating procedures of the licensee. Similarly, a commenter representing a zoological park stated that the additional regulation of obtaining a new license when making a noteworthy change is excessive, as the USDA license is for the functioning of the entire zoo and not for one small part of a facility that may have a noncompliant issue. Another commenter stated that slight changes to regulated activities should need no review, and specifically cited riding and feeding animals, and animals used in circus and movie work.

We are making no changes in response to the comments. In developing the list of conditions in § 2.1(b) that trigger the need for a new license, we considered several factors, including the complexity of care the animals require, the varying regulations and standards for different types of animals, and the number of animals at facilities. Our focus is on requiring facilities to demonstrate compliance when acquiring animals subject to different standards or that have special husbandry and care needs, or when expanding the size of their animal collection significantly from the time of licensure. We believe this demonstration is important for ensuring that such facilities maintain compliance with the AWA during their period of licensure.

Several commenters stated that the proposal to require a new license whenever a facility makes any change in substantial control or ownership is vague and overly broad. One such commenter asked that we state more clearly when a new license is needed under this type of change.

We appreciate the opportunity to clarify the proposed rule in response to these comments. Licenses are issued to specific persons, which is defined in the AWA regulations to mean, ''individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.'' If the ownership of a licensed facility changes (*i.e.,* if a new ''person'' or group of persons assumes ownership [6]), the new owner would need to obtain a license.

A new license is also required if the ownership structure is modified such that it changes who has substantial control of the business. For example, the business' ownership model may change from an individual to a partnership or corporation, or vice versa. If a business is sold to another party, or if the licensee passes away and a new owner (including relatives) takes possession, a new license is required. Licenses are issued specific to certain activities (such as exhibition), so a new license would be required if, for example, a breeder wants to begin operating as an exhibitor. Because licenses are site-specific, any change in location of the animals also requires a new license. APHIS will provide additional guidance on this topic to include examples that indicate when a new AWA license is needed.

A few commenters expressed the view that requiring a new license whenever a facility undergoes a change in management is an unnecessary intrusion into a licensee's business activities. One such commenter said that if any management changes to a facility are necessary, the Agency should confine its role to simply requiring advance notice of such changes and allow the facility to keep its existing license.

While a change in ownership would require a new license under the proposed regulations, changes in operational management of a facility typically would not. Accordingly, we are revising proposed § 2.1(b)(1) to exclude changes in management as requiring a new license. Similarly, a licensee that changes only the name of the business would not require a new license, unless the name change is associated with a change in ownership.

Some commenters expressed concerns about the minimum 90-day notice that must be given to APHIS before any change is made to the business or operation as required in § 2.1(b)(1). The commenters' concerns focused on situations where changes to the facility would need to be made in a shorter period due to unexpected circumstances such as the death of an owner or damages to the facility that affect the welfare of the animals held by the licensee.

We acknowledge that unexpected situations (such as natural disasters) can

[6] New ownership as described here typically involves the facility being associated with a different Internal Revenue Service-issued Employer Identification Number (EIN). An EIN cannot be transferred to another owner.

arise and note that we have the discretion to suspend enforcement in such situations.

In § 2.1(b)(1), we proposed that any person who intends to exhibit any animal at any location other than the person's approved site must provide that information on their application in accordance with proposed § 2.1(a)(1)(iii) and submit written itineraries in accordance with § 2.126. We noted that if the application did not provide such information, then a new application would have to be submitted and a new license obtained before exhibiting at locations other than the approved site.

A commenter operating as an exhibitor asked us to explain how to complete the license application with respect to the location of animals. The commenter asked whether licensees should indicate on the application that they exhibit at offsite locations and then follow up with itinerary filings, or whether each exhibition location would need to be listed and approved upon application for the license. The commenter stated that it is unfair to require licensees to know their entire traveling itinerary for up to a year in advance, much less 3 years.

We appreciate the opportunity to clarify how this requirement will be implemented. The applicant will need only to specify on the application that they intend to exhibit at off-site locations, and then follow up with submission of itineraries in accordance with § 2.126.

Changes to Number of Animals Used in Regulated Activities

We proposed in § 2.1(b)(2) that licenses will authorize increments of 50 animals on hand at any single point in time during the period of licensure, and that licensees must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time. Licensees falling below de minimis are still licensed and subject to the regulations unless they choose to terminate their license. If they terminate their license then later exceed the de minimis level and continue to conduct regulated activity, they would need to reapply for a license.

Several commenters suggested that when licensed exhibitors obtain more animals, they should have to seek APHIS approval for the additional animals regardless of number.

We are making no changes to the rule in response to this comment. In deciding on the range of the number of animals we considered several factors, including the impact on compliance and the burdens associated with obtaining a new license. We do not believe that a new license is necessarily required every time a facility acquires an additional animal.

A commenter recommended that APHIS base the authorized number of animals on a relative change in size rather than on a flat threshold of 50 animals. The commenter added that this determination should be made by observing the actual number of animals present during the prelicense inspection rather than on the licensee's reporting.

We are making no changes to the rule based on this comment. The rule requires applicants to provide the anticipated maximum number of animals on hand at any one time during the period of licensure. This number may not match the number of animals on hand during the prelicense inspection (although the number of animals on hand during the prelicense inspection should not exceed the maximum number reported on the application). During the prelicense inspection, APHIS will determine whether the animals, facilities, vehicles, equipment, and locations are in compliance, taking into account the anticipated maximum number of animals on hand.

Another commenter said that our proposal to authorize increments of 50 animals is arbitrary and does not serve its intended purpose. The commenter added that an increase of 50 in one species might require very little change in facilities and resources, whereas an increase of only a few of another species might completely change the nature of the operations. The commenter recommended that APHIS not provide licenses for increments of 50 animals, but should instead provide licenses based on the anticipated maximum number of animals possessed during the 3-year period of licensure.

We are making no changes to the rule in response to this comment. The purpose of this requirement is to ensure a licensee's facilities are compliant with the AWA regulations and standards for the anticipated number and type of animals to be held or used during the period of licensure. Not all facilities will have a static inventory of animals or have all of their animals on-site for the entire period of licensure. For example, a dog breeding facility may have a large number of animals over the course of 3 years, but a small number of animals on hand at any single point in time. The facility would need to demonstrate compliance for the maximum anticipated number of animals on hand at any single point in time during the period of licensure.

A commenter stated that APHIS should clarify the requirements for disclosure of the anticipated number of animals to account for potential offspring (whether or not there is an intention to breed), in order to account for fraudulent disclosures. The commenter cited the example of an applicant who has 50 dogs, 40 of which are unaltered females, who claims no intention to breed those dogs yet could have them produce 40 separate litters of puppies. On the other hand, several commenters stated that not all breeding females are used for breeding. One such commenter stated it is important to define the term ''breeding female'' in a clear and reasonable manner, adding that just because a female dog is not spayed does not mean she is a breeding female.

We note that the prelicense demonstration of compliance would take into account the breed of dog, the number of breeding female dogs, the projected litter size, and the facility's business model for selling and placing puppies and adult dogs who are no longer used for breeding purposes. For the purposes of enforcement, APHIS assumes that a female dog that is capable of breeding may be bred. If a person uses animals for purposes counter to what the license allows, including breeding dogs that were indicated during the inspection to be no longer used for breeding, we will investigate such instances and take appropriate action.

A commenter stated that APHIS is forcing people to circumvent the burdens being placed on them by the Agency and asked, by way of example, if there is anything that would prohibit his spouse or child from keeping 200 more animals outside the perimeter of his licensed facility.

We note in response that this rulemaking will actually relieve paperwork burden and reduce fees for many licensees. To answer the commenter's question, we reply that the licensee, or any other person using or maintaining animals in such a manner that he or she requires a license, is subject to the AWA regulations and any prohibitions applicable to the situation described.

Changes to Types of Animals Used in Regulated Activities

Proposed § 2.1(b)(2) provides that licenses will authorize specific numbers and types of animals. Section 2.1(b)(2)(ii) specifically authorizes licenses for using animals that are subject to subparts A through F in part 3. However, with respect to licenses for using animals subject to subparts D and

F, licenses will separately authorize the use of each of the following groups of animals: (1) Group 5 and 6 nonhuman primates, (2) big cats or large felids, (3) wolves, (4) bears, and (5) mega-herbivores. We noted that these groups of animals would be separately authorized because they are potentially dangerous and have unique care needs. We also included a provision requiring licensees to obtain a new license before using any animals beyond those animals authorized for use under the existing license for activities for which a license is required. We proposed these changes based on our experience with administering and enforcing the AWA, noting that licensees sometimes struggle to achieve and maintain compliance after making noteworthy changes to the numbers or types of animals used in regulated activity.

A commenter suggested that APHIS should make it more clear in proposed § 2.1(b)(2)(ii) of the regulations that if a licensee wishes to obtain any new species, he or she is required to obtain a new license.

We note in § 2.1(b)(1) that licensees are required to notify Animal Care no fewer than 90 days, and obtain a new license, before making any change in the number or type of animals described in paragraph (b)(2).

A commenter supported the proposed requirement for a new license for dangerous and exotic animals with unique care needs, but requested more information as to what animals we would include under such a license beyond obvious ones such as elephants, big cats, and bears. The commenter noted, for instance, that servals are potentially dangerous.

On the other hand, several commenters opposed the proposal to require a new license for each new species acquired, and one such commenter recommended that APHIS set up several classes of animals based on level of risk and complexity of care. The commenter offered as an example a class for domestic and farm animals, a class for small exotics, and a class for large exotics. Under this arrangement, the commenter suggested, a licensee could acquire any animal from the animal class they are licensed for, or any lesser class, without having to reapply for a new license.

We agree that there are other potentially dangerous animals that fall under the general standards in subpart F of part 3 that should be separately authorized. Accordingly, we are revising our proposed groups of animals that require separate authorization as follows: (1) Group 5 (baboons and nonbrachiating species larger than 33 pounds) and 6 (great apes over 55 pounds and brachiating species) nonhuman primates; (2) exotic and wild felids (including but not limited to lions, tigers, leopards, cheetahs, jaguars, cougars, lynx, servals, bobcats, and caracals, and any hybrid cross thereof); (3) hyenas and/or exotic and wild canids (including but not limited to wolves, coyotes, foxes, and jackals); (4) bears, and (5) mega-herbivores (elephants, rhinoceroses, hippopotamuses, and giraffes).

A commenter recommended that we include Category E, marine mammals, under the considerations for licensing along with large primates, large carnivores, and mega-herbivores. The commenter added that a facility that passes a prelicense inspection to house sea lions is not automatically prepared to handle orcas, for example. This and other commenters also noted that as polar bears are considered a marine mammal and bears are listed as a Category F animal requiring special considerations, Category E should be listed under the considerations for licensing so that polar bears do not fall into a regulatory loophole.

We acknowledge the commenters' concerns but are making no changes to the rule on this topic. As a practical matter, marine mammals are already highly regulated animals with respect to their welfare and species-specific needs. In addition to protection under the AWA, all species of marine mammals are protected under the Marine Mammal Protection Act (MMPA), and some are also protected under the Endangered Species Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These animals include whales, dolphins, porpoises, seals, sea lions, walruses, polar bears, sea and marine otters, dugongs, and manatees. Polar bears are provided additional protection under the International Agreement on the Conservation of Polar Bears, an agreement between the United States, Canada, Denmark, Norway, and Russia, which is implemented in the United States by the provisions of the MMPA.

One commenter asked if a new license is needed for adding other cetaceans if the facility already has one kind of cetacean.

If the species of cetacean being added is different from the species authorized under the existing license, a new license would be required in accordance with proposed § 2.1(b)(2)(ii).

Another commenter asked about the impact of the proposed licensing requirement for changes to numbers and types of animals on the practice of rescuing and rehabilitating stranded marine mammals.

Unless the rescued marine mammals are exhibited (see the definition of *exhibitor* in § 1.1) by the rescue or rehabilitation facility, there is no impact on such facilities. The animals are regulated under the MMPA by the National Oceanic and Atmospheric Administration or the U.S. Fish and Wildlife Service, depending on the species involved.

A commenter asked APHIS to require more specificity from licensees regarding the types of animal they plan on keeping. The commenter stated that the categories of animals in part 3 are typed too broadly for APHIS to ascertain whether an applicant can properly care for particular animals and suggested that APHIS instead require disclosure by species rather than type.

We appreciate the opportunity to make clear that applicants would need to specify the anticipated species or common names of animals owned, held, maintained, sold, or exhibited during the period of licensure.

One commenter stated that licensees acquiring nondomestic animals should be required to indicate the type, weight, and risk factor of the animal and that APHIS should confirm that a suitable secure enclosure is available to house the new animal. The commenter also recommended that the animals have an assigned veterinary clinic.

We are making no changes to the rule in response to this comment. During prelicense inspections, Animal Care inspectors assess facility compliance with the AWA regulations, which require animals to be in good health and have adequate space. Each facility is also required to have an attending veterinarian with knowledge of and experience with the animals at that facility and a program of veterinary care for those animals.

A commenter stated that if a licensee has acquired animals that they are incapable of caring for, this possibility should be addressed more frequently than every 3 years. The commenter also questioned why a licensee with an excellent compliance history needs to reapply for a license every 3 years and reasoned that a simple renewal would be appropriate for such facilities and consistent with APHIS' risk-based approach. Another commenter asked APHIS to reconsider its proposal to require new licenses and prelicense inspections for zoological facilities in good standing that make changes to the species or number of animals they display. The commenter stated that APHIS' policy objectives can easily be

achieved during the already existing inspection process.

We are making no changes to the rule in response to these comments. If a facility is in compliance, the process for applying for a new license will be simple, with less paperwork and reduced fees by comparison with the current license renewal process. Similarly, facilities that wish to add animals to their collection under a new license class will be able to do so easily by completing an application form, paying the applicable fees, and demonstrating compliance with the AWA regulations. During this time, the facility can continue to use the animals authorized by their existing license for regulated activity with no disruption to business.

One commenter opposing the rule stated that the number of animals a licensee owns is not regulated under the AWA and therefore should not be considered in the regulations.

USDA's authority to set criteria for licensing comes from section 2133 of the Act, which directs the Secretary to issue licenses to dealers and exhibitors upon application and payment of the applicable fees, provided that the applicant has demonstrated compliance with the AWA regulations. The number and type of animals that an applicant intends to use for regulated purposes has a direct bearing on compliance with the AWA regulations. Moreover, section 2133 authorizes USDA to prescribe the ''form and manner'' of applications.

License Fees

In the ANPR, we asked for comment on what fees would be reasonable to assess for licenses. We received a wide range of responses, including those from commenters who suggested raising fees as a way to discourage dog breeding, as well as those from other commenters who asked that we eliminate licensing fees entirely to relieve burden on small businesses. Many commenters suggested sliding scales based on business size and complexity that would allow APHIS to recover its inspection costs. After reviewing these comments on the ANPR, we decided to propose amending paragraph § 2.1(c)(2) of the regulations by requiring a flat license fee of $120.

Several commenters responded to our proposed changes to the license fees. A commenter said that the USDA has not raised licensing fees in 30 years and that lowering the fees would be arbitrary, capricious, and in violation of several statutory requirements. The commenter also stated that current license fees do not cover the cost of issuing the license, thus causing taxpayers to subsidize the costs, and asked us not to reduce the fees. Another commenter stated that fees should be raised to keep pace with inflation and account for the Agency's enforcement burdens. The commenter provided data to illustrate that annual rates should be doubled to compensate for inflation and stated that the lowest fee to be paid every 3 years, when adjusted for inflation, would be $180, with the highest being $4,515 for the largest facilities. Another commenter stated that the proposed flat fee of $120 is contrary to the Act because it is inequitable. The commenter cites a passage in the Act stating that fees for licenses ''shall be adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed,'' and notes that a facility that receives $1,000,000 in annual income paying the same fee as a facility that receives $10,000 annually is not an equitable fee because it is neither ''adjusted'' nor considers the type and nature of the operations as required by the statute. The commenter stated that USDA should instead scale fees based on the numbers of animals and the complexity involved in caring for and inspecting the animals. Finally, a commenter stated that APHIS is not meeting the requirements of the Independent Offices Appropriations Act,[7] which provides that Federal agencies may set fees that are based on costs to the Government and the value of the permit to the recipient, among other factors.

We appreciate the many comments we received on license fees but are making no changes to the proposed fee. Under the AWA, the Secretary shall charge, assess, and cause to be collected reasonable fees for licenses issued. Such fees shall be adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed and shall be deposited and covered into the Treasury as miscellaneous receipts. These fees are not user fees and are not used to cover the cost of licensing, inspection, enforcement, or other APHIS services. Also, the Independent Offices Appropriations Act does not apply to AWA licensing fees, because USDA was granted specific statutory authority to assess them.[8]

As discussed in the proposed rule, we took into account the type and nature of operations to be licensed and conducted a formal economic analysis. One alternative to a flat fee that we considered was to establish scaled fees, similar to those in the current regulations. However, we found it difficult to do so in an equitable way. For example, some dealers and exhibitors with small numbers of animals may derive significant income from their regulated activities, while other dealers and exhibitors with large numbers of animals may derive more modest incomes from their activities, based on the types of animals, location of their business, business model, and a variety of other factors. Accordingly, we are establishing the flat fee of $120 for licensure, which represents a fee that is comparable to, or in many cases reduced from, existing fees for licensure. In addition to being an equitable fee for licenses that considers the type and nature of the operations to be licensed, the fee structure allows for more efficient and streamlined business processes for Animal Care and simplifies the calculation of licensing fees for applicants.

A lesser number of commenters asked that we consider lowering or eliminating license fees, with many noting that any type of fee places an unfair burden on smaller dog breeding facilities.

We disagree with these commenters. While the current regulations require an annual license application and fees ranging from $40 to $760 annually, this rule only requires an application and a flat $120 fee every 3 years, which would be equivalent to the current lowest fee of $40 (if applied annually over 3 years). Accordingly, we do not believe that the licensing component of this rule places additional or undue burdens on license holders or applicants and will in fact reduce paperwork burdens on them, as well as reduce licensing fees for many of them. For these reasons, we are making no changes to the rule in response to this comment.

License Denial and Suspension

In proposed § 2.1(d), we reassigned an existing provision from § 2.1(e) stating that any failure to comply with the Act, regulations, or standards would be grounds for denial, suspension, or revocation of a license as provided in the AWA.

A few commenters recommended revising § 2.1(d)(1) to read, ''A licensee who has a record of affirmative demonstration of compliance and is thus eligible for renewal must submit to the appropriate Animal Care regional office a completed application form and the required license fee indicated in § 2.1(a)(2) by certified check, cashier's check, personal check, money order, or credit card.''

We are making no changes to the rule in response to this comment. We have revised § 2.1(d). Licenses are no longer

[7] 31 U.S.C. 9701.

[8] 7 U.S.C. 2153.

renewable, and compliance as a condition of licensure is already made clear in other sections.

Demonstration of Compliance

Although an applicant for a license renewal currently must also certify, to the best of his or her knowledge and belief, that he or she is in compliance with all regulations and standards, we noted in the proposed rule that the regulations do not require the applicant to actually demonstrate compliance during an inspection before APHIS renews his or her license.

Demonstration of compliance as a condition of licensure was supported by a majority of persons commenting on the ANPR and proposed rule. As noted above, many commenters also expressed support for APHIS to require a new license whenever noteworthy changes are made to a facility, its management, or its operation, or to the number, type, or location of animals used in regulated activities.

A substantial number of commenters asked APHIS to stop ''rubber stamping'' licenses without requiring compliance with the regulations.

We disagree with this characterization and note that § 2.3 currently requires that license applicants demonstrate compliance with the AWA regulations during an inspection before APHIS will issue a new license to them. APHIS also conducts regular inspections of licensed facilities under a risk-based inspection system that calls for frequent and in-depth inspections at facilities with a higher risk of animal welfare concerns, and fewer at those that are consistently in compliance. As we noted above, the proposed changes eliminate the annual license renewal and require instead passing a prelicense compliance inspection to obtain a new license every 3 years.

Many commenters called for a ''zero tolerance'' approach to AWA violations found during prelicensing inspections, regardless of the degree of the infraction.

Both current and proposed § 2.3 require that applicants demonstrate compliance with the AWA and the regulations before any new license is issued. An applicant failing the first inspection may request up to two more inspections to demonstrate compliance. If the first inspection reveals noncompliant issues, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance. In the subsequent inspection, we verify that the applicant has taken any and all prescribed corrective measures. Under this approach, APHIS will not issue licenses to applicants with uncorrected deficiencies. Accordingly, we see no need to make changes in response to these commenters.

A commenter asked that the USDA put safeguards in place to ensure that it does not continue renewing licenses from facilities that it knows or should know are not in compliance with the AWA. Citing a lawsuit filed by the commenter's organization against the USDA, the commenter stated that it would be arbitrary and capricious for the agency to renew the license of a facility despite having ''smoking gun'' evidence of noncompliance at that facility.

We are making no changes in response to this comment because this rule removes the license renewal process from the regulations. Licensees will have to demonstrate compliance with the AWA before being issued a license.

A commenter stated that the proposal is deficient in that it still allows a licensee with a history of noncompliances to obtain a new license every 3 years as long as they pass the prelicense inspection by the third try. The commenter urged APHIS to amend its regulations to ensure that facilities with a history of substantial noncompliance, during either the prelicense or license periods, are not issued new licenses and are prohibited from re-applying for new licenses for a period of at least 3 years.

We are making no changes to the rule in response to this comment. Under this final rule, licenses are valid for 3 years and applicants must demonstrate compliance before obtaining a license. If a previous licensee with a history of repeat noncompliances wishes to obtain a new license, they would need to demonstrate compliance with the AWA regulations before we will issue a license to them. Separate from these requirements, APHIS also has the authority under the Act to deny and terminate licenses when a person is unfit to hold a license and to pursue civil penalties and other sanctions for violations after the person is given notice and the opportunity for a hearing.

Several commenters recommended that APHIS consider creating and using a sliding scale or a tiered system of noncompliances for greater fairness and accuracy when determining a facility's compliance with the regulations.

Licensed facilities are expected to comply with the AWA regulations and standards. USDA conducts regular inspections of licensed facilities under a risk-based inspection system that calls for frequent and in-depth inspections at facilities with a higher risk of animal welfare concerns, and fewer at those that are consistently in compliance. USDA currently identifies the seriousness of each noncompliance to determine the appropriate follow-up action. We are therefore making no changes in response to the recommendation.

One commenter expressed concern that forcing wildlife facilities with a history of compliance to apply for a license on equal footing with new applicants fails to recognize the experience of many wildlife professionals and achievements of superior facilities.

The purpose of this rule is to ensure that licensees are compliant with the AWA regulations. Although an applicant for a license renewal under the existing regulations must certify, to the best of his or her knowledge and belief, that he or she is in compliance with all regulations and standards, those regulations did not require the applicant to demonstrate compliance before APHIS renewed the license. Based on our knowledge and experience with administering and enforcing the AWA and regulations, we are concerned that even experienced licensees may sometimes struggle to achieve and maintain compliance after making noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we believe that revisions to the regulations set forth in this final rule are necessary to ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the AWA regulations.

Several commenters said that USDA is adding terminology to the regulations that is not defined in the Act and allows for broad interpretation by Agency employees. These terms include ''demonstrate'', ''unfit'', ''affirmatively'', and ''sustained compliance''. One commenter said that Agency inspectors interpret these terms unfairly to find instances of noncompliance to the detriment of the licensee, resulting in more violations and subsequently more elimination of licensees.

We disagree with the commenters. The terms ''demonstrate'' and ''unfit'' have been in the AWA regulations for decades, and the terms ''affirmatively'' and ''sustained compliance'' do not appear in the regulations; they are simply used as descriptive terms in this rulemaking to help the reader understand the Agency's intent.

''Demonstrated'' appears in the Act at 7 U.S.C. 2133.

Similarly, a commenter stated that inspections of zoos are not conducted to note those things that meet or exceed compliance. The commenter said that any decision about licensing status made about a facility based only on noncompliant issues is biased and does not consider the state of the zoo overall, which likely exceeds compliance.

We are making no changes in response to this comment. The AWA directs USDA to only issue licenses to dealers and exhibitors that have demonstrated compliance with the AWA regulations. Although certain aspects of a facility may meet or exceed those requirements, we are not authorized to issue licenses to dealers and exhibitors who are not in full compliance with the AWA regulations.

On the other hand, a commenter stated that APHIS should increase the frequency and rigor of inspections by examining the full operation for noncompliant issues and not limit inspections in any way. The commenter noted that in the Animal Care Inspection Guide, APHIS distinguishes between full or complete inspections on one hand, and focused or limited inspections on the other. The commenter added that APHIS should ensure that all prelicense inspections are full rather than focused to ensure that licenses are not issued to facilities that fail to meet AWA standards as required by 7 U.S.C. 2133.

We are making no changes to the rule in response to this comment. During prelicense inspections, USDA conducts full and complete inspections of applicant locations, animals, facilities, vehicles, and equipment to assess compliance with the AWA and regulations. This process is not changing under this final rule.

Several commenters supporting the proposal disagreed with APHIS' use of ''teachable moments,'' which, according to commenters, are minor noncompliances discovered during inspections that APHIS does not document on inspection reports. One such commenter said that USDA has implemented a variety of problematic practices, including not recording noncompliant items on any publicly available reports. Another commenter claimed that teachable moments were developed to protect regulated entities from public scrutiny for their noncompliance and for this reason licensing decisions are arbitrary and capricious if based on documented inspection reports only. The commenter concluded that the USDA should determine whether an applicant has demonstrated compliance based on the full administrative record at the time of the licensing application.

We are making no changes to the rule in response to these comments because what APHIS inspectors decide to document as noncompliances during an inspection is outside the scope of this rulemaking. Furthermore, APHIS inspectors do not use teachable moments for prelicense inspections or new site approval inspections. As noted above, USDA conducts full inspections of applicant locations, animals, facilities, records, vehicles, and equipment to assess compliance and applicants must demonstrate compliance with the Act and regulations before a license will be issued.

A few commenters stated that prelicensing inspections should be conducted without prior notification of the facility to be inspected. One such commenter expressed concern that announced inspections may result in the inspector having higher expectations for a facility and not properly exercising inspector discretion as referenced in the inspection guide. Another commenter noted that unannounced inspections are common in other industries such as restaurants.

We proposed no changes to the requirement that prelicense inspections must be scheduled during business hours and at other times mutually agreeable to the applicant and APHIS. In addition to determining if an applicant is in compliance with the AWA and regulations, we wish to note that interaction with APHIS staff during the prelicense inspection is the best time for applicants to learn more about complying with the regulations. Also, scheduled prelicense inspections allow applicants to prepare files for review and make personnel available for prelicense inspections.

Several commenters opposed or questioned the need for a prelicense compliance inspection. One commenter stated that APHIS already ensures compliance through random inspections as often as every 3 months for some facilities, once a year for others, and every 2 to 3 years for others. The commenter added that for the small number of facilities that are not in compliance, APHIS already has the authority to secure compliance through a wide range of enforcement tools. The commenter stated that conducting prelicense inspections on top of its existing random inspections for its thousands of licensees is a waste of limited resources and will strain the Agency's inspection capacity. One commenter noted that if he is found to be in non-compliance, he is typically provided a certain number of days to correct the problem, after which his premises are re-inspected to confirm that the problem has been resolved. The commenter asked why these reinspections do not qualify as a demonstration of compliance.

Other comments opposed the prelicense compliance inspection on grounds that it is unfair to facilities with good histories of compliance. A commenter suggested that businesses with a continuous record of compliance should receive fewer and fewer inspections over time. Other commenters cited a 2018 Animal Care Impact Report showing that high numbers of licensed sites have remained in compliance and that there is no significant burden posed by renewing licenses annually. Another commenter representing a marine mammal park stated that APHIS has reported that 91 percent of the facilities accredited by the Alliance of Marine Mammal Parks and Aquariums were in compliance with the AWA in 2018. Another commenter noted that compliance is checked through random inspections and that the current methods are successful at ensuring a zoological facility's compliance with the AWA standards.

As we have noted previously, the existing regulations did not require an applicant for a license renewal to demonstrate compliance before renewing his or her license. The existing regulations also did not require a licensee to demonstrate compliance when making any changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. However, based on our experience with administering and enforcing the Act and regulations, we are concerned that licensees may struggle to achieve and maintain compliance after making such noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years may have difficulties with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we consider prelicense compliance inspections important to ensuring animal welfare under the AWA and regulations and are adopting the changes as we proposed them.

A commenter recommended that a neutral review team, consisting of local or State veterinarians, should be included as part of the inspection

process and review the conditions of both the animals and animal housing.

We are making no changes to the rule in response to this comment. The AWA already authorizes the USDA to cooperate with officials in various States and subdivisions as necessary.[9]

Reinspections

In proposed § 2.3(b), we retained the existing provision that an applicant who fails the first inspection may request up to two reinspections to demonstrate compliance, but shortened the timeframe in which the applicant must request the second inspection, and if applicable, the third inspection, to 60 days following the first inspection, instead of the existing 90-day deadline.

Many commenters stated that license applicants should receive two, not three, chances to demonstrate compliance with the law during prelicense inspections. Several commenters went further, stating that two opportunities is excessive with respect to existing license holders who should have no uncertainties about what the law requires. Another commenter stated that the public comments on the ANPR and the proposed rule indicate that licensees are taking advantage of the Agency's lenience, using both prelicense and routine inspections as a means to learn the animal husbandry standards prescribed by the AWA gradually, at the cost of both the animals and taxpayers. The commenter recommended that we provide only two prelicense inspection opportunities, stating that this would lessen the time and cost burdens on the Agency and compel licensees to be more responsive to addressing documented noncompliances. Some commenters asked us to not provide any second chances to persons whose facilities are not in compliance at the initial inspection.

Our review of Animal Care records indicates that few applicants actually require three prelicensing inspections to demonstrate compliance, but even those applicants that require three prelicensing inspections usually complete the process within 90 days. We encourage applicants to establish contact and dialogue with their inspector prior to requesting a prelicensing inspection to make sure the facility is in compliance. The AWA regulations have long provided for three prelicense inspections, and it will not increase our regulatory burden to maintain the availability of these inspections. Therefore, we are making no changes based on these comments.

Another commenter expressed concern that there is no deadline for APHIS to perform its first prelicense inspection once it receives an application for a new license. The commenter noted that this lag could cause the license application process to stretch out indefinitely even if the facility cannot demonstrate compliance with the AWA.

Applicants for licenses have a strong incentive to complete the prelicense inspection process quickly so they can obtain a license and engage in regulated activity. Applicants who fail their first prelicense inspection must request their second inspection, and if applicable, the third inspection, within 60 days following the first inspection. Based on our decades of experience in conducting prelicensing inspections, we do not anticipate the kind of delays envisioned by the commenter.

To ensure that applicants can take full advantage of the three prelicensing inspections to demonstrate compliance with the regulations and standards, we stated in the preamble of the proposed rule that we would encourage current licensees to apply 4 months prior to the expiration of their license.

A commenter requested that we require, instead of ''encourage,'' reapplication filing 4 months prior to current license expiration to allow for a period of up to three inspections within 60 days and judicial appeal processing of denials.

We are making no changes to the rule in response to this comment. By encouraging rather than requiring reapplication 4 months prior to license expiration, we are providing flexibility to licensees without changing the requirements for the inspection and appeal processes.

We proposed in § 2.3(c) that should applicants fail to demonstrate compliance during the third prelicense inspection, they can appeal the findings of such inspection to the Deputy Administrator within 7 days of receiving the report. Should APHIS reject an appeal, we would notify the applicant of the Agency's denial of the license application. Within 30 days of receiving such notice, an applicant may request a hearing to contest the Agency's denial of the license application. (Comments on hearings are addressed under § 2.11 below.)

Citing animal welfare concerns, a substantial number of commenters disagreed with the provision to allow applicants and license holders to request a hearing if APHIS rejects an appeal for the third failed inspection.

We are making no changes based on the comments we received on this topic. As we noted in the proposed rule, we included this provision to afford due process protections for current licensees.

A commenter recommended that the last sentence of § 2.3(d) be changed to state, ''No license will be issued until an affirmative demonstration of compliance has been documented that the applicant's animals, premises, facilities, vehicles, equipment, locations, and records are in compliance with all applicable requirements in the Act and the regulations and standards in this subchapter.''

We are making no changes to the rule in response to this comment. The regulations already require that applicants affirmatively demonstrate compliance before a license will be issued by APHIS.

Forfeiture of Application Fee

We proposed in § 2.3(d) that if an applicant fails inspection or fails to request reinspections within the 60-day period noted in § 2.3(b), or if an applicant fails to submit an appeal of the third inspection report, the applicant will forfeit the application fee and cannot reapply for a license for 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection.

One commenter noted that this section indicates the failing applicant will forfeit the application fee, but the rest of the document indicates that there will no longer be an application fee, only a license fee. The commenter asked us to clarify the application process with regard to fees, particularly whether the applicant pays the license fee at the time of application.

In the proposed rule, we referred to forfeiture of the application fee for failure to pass the prelicensing inspection or to request a reinspection within 60 days. However, as we had removed the application fee requirement from § 2.1(c), our reference to it was an oversight. We intended to refer to forfeiture of the license fee and will revise the section accordingly. The applicant pays the license fee at the time of application but forfeits the license fee if he or she fails the inspections, fails to request reinspections within the 60-day period, or fails to submit a timely appeal of the third prelicense inspection report.

One commenter noted that proposed § 2.3(d) does not require applicants to complete the inspection appeal process before reapplying for a license, nor does it require that they request all three prelicense inspections. On the other hand, the commenter noted that under proposed § 2.11(b), applicants who have

[9] 7 U.S.C. 2145(b).

pursued all three prelicense inspections and appeals but are still denied a license may not be granted a license within 1 year of their denial. The commenter stated that if an applicant intentionally fails to request additional prelicense inspections and an appeal, that applicant may reapply for a license 6 months sooner than a person who after several efforts to remedy his or her noncompliances was denied. The commenter said that this discrepancy would encourage persons with significant noncompliances to forfeit the license fee and reapply 6 months later, instead of going through the appeals process and working with APHIS to address their violations. For this reason, the commenter recommended that APHIS change the waiting period for reapplying for a license in § 2.3(d) from 6 months to 1 year from the date of the failed third inspection or expiration of the time to request a third inspection.

We appreciate the commenter's recommendation but are making no changes to the rule in response. Every applicant reapplying for a license must demonstrate compliance with the Act and regulations before a license is issued.

Duration and Expiration of License

In the ANPR, we invited and received a range of responses on whether we should propose to establish a firm expiration date for licenses (3 years, 5 years) and if so, what should that date be and why. We noted in the proposed rule that a large number of commenters agreed with the example given in the ANPR to have licenses expire with the expectation that the issuance of a new license would be contingent upon affirmative demonstrations of compliance with AWA regulations.

In the proposed rule, we included in § 2.5(a) the provision that licenses will be valid and effective for a period of 3 years unless certain circumstances arise. Consistent with the current regulations, a license would not be valid if it has been revoked or suspended, or if the license is voluntarily terminated upon request of the licensee.

A large number of commenters agreed with our proposed action to eliminate annual license renewals and to require persons to apply for a new license every 3 years. However, many other commenters with animal welfare concerns considered a 3-year license term to be too long, particularly for dog breeders, arguing that 1 or 2 years would be more appropriate. One commenter stated that a longer expiration window only works to assist the chronically noncompliant facilities in escaping consequences for their violations. Several commenters stated that we should inspect premises housing dangerous and exotic animals annually to verify compliance, and that once every 3 years is insufficient for these premises. Another commenter opposing a licensing period of 3 years stated that such an approach would allow a facility to fall out of compliance between prelicense inspections, resulting in dangerous conditions for all animals at the facility while the licensee continues to have applications approved based on a show of compliance every 3 years. The commenter asked APHIS to amend its regulations to ensure that facilities with a history of substantial noncompliance, during either the prelicense or license periods, are not issued new licenses and are prohibited from re-applying for new licenses for a period of at least 3 years.

We are making no changes to the rule in response to these comments. In addition to requiring that applicants demonstrate compliance before obtaining a 3-year license, APHIS routinely conducts unannounced inspections of licensees, as well as complaint-based inspections and inspections in which frequency is based on determination of risk. If an APHIS inspector identifies noncompliances during these inspections, we may take a number of actions in response to promote compliance, including offering enhanced compliance support, issuing official warnings and other regulatory correspondence, and pursuing penalties and other sanctions after notice and the opportunity for a hearing.

Many commenters opposed to the proposal stated that APHIS lacks the authority under the AWA to set an expiration date on a license and that the proposed rule is only an attempt to bring about license removals. A commenter asked how APHIS can justify making someone start over in an application process for a license for the same facility and animals, even though the facility is in compliance and has been for several years. Similarly, other commenters stated that placing a permanent expiration date on current licenses, then requiring licensees to go through the entire initial licensing procedure upon expiration would be time-consuming and duplicative. Several of these commenters noted that there are current and successful license renewal processes already in place.

As we noted in the proposed rule, all licenses currently have expiration dates—they expire 1 year after issuance, and may be renewed annually. This rule extends the period of licensure to 3 years but requires a license application and demonstration of compliance prior to the issuance of a new license. We also noted that the proposed rule is consistent with section 2133 of the Act, which prohibits the issuance of a license until the dealer or exhibitor has demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to section 2143 of the Act. Section 2133 of the Act also gives the Secretary the authority to issue licenses to dealers and exhibitors upon application in such form and manner as he may prescribe, which includes the authority to set expiration dates for those licenses.

Some commenters opposing the rule stated that setting a permanent expiration date on a license and requiring exhibitors to reapply 4 months in advance would cause serious hardships for traveling exhibitors. One commenter said that exhibitors would be forced to be at their home location in order to have a prelicense inspection, and that depending upon their renewal date would incur costly travel expenses to return home or to not book exhibits for up to 4 months to accommodate this process.

We are not making any changes to the rule in response to this comment. Although we encourage applicants to take full advantage of the prelicense inspection process by applying 4 months prior to the expiration date of their license, it is not required, nor do we anticipate that most applicants will need the full time to complete the process. A review of Animal Care records indicates that few applicants require three prelicensing inspections to complete the process, but even those applicants that require three prelicensing inspections usually complete the process within 90 days. Finally, we also note that prelicense inspections are scheduled at times that are mutually agreeable to applicants and APHIS.

Some commenters representing zoos and aquariums stated that the proposal to require exhibitors to apply for a new license every 3 years would drastically increase litigation costs borne by these businesses. One such commenter said that by proposing to switch from a system of annual renewals to a new license requirement, APHIS is enabling litigation from activist groups that disagree with the conclusions of APHIS inspectors regarding prelicense inspections and AWA compliance, resulting in substantial legal costs for both APHIS and exhibitors. The commenter added that APHIS' rulemaking proposal is unnecessary because, as the Federal courts have held, APHIS already has ample authority under the AWA to bring

enforcement actions against licensees whose compliance performance slips.

As the commenter notes, APHIS has authority under the AWA to enforce the regulations on licensees in noncompliance and will do so as warranted. However, we disagree with the commenter and consider the proposed changes to licensing to be necessary because the existing regulations do not require an applicant for a license renewal to demonstrate compliance before renewing his or her license, nor do they require a licensee to demonstrate compliance when making any changes to his or her animals. APHIS has observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. We determined that in order to reduce risks to animal welfare and the public, licensees should be required to demonstrate compliance and obtain a new license to ensure that aging facilities remain in compliance. For applicants who have a history of compliance, they should be able to confidently demonstrate compliance during the initial prelicense inspection, generating a record that will be defensible in any subsequent litigation. In addition, APHIS already conducts prelicensing inspections for new applicants and risk-based inspections for current licensees, and neither our process for evaluating compliance nor our goal of ensuring compliance with the regulations has changed as a result of the proposal. Substantial changes in litigation rates or outcomes are not anticipated. Therefore, we are making no changes to the rule in response to these comments and are adopting the changes as proposed.

Some commenters representing marine mammal exhibition facilities stated that such facilities are permanently situated and require an extensive financial commitment to develop and maintain, and that they are inspected and approved by APHIS prior to animals ever residing in them. One commenter noted that the consequences of a denial of a new license for an existing licensee over what may be a minor noncompliant item could be devastating and far-reaching. The commenters asked that we reconsider our proposed requirement for new licenses.

We are making no changes in response to this comment. As noted above, we encourage applicants to initiate the application process 4 months prior to the expiration date of their license to allow them the opportunity to take full advantage of the prelicense inspection process. If a noncompliance—especially a minor noncompliance, as raised by the commenters—is discovered during the initial prelicense inspection, the applicant will have two more opportunities to correct the deficiency, demonstrate compliance, and obtain a license, thus ensuring continuity of their business operations.

A commenter asked whether the proposed changes would require new licenses more often as a facility ages.

No, the period of licensure will be 3 years for all licensees in compliance, regardless of the age of the facility.

Proposed § 2.5(a) states that licenses will be valid and effective for 3 years, with several exceptions. One exception, in § 2.5(a)(1), is if the license has been ''revoked or suspended pursuant to section 19 of the Act.'' A commenter suggested that we add ''or these regulations'' to the end of this exception.

We are making no changes to the rule in response to this comment. The provisions of the rule regarding license suspensions and revocations are authorized by section 19 of the Act and its implementing regulations.

In the proposed rule, we removed and reserved § 2.6, which contained license provisions. We received a comment about the implications of removing these provisions from the regulations. The commenter noted that § 2.6 includes the statement that people meeting the requirements for more than one class of license are licensed for their predominant business. The removed section also includes a requirement for both lessors and lessees to be licensed. The commenter stated that if this section is deleted, that information needs to be addressed elsewhere in the regulations.

We are not making any changes to the rule in response to this comment. The definitions *Class ''A'' licensee (breeder), Class ''B'' licensee,* and *Class ''C'' licensee (exhibitor)* specify which category of license a person should apply for based on their business activities. Lessors and lessees that meet the definition of *dealer,* and do not fall under one of the exemptions from the licensing requirements, continue to require a license under the AWA regulations.

Temporary Licenses

We received numerous comments in both the ANPR and the proposed rule on the issuance of temporary licenses for those licensees who may suffer a lapse in licensure during the relicensing process. We proposed in § 2.5(a)(3)(i) to include flexibilities for issuing temporary licenses to licensees with histories of compliance to ensure they have ample time to apply for licenses and demonstrate compliance prior to the expiration of an existing license.

Substantial numbers of commenters opposed our proposal to grant temporary licenses on grounds that they give licensees in noncompliance additional time to operate. One such commenter stated that the Act is clear that USDA cannot provide for temporary licenses unless it has a process through which the facility demonstrates compliance with the AWA. The commenter stated that the proposed rule presumably tries to account for this problem by authorizing temporary licenses for facilities showing a ''history of compliance'' for the prior licensing period. However, the commenter said that this ''history of compliance'' standard is inadequate because facilities are not required to be inspected every year, and noted that the most recent inspection report may be over 2 years old by the time the licensee applies for a new license. Similarly, another commenter stated that allowing an applicant to remain in business based solely on prior inspection reports is an abuse of discretion.

We disagree with the commenters and note that we base determinations of compliance not only on the history of compliance but on actual inspections. We employ a risk-based inspection system that calls for more frequent inspections at facilities with a higher risk of animal welfare concerns and fewer inspections at those that consistently demonstrate compliance.

Several commenters opposed to temporary licensing said that USDA lacks statutory authority to issue temporary licenses.

The AWA authorizes USDA to issue licenses to dealers and exhibitors upon application in such form and manner as he may prescribe and upon payment of applicable fees, provided that no such license shall be issued until the dealer or exhibitor has demonstrated compliance with the AWA regulations. Under this rule, the Deputy Administrator of Animal Care may issue a temporary license that automatically expires after 120 days to an applicant whose immediately preceding 3-year license has expired if the applicant submits the appropriate application form before the expiration date of the preceding license and has had a history of compliance with the AWA and regulations during the preceding period of licensure. These requirements are authorized by the AWA and fall within USDA's authority to issue licenses.

Another commenter expressed concern that a temporary license would be perceived as an indicator that the facility under temporary licensure is somehow inferior with respect to animal welfare, and that this could have negative consequences from a business perspective.

Only licensees with extended histories of compliance with the AWA are eligible for a temporary license. APHIS makes no distinction between a 3-year license certificate number and a temporary license certificate number.

Several licensees who commented on the rule expressed concern that their license could expire before APHIS is able to inspect their facility to verify compliance for a new license. One such commenter stated that it is unreasonable to believe that APHIS will issue every license prior to expiration and asked what would happen in such a case.

We have considered the implications of issuing new licenses to licensees as their licenses expire and how to best address the concerns expressed by commenters. Accordingly, we have adjusted the effective date of the rule for the licensing provisions and will conduct a gradual, phased-in implementation based on license expiration dates for current licensees. We believe this approach will ensure that adequate resources are continuously available to conduct prelicense and routine inspections under the AWA. In the event that the licensee submits a timely application and has no noncompliances documented in any inspection report during the preceding period of licensure, and APHIS does not conduct the prelicense inspection before a lapse in licensure, we have the ability to issue a temporary license to that applicant.

One commenter asked if breeders with lapsed licenses would be prohibited from selling puppies until the inspection for a new license is completed, noting that such a lapse in operations could result in them having puppies that are too old to sell to brokers and pet stores.

A person without a valid license is prohibited from selling puppies or engaging in any other activities regulated under the Act until they obtain a valid license. As mentioned above, persons with an existing license are encouraged to apply for a new license up to 4 months prior to the expiration of their license so they can take full advantage of the prelicense inspection process. The Deputy Administrator would issue a temporary license as long as the applicant meets the criteria of submitting the application for a new license before the preceding license expires and there are no noncompliances cited during the period of the preceding licensure. A temporary license, valid for up to 120 days, would be issued.

A commenter suggested that APHIS consider multiple preceding periods of licensure for purposes of granting temporary conditional licenses in order to strengthen the possibility that the Agency is reviewing an accurate picture of a facility's compliance.

We are making no changes to the rule in response to this comment. We believe that a licensee that maintains compliance with the regulations for a 3-year period of licensure should be eligible for a temporary license in the event of an inadvertent lapse in licensure. We note that the temporary licenses are of limited duration and the person would need to demonstrate compliance before obtaining a new 3-year license.

One commenter stated that for licensees with a history of compliance there is no need for developing new regulations for a temporary license process when the current regulation for renewal could be amended to accommodate licensees with a history of compliance.

We are making no changes in response to the rule in response to this comment. As discussed above, the existing regulations did not require an applicant for a license renewal to demonstrate compliance before renewing his or her license. The existing regulations also did not require a licensee to demonstrate compliance when the licensee makes any subsequent changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, amending the current renewal process to accommodate certain licensees would not achieve the purpose of demonstrating compliance as a condition of licensure.

One commenter suggested that a license extension could be allowed in the case of a natural disaster, or when a licensee has submitted the required paperwork at least 3 months in advance of expiration and whose past inspections documented no noncompliances.

We agree that a temporary license may be issued to an applicant whose immediately preceding 3-year license has expired if the person submitted the application form before the expiration date of a preceding license and the applicant had no noncompliance with the AWA and regulations documented in an inspection report during the preceding period of licensure. We do not limit the causes for the inadvertent lapse, and one such cause could be a natural disaster.

A commenter asked whether ''an'' should actually be ''any'' in § 2.5(a)(3)(i)(B). The commenter pointed out that the way the proposed provision is worded, if an applicant had one inspection report with no instances of noncompliance, he or she would qualify, even if he or she had two others with critical noncompliances.

We agree with this comment and have corrected the wording accordingly.

The same commenter observed that in proposed § 2.5(a)(4), there ''will not be a refund of the license fee if a license is denied, terminated, suspended, or revoked prior to its expiration date,'' but noted that this language refers to a license fee, not an application fee. The commenter suggested adding ''or'' after ''denied'' in that sentence, explaining that a license cannot be denied prior to its expiration date because there is no expiration date (*i.e.,* no license to expire) if the license is denied.

We agree that adding ''or'' after ''denied'' will clarify the sentence and have made that change in this final rule. As noted above, this final rule removes the application fee, so we are making no other changes in response to this comment.

Suspensions and Revocations

In the ANPR, we asked for comment on whether persons whose license has been suspended or revoked should be prohibited from engaging in other activities involving animals regulated under the AWA, such as working for other AWA-regulated entities or using other individual names or business entities to apply for a license. We also asked for comment on whether such prohibitions should extend to officers, agents, and employees of persons with suspended or revoked licenses. A majority of persons commenting on the ANPR expressed strong support for the suggested regulatory provision for license applicants to disclose incidences of violations and convictions involving animal-related laws. Persons commenting on the proposed rule also supported disclosure of violations and ''no contest'' pleas as a requirement.

We proposed in § 2.9 that any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in

the activity upon which the suspension or revocation was based will not be licensed, or registered as a carrier, intermediate, handler, exhibitor, or research facility within the period during which the order of suspension or revocation is in effect.

A commenter stated that additional language is required to address the cited licensees' family members who may not fall under the legal definition of employee, agent, or officer.

We are making no changes to the rule in response to this comment. Family members who are authorized to act on behalf of the licensee and who are responsible for or participated in the activity upon which the suspension or revocation was based would fall within the meaning of an ''agent'' and be subject to this provision.

A commenter representing an animal welfare advocacy organization suggested that the Welfare of Our Friends Act, or WOOF Act, which would amend the AWA to prohibit the issuance of licenses to immediate family members and business partners of animal dealers who had their licenses revoked, provides clear and unambiguous language that should be used in this proposed provision.

The WOOF Act is proposed legislation and has not been enacted. The authority for this final rule is the AWA. We note that § 2.9 already covers immediate family members and business partners of animal dealers who may have been officers, agents, or employees of the licensee. If these persons have not participated in the activity upon which the order of revocation or suspension was based, APHIS has no grounds to deny them a license. Therefore, we believe that the proposed rule language is sufficient and are making no changes to the rule in response to this comment.

One commenter supported this provision but recommended carving out exceptions for those with specialized skills but may not have been directly involved in prior violations of the AWA, when their talents are needed due to lack of other qualified individuals.

We are making no changes to the rule in response to this comment. If a person was not responsible for or did not participate in the activity upon which the suspension or revocation was based, this provision would not apply to them.

A commenter agreed with the proposed provision in § 2.9 to deny licenses to officers, agents, and employees of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the suspension or revocation was based. The commenter said that APHIS has the authority to interpret what constitutes ''participation,'' such that if an officer, agent, or employee somehow promoted, aided in, or acted in furtherance of the adverse activity, without actually participating in the violation, APHIS may still prevent that person from getting their own license when appropriate. To underscore this point, the commenter encouraged APHIS to strengthen § 2.9 by assessing each participant's non-eligible period on a case-by-case basis and based on their personal history, with the possibility of that non-eligible period for that person extending past the original licensee's period of suspension or revocation.

We are making no changes to the rule in response to the comment. Periods of suspension and revocation are assessed by USDA administrative law judges after notice and opportunity for a hearing, or through a settlement agreement. We do note that revocation is permanent, so the period of revocation is a person's lifetime. Accordingly, there is no longer period of time that could be assessed for the revocation of a license. In addition, APHIS is authorized to deny a new license when an applicant has been determined to be unfit by the Secretary as stated in § 2.11(a)(5) of the amended regulations.

A commenter stated that APHIS must ensure that existing licensees cannot add, as an additional location on that license, a facility or site associated with a revoked or suspended license, and that a licensee who seeks to do so should not be found eligible for a new license.

We are making no changes to the rule in response to this comment. As noted above, licenses are issued to specific persons, and are issued for specific activities, animals, and approved sites. Under proposed § 2.1(b)(1), if an existing licensee in good standing seeks to acquire an additional location, he or she would first need to notify APHIS-Animal Care no fewer than 90 days before the change and obtain a new license. We note that seeking to add a location associated with a license revocation or suspension is not in itself grounds for denying a license to a person seeking such a location, but rather depends on the specific terms of a suspension or revocation associated with a location. These terms are contained in orders issued by administrative law judges or settlement agreements entered into by APHIS and involved persons.

A commenter opposing the rule stated that this provision violates the Equal Employment Opportunity Act, as the government cannot prevent employers from hiring who they wish to employ.

We are making no changes to the rule in response to this comment. The Equal Employment Opportunity Act is the act which gives the Equal Employment Opportunity Commission authority to sue in Federal courts when it finds reasonable cause to believe that there has been employment discrimination based on race, color, religion, sex, or national origin. This rule in no way discriminates based on these factors.

Licensees Whose Licenses Have Been Suspended or Revoked

In the proposed rule, we revised § 2.10 to strengthen prohibitions against licensees whose licenses have been suspended or revoked from engaging in AWA-regulated activities.

Several commenters asked that APHIS prevent persons with histories of noncompliance from playing a ''shell game'' of applying for new licenses under different names or businesses.

We are making no changes to the rule in response to this comment. Licenses are issued to specific persons for specific premises. If a person (for example, a corporation) dissolves and forms a new legal entity, the person must apply for a new license. We believe this commenter is concerned about a licensee with a suspended or revoked license applying for a new license under a new name in order to work around sanctions and resume operations. However, a person may be held liable for violations and subject to penalties and other sanctions, even if they no longer hold a license, or hold a license in a different name.

Section 2.10(c) states that persons with suspended or revoked licenses shall not buy, sell, transport, exhibit, or deliver for transportation, any animals during the period of suspension or revocation. A few commenters recommended that we add ''maintain'' to the list of prohibited actions.

The maintenance of animals on the property of a licensee whose license is suspended or revoked depends on the specific terms of a suspension or revocation. These terms are contained in orders issued by administrative law judges or settlement agreements entered into by APHIS and involved persons. We are therefore making no changes to the rule in response to this comment.

Denial of License Application

In the proposed rule, we discussed responses to the ANPR from many commenters expressing support for streamlining procedures for denying, terminating, and summarily suspending a license. In proposed § 2.11(a), we

added several grounds for denying a license to an applicant, including failure to comply with the Act or regulations, license suspension or revocation, a no contest plea or violation of laws or regulations pertaining to animal cruelty, or false statements to USDA pertaining to animal welfare. A license may also be denied if the Administrator determines that circumstances render the applicant unfit to be licensed or if issuance of a license would be contrary to the purposes of the AWA.

A commenter stated he does not support streamlining the procedures for denying a license application, terminating a license, and summarily suspending a license. The commenter asked if there is an official definition for ''streamlining'' and whether it actually involves revoking a license without due process.

The AWA and this final rule provide ample due process to persons whose license has been denied, terminated, summarily suspended, and revoked. For example, a person whose license has been revoked was provided with the opportunity for a hearing. Therefore, we are making no changes to the rule in response to this comment.

A commenter proposed that APHIS should automatically deny licenses to applicants who have three or more direct or critical violations during the prior 3-year period, or have five or more repeat violations during the prior 3-year period, as defined in the Animal Welfare Inspection Guide. The commenter stated that whatever standard APHIS adopts, it should result in automatic denial of license applications from facilities that have accumulated dozens of repeat violations that affect animal welfare over the last 3-year period. The commenter additionally suggested that if a State license was denied or rescinded then the USDA license should be denied or rescinded as well.

We believe the commenter is referring to noncompliances rather than violations, as noncompliances are based on the observations and professional judgments of inspectors. Section 2.11(a)(7) does provide grounds for denying a license if an applicant is determined to be unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. However, we realize that not every noncompliance occurring during a previous period of licensure makes a person unfit to hold a license. For this reason, we are making no changes to the rule based on these comments.

In proposed § 2.11(a)(5), we conformed with the proposed 3-year period of licensure the length of time during which an applicant shall be denied a license due to a *nolo contendere* (no contest) plea or finding of a violation of any Federal, State, or local laws or regulations pertaining to animal cruelty. We also continued to retain the proviso that a license may also be denied for such violations after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed.

A commenter said that the proposal does not go far enough to prevent convicted animal abusers from continuing to abuse animals and recommended that we deny an application if the applicant or licensee has been convicted of an animal welfare related law during the previous 10 years.

We are making no changes to the rule in response to this comment because proposed § 2.11(a)(5) already provides APHIS with the authority to deny a license if the applicant has been found to have violated animal cruelty laws within 3 years of application, as well as after 3 years if the Administrator determines the circumstances render the applicant unfit to be licensed.

Appeal of License Denial

We proposed in § 2.11(b) to allow an applicant without a license whose initial application has been denied to request a hearing for the purpose of showing why the application for license should not be denied. Should the denial be upheld, we proposed that the applicant may again apply for a license 1 year from the date of the final order denying the application. We also proposed allowing an applicant who holds a valid license at the time he or she submitted the application that has been denied, and who submitted a timely appeal of the inspection findings from the third prelicense inspection as indicated in § 2.3, to request an expedited hearing before a USDA Administrative Law Judge, with the license remaining in effect until an initial decision is rendered. We noted in the proposal that this provision is intended to afford adequate due process protections to current license holders, while maintaining proper regard for the policy of Congress to ensure the humane care and treatment of animals covered under the Act.

A commenter noted that the USDA's administrative law judge system is overburdened and can take years to resolve AWA matters, and suggested that the USDA not provide hearings for the denial of license applications but adopt informal hearing standards similar to those for license suspension and revocation. The commenter added that informal hearings would further the purposes of the AWA and reduce regulatory burdens. Other commenters stated that the provision to allow licensees whose applications have been denied to seek a hearing will only prolong animal suffering and delay justice, and added that the law does not require that they receive a hearing. One such commenter stated that the AWA does not call for a hearing ''on the record'' and contains no other language that would trigger the Administrative Procedure Act's formal adjudication requirements. Other commenters stated that licensees already have many opportunities to challenge and correct findings of noncompliance without having to resort to a hearing.

We are making no changes to the rule in response to these comments. As noted above, we believe the provisions will provide due process protections, and are actually similar to those for license termination, suspension, and revocation, which also require notice and the opportunity for a hearing before a license can be terminated, suspended, or revoked.

A commenter asked APHIS to revise the language in 9 CFR part 4, ''Rules of Practice Governing Proceedings Under the Animal Welfare Act,'' to reflect the full authority given to the Secretary by the AWA and develop and implement a process for promptly providing a notice and opportunity for a hearing so additional suspensions can be instituted more quickly. The commenter noted that while the Act provides the Secretary with the authority to temporarily suspend a license for up to 21 days and after notice and opportunity for a hearing to suspend the license for an additional period, the current language in part 4, subpart B, of the regulations only refers to a temporary 21-day suspension and not to the possibility of extending that suspension. The commenter also asked us to review our stipulation process under ''Subpart B—Supplemental Rules of Practice,'' to determine whether agreed upon license forfeitures would help ensure compliance and animal welfare.

We appreciate the commenter's request but are making no changes in response. We proposed no changes to the regulations in part 4 or to the USDA's Rules of Practice governing administrative enforcement proceedings. Therefore, this comment falls outside the scope of this rulemaking.

A commenter stated that the last line of proposed § 2.1(b)(2)(ii), which states that ''a licensee must obtain a new

license before using any animal beyond those animals authorized under the existing license,'' needs to be clarified.

We agree with the commenter that this provision could more clearly communicate our intent, which is that licensees who wish to use animals not authorized on their license will need to obtain a new license before additional types or numbers of animals may be used for regulated purposes. Accordingly, we are amending the last line of § 2.1(b)(2)(ii) to read ''A licensee must obtain a new license before using any animal beyond those types or numbers of animals authorized under the existing license.'' Similarly, we are amending proposed § 2.1(b)(1) to clarify that licenses are issued for specific types and numbers of animals.

One commenter stated that the right of appeal for persons in noncompliance with the AWA regulations is based on an erroneous interpretation of the law and the Constitution. The commenter questioned our statement in the proposed rule that allowing licensees whose renewal applications are denied for failure to demonstrate compliance to keep their licenses pending a formal hearing affords ''constitutionally mandated due process protections.''

As we noted in the proposed rule, the right to a hearing is intended to afford due process protections to current license holders, while ensuring the humane care and treatment of covered animals in accordance with the AWA. By providing licensees with the opportunity to appeal a noncompliance documented on an inspection report, we are able to consider facts that may not have been available to the inspector at the time of inspection and therefore to ensure that the USDA has all available information.

Several commenters asked that we revoke the license of a person during any ongoing appeals process. One such commenter stated that animals should not be permitted to remain with their custodian when that person has violated health and care requirements, and should be sent to a sanctuary instead.

We are making no changes to the rule in response to this comment, as a license can only be revoked after notice and opportunity for a hearing. A license remains in effect until its expiration date or a final decision is rendered by an administrative law judge. We do note that USDA has separate authority to confiscate animals that are in a state of suffering, after notifying the licensee and providing him or her the opportunity to correct the condition.

Termination of License

Proposed § 2.12 states that, after a hearing, a license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11. We proposed to remove a reference to the license renewal process in the current regulations because the renewal option no longer exists.

A commenter expressed concern that under proposed § 2.12, a teachable moment reported as an instance of noncompliance could result in license termination. The commenter added that although there are judicial safeguards in the process, terminating a license under those circumstances would be a gross miscarriage of justice. Instead, the commenter recommended amending §§ 2.1(d) and 2.12 to specifically exempt minor instances of noncompliance as the basis of a license revocation unless they are repeated.

Section 2.11(a)(7) provides grounds for denying a license if an applicant is determined to be unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. However, as the commenter notes, APHIS inspectors do engage in teachable moments with licensees, in which inspectors point out minor noncompliances and explain how they can be corrected. Current and proposed procedures do not require termination of a license for these minor noncompliances. For this reason, we see no need to change the regulations as requested by the commenter.

Appeal of Inspection Report

In proposed § 2.13, we noted that any licensee or registrant may appeal inspection findings in an inspection report to the Deputy Administrator within 21 days of the date the licensee or registrant received the inspection report.

One commenter, while not opposed to this provision, suggested that when a licensee's inspection appeal is successful, the public has the right to know the nature of the disputed violation and that an appeal was undertaken. Accordingly, the commenter stated that APHIS should include assurances that we will publicly disclose that the findings in an inspection report have been appealed. Additionally, the commenter stated that all inspection reports that are corrected based on appeals must be properly labeled as such and shared with the public.

We are making no changes to the rule in response to this comment because it falls outside the scope of this rulemaking. Separate Federal laws govern the release of information and documents to the public that are controlled by the U.S. Government, such as the Freedom of Information Act (FOIA).

Another commenter observed that § 2.13 provides a right to a licensee or applicant to appeal the individual findings within an inspection report distinct from an applicant's ability to appeal a denial of their license. The commenter expressed concern that some applicants may perceive these rights not separately but as an additional step within the appeals process, allowing them to appeal inspection findings and delay the license denial process. The commenter suggested that APHIS add language to § 2.13 stating that, ''Under no circumstances shall this section be interpreted as tolling the period of time by which a licensee or license applicant must seek an appeal or request further prelicense inspections.''

We are making no changes to the rule in response to this comment. The procedures for appealing an inspection report and requesting a hearing in connection with the denial of a license are distinctly separate processes.

Publication of Licensee Information

We proposed to amend § 2.38, ''Miscellaneous,'' by eliminating the statement in paragraph (c) that we will publish lists of research facilities in the **Federal Register** and replacing it with the statement that we will publish such lists on the APHIS website instead.

A few commenters agreed with our proposal to publish the lists of research facilities online but suggested that APHIS emphasize in the regulations that the lists will be available on its website.

We believe the rule is sufficiently clear that the lists will be published on APHIS' website and that copies of the lists can also be obtained upon request from the Deputy Administrator. Therefore, we are making no changes to the rule in response to this comment.

One commenter disagreed with our proposal to remove the statement that APHIS will publish lists of research facilities in the **Federal Register** and stated that APHIS is making it difficult to locate the lists.

It is not APHIS' intent to make the lists difficult to locate. Indeed, we believe making the lists available on our website [10] makes them easier to find. As is currently the case, interested parties may continue to request the list from the Deputy Administrator.

[10] *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare.*

We also proposed to amend § 2.127, ''Publication of names of persons subject to the provisions of this part,'' by replacing ''names'' in the section heading with ''lists,'' and by removing the statement that the list will be published in the **Federal Register**. We are making these changes to reflect current business practices of publishing information on public websites for ease of access as well as our practice of maintaining and updating a list of registered research facilities on the APHIS website.[11]

Substantial numbers of commenters expressed concern about Agency transparency with respect to making the names of licensees, breeders, and research facilities available to the public, and many asked that we ensure that licensee records are available for public review. Some commenters opposed the proposed change to § 2.127, which would strike ''names'' and replace it with ''lists.'' One such commenter stated that the term ''lists'' is ambiguous and does not express how, if at all, the Agency intends to identify registrants or licensees.

As noted above, APHIS maintains a list of licensees and registrants on its website. By replacing the word ''names'' with ''lists,'' we are making clear that the list may include additional information beyond just the name of the licensee and registrant, such as the city and State where they are located and the type of license or registration that person holds. We are therefore making no changes to the rule in response to this comment.

One commenter stated that the final rule should expressly state what licensee information the USDA will share with the public. Another commenter requested that APHIS continue to publish identifying information for all persons licensed or registered under the AWA, including the following: Certificate/customer type, legal name, doing business as (DBA) name, city, and State, and to affirm this in § 2.127.

APHIS is undertaking this change to reflect both current business practices of publishing information using public websites for ease of access, and the Agency's practice of maintaining and regularly updating a list of registered research facilities on the APHIS website. Currently, APHIS lists the legal name of the licensee or registrant, any DBA name associated with that person, the city and State where they are located, and the type of license or registration the person holds. Therefore, we are making no changes in response to these comments.

A commenter asked APHIS to include in its publication a disclosure requirement for all ''formerly known as'' names associated with an existing licensee or registrant to ensure full transparency. The commenter, representing an animal welfare organization, added that it is necessary to have access to unredacted inspection reports so the organization can follow up on complaints and incidents and determine whether APHIS has identified specific animal care deficiencies at such locations.

We are making no changes to the rule in response to this comment. We publish the list of licensees and registrants so that the public can know who currently holds a license or registration under the AWA. Whether a person previously held a license, and what name they held that license under, is immaterial to this purpose. Members of the public can request inspection reports under FOIA by submitting a request online at: *https://www.aphis.usda.gov/aphis/resources/foia/ct_how_to_submit_a_foia_request.* All releases of information are subject to applicable FOIA laws and appropriate handling of protected personal information. APHIS releases information that meets all appropriate FOIA and protected personal information restrictions.

A commenter asked that we use and retain a permanent identifying number for each regulated entity regardless of issuance of a new or subsequent license. The commenter stated that use of an assigned number not publicly linked to any other identifying information will mitigate any concerns the USDA has about maintaining privacy interests. The commenter stated that this number should be included on all publicly released AWA-related records in order to allow public monitoring of the USDA's implementation of the Act, including the ability to track whether the USDA is following its own inspection and enforcement policies.

This comment pertains to APHIS' internal business processes and is outside the scope of this rulemaking. Therefore, we are making no changes to the rule in response to this comment.

A commenter asked the USDA to stop redacting licensee identities and withholding records about enforcement actions and adjudication proceedings. The commenter said that the public cannot determine whether USDA is complying with the licensing requirements if it redacts licensee information from inspection reports. Another commenter stated that APHIS needs to ensure that the additional licensee information required by the rule will be made public in accordance with the precedent the Agency itself persuaded the D.C. Circuit to establish in *Jurewicz* v. *U.S. Department of Agriculture,* 714 F. 3d 1326 (2014).

Public access to records held and maintained by the U.S. Government is outside the scope of this rulemaking, but all released records meet all applicable FOIA and personally identifiable information restrictions. Therefore, we are making no changes to the rule in response to this comment.

Importation of Live Dogs

We proposed to amend the regulations for importing live dogs in §§ 2.150 through 2.153 in order to harmonize the regulations with the AWA and emphasize that dogs intended for resale for research purposes, or dogs intended for resale following veterinary treatment, must be imported under a permit and accompanying certifications.

Several commenters stated, without providing specifics, that APHIS should restrict importation of dogs because imported dogs carry exotic diseases.

We are making no changes to the rule in response to this comment. APHIS does restrict the importation of dogs for resale purposes to ensure they are in good health, vaccinated, and meet the minimum age requirement established in the AWA.

One commenter stated that the proposed changes will increase the vulnerability of live dogs imported for the purposes of experimentation. Specifically, the commenter stated that removal of the word ''research'' from §§ 2.150(a) and 2.151(a) would exempt from import permit requirements those research entities with foreign sites that import their own live dogs into the United States, without reselling them, for the purpose of research. The commenter cited instances of research companies obtaining animals from other countries with weak records of animal welfare and stated that, under our proposed changes, they could import dogs from their facilities in other countries to use in their testing facilities in the United States without securing a permit from the USDA or preparing certifications. Similarly, a commenter stated that APHIS has provided no reasoning for why this recordkeeping requirement is proposed to be removed for dogs imported for research or veterinary treatment without subsequent sale and noted that it is important that all dogs imported for research or veterinary treatment are accompanied by a permit and certificate of veterinary health to prevent the spread of disease.

[11] *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare.*

We are making no changes to the rule in response to these comments. These changes will harmonize the regulations with the Act and make clear that dogs intended for resale for research purposes, or dogs intended for resale following veterinary treatment, are imported with an import permit and accompanying certifications, except as provided in § 2.151(b).

Animal Health and Husbandry Standards

Watering

We indicated in the proposed rule that we were considering adding various provisions pertaining to the care of dogs in part 3, particularly in relation to housing and access to water. We noted that the current regulations require dogs that do not have continual access to water must be offered water not less than twice daily for at least 1 hour each time. While lack of continual access to water is generally not a risk to healthy dogs, lack of access to water may exacerbate health problems when other stresses are present, such as high heat or illness. We considered amending the AWA regulations to account for specific watering needs for certain dogs, short of requiring that all dogs have 24-hour access to potable water for their well-being. However, in examining the issues and accounting for the animal health and well-being factors involved, we determined that the most prudent approach would be to include such a provision requiring all dogs to have 24-hour access to water. We therefore proposed to amend § 3.10 to add a provision that requires dogs to have continual access to potable water, unless restricted by the attending veterinarian.[12]

A commenter agreed with ensuring dogs have regular access to water but noted that we stated in the proposed rule that a lack of continual access to water is generally not a risk to healthy dogs. The commenter noted that regulated facilities vary by type, size, and the number of animals they maintain. For this reason, the commenter stated that APHIS should allow for some flexibility in how licensees, particularly smaller ones, make water available to their animals while still ensuring they are providing appropriate care.

The rule requires that potable water be continuously available to dogs, unless restricted by the attending veterinarian. The rule does not prescribe how the water is made continuously available. With respect to flexibility in how water is made available to dogs, facilities may use a variety of watering methods to comply with this requirement. Most facilities at which the dogs have 24-hour access to water use a plumbed automatic watering system. Automatic watering systems can be connected either to a central water supply line or a holding tank, which then supplies a valve-tipped access point through a pump or gravity-fed system. Facilities that do not have an automatic watering system may use water-holding tanks filled by hand. Water may also need to be hand-carried to outdoor areas that house dogs.

Another commenter said that there are no data or veterinary care requirements described to support this change for healthy dogs. The commenter noted that healthy animals will play with water bowls and spill water, and that the lack of continuous access to water in those cases should not be an instance of noncompliance if the dog is adequately hydrated. The commenter added that the health and welfare of animals is directly related to their degree of hydration, not to the frequency or duration of access to water, and that the requirement for continuous access to water for all is therefore an arbitrary regulation based on ease of enforcement rather than sound veterinary judgment. The commenter concluded that a better approach would be to keep the current standard but modify it to require that dogs be adequately hydrated and have access to water depending on conditions.

We are making no change to the rule in response to this comment. The rule as proposed will provide dogs with continuous access to water so that the dogs can adequately hydrate themselves. We believe this standard will be easier for facilities to follow and for APHIS to enforce than the condition-dependent alternative proposed by the commenter and will ensure the health and well-being of the dogs.

Several commenters associated with research institutions did not consider the change to the watering requirements to be necessary or practical. One commenter stated that, according to his organization's records, for the past 5 years there have been 6,613 inspections of research facilities resulting in 2,029 noncompliant items documented, of which only 3 were for noncompliance with the regulations in § 3.10. Another commenter requested that the Agency document the actual need for these expenditures before developing a final rule requiring 24-hour access to water.

The commenter correctly points out that a small fraction of inspections of regulated facilities result in citations related to inadequate watering, although the number cited is lower than the actual number for all facilities (there were 11 such citations in FY 2016 and 2017 alone; in 2017, there were 12,243 active sites). Lack of continuous access to drinkable water is generally not a risk to healthy dogs, but lack of access can escalate in dogs the health consequences of other stress factors. We note that the number of citations issued for lack of water access does not reflect the totality of problems that are either caused or exacerbated by lack of access to clean drinkable water. Ensuring this access will directly benefit those dogs that would otherwise have insufficient access to drinkable water.

Moreover, we also proposed specific veterinary care requirements for dogs. We expect that these specific requirements will strengthen arrangements between licensees and registrants and their attending veterinarians and enhance preventative and ongoing care for dogs. Accordingly, we are making no changes to the rule in response to this comment.

Other commenters questioned how water can be provided continuously when dogs are being removed from pens for training or cleaning, or during transport, and noted that there have already been guidelines available for providing adequate water supply for dogs. Another commenter noted that requiring 24 hour access to water contradicts the current regulations, which allow for the offering of water to dogs before, during, and after transport to be determined under a watering and feeding plan, which may not necessarily allow for 24 hour access. To resolve this contradiction, the commenter recommended that APHIS add an exception to § 3.10(a) that states, ''except during transport, in which the dog must be offered water in accordance with the standards set forth in § 3.14.''

The transport watering requirements, which do not require 24 hour access, are actually detailed in § 3.16 (redesignated as § 3.17), and not in § 3.14 as the commenter indicated. However, we agree with the substance of the comment and will amend § 3.10(a) to refer to the transportation requirements in redesignated § 3.17.

Veterinary Care for Dogs

We proposed to amend the veterinary care requirements for dogs in § 3.13. The changes would expand existing regulations in subpart D requiring

[12] In the proposed rule, we used the term ''continual'' access to water to mean constant, uninterrupted access to potable water for dogs at all times. However, we are substituting the more accurate term ''continuous'' to mean the same thing in this final rule.

dealers and exhibitors to establish and maintain an adequate program of veterinary care for regulated animals. The expanded care requirements include regularly scheduled veterinary visits, an annual hands-on examination, and husbandry requirements to help ensure healthy eyes, skin, nails, hair, and teeth.

We proposed in a new § 3.13(a)(1) to require regularly scheduled visits by the attending veterinarian, not less than once every 12 months, to all premises where animals are kept to assess veterinary care and other aspects of care and use. This requirement is expected to be completed no later than 1 year after the effective date.

Substantial numbers of commenters supported this requirement. One commenter supported the proposal but expressed concern about the level of oversight required by the attending veterinarian in § 3.13(a), noting that it places significant responsibility and burden on the attending veterinarian to draft policies tailored to all aspects of the animals' lives, despite the veterinarian only being required to visit the facility once a year. To ensure that the animals at each facility receive consistent and adequate veterinary care, the commenter asked that we adopt objective standards for medical, preventative, and grooming care to minimize inconsistent approaches to care among attending veterinarians. Furthermore, the commenter recommended that APHIS add to the regulations the requirement that the program of veterinary care be drafted and developed ''in accordance with the recommendations of a recognized and objective veterinary association like the American Veterinary Medical Association.'' Other commenters recommended that APHIS include additional requirements as part of the scheduled visit, including pain assessment and body condition scoring; an oral examination; special exams for breeding dogs; and administration of medications for intestinal parasites, heartworm, fleas, and ticks. A commenter also recommended that dogs receive preventative dental care, and that specialized procedures such as euthanasia and surgery only be practiced by licensed veterinarians using widely accepted techniques.

Some commenters opposed the requirement for scheduling regular veterinary visits. One such commenter stated that the imposition of a prescriptive program of veterinary care is not consistent with APHIS' stated purpose to reduce regulatory burden on licensees because the program of veterinary care should be individually tailored to meet the needs of the animals being maintained in each facility. Other commenters representing research organizations opposed the proposed change and urged APHIS instead to consider stronger enforcement of its existing standards regarding veterinary care, noting that their organizations are rarely cited for veterinary care violations.

We believe the requirement for regular veterinary visits provides an appropriate level of specificity to ensure an adequate and balanced program of veterinary care for dogs, and allows for professional, individual judgment on the part of the attending veterinarian. Annual hands-on physical exams by the attending veterinarian allow for the evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. A required husbandry program will help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease and injury. Required medical records will help facilities keep track of incidents, treatments and progress of care, and allow facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole. For these reasons, we are making no changes to the rule in response to the commenters.

A commenter asked that standards for breeding, socialization, and exercise be added to the regulations, as the lack of concrete requirements may result in inconsistent levels of oversight among attending veterinarians and foster uncertainty as to whether a licensee will follow a veterinarian's recommendations for addressing standards of care. Similarly, another commenter stated that the veterinary care plan should be required to include current exercise and human interaction and require greater life enrichment for animals in the companion pet industry, as well as placement strategies for dogs after breeding age is passed and a cap on the age of maturity for breeding.

The regulations pertaining to exercise of dogs are contained in § 3.8 of the regulations. Because we did not propose any changes to these regulations or propose any standards for breeding or socialization of dogs, this comment falls outside the scope of this rulemaking.

A commenter stated that this section should be strengthened to require veterinary care for animals, not only for the obvious humane reasons, but also so that unsuspecting consumers are not saddled with unexpected health problems after purchase.

USDA is authorized under the AWA to issue standards governing the humane handling, care, treatment, and transportation of animals. We lack authority to promulgate regulations pertaining to consumer protection.

A commenter stated that APHIS should require that the veterinarian signing the program of veterinary care be in good standing with the applicable State's veterinary board and has experience working with the species at issue.

We are making no changes to the rule in response to this comment. The AWA authorizes USDA to require licensees to comply with the Act, but not veterinarians. We note that § 2.40(a)(2) of the regulations requires licensees to ensure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use. The appropriate authority may include but is not limited to ensuring that the veterinarian is in good standing with the applicable State veterinary licensing board. We also note that the definition of *attending veterinarian* specifies that the veterinarian ''has received training and/or experience in the care and management of the species being attended.''

We also proposed in a new § 3.13(a)(2) to require that each dealer, exhibitor, and research facility follow an appropriate program of veterinary care for dogs that is documented and signed by an attending veterinarian, and includes annual physical head-to-tail examinations for adult dogs by the attending veterinarian. We proposed that these annual examinations be required in addition to existing requirements that provide for regularly scheduled visits by the attending veterinarian to premises where animals are kept.

A substantial number of commenters supported the proposal to require an annual head-to-tail examination of each adult dog at a facility. One commenter recommended that we also require hands-on veterinary examinations for any dog showing visible signs of pain or distress, emaciated body condition, or other symptoms of potentially severe illness or injury.

The requirements in proposed § 3.13 are in addition to the existing requirements in subpart D, which already require programs of adequate veterinary care that include the use of appropriate methods to diagnose and treat diseases and injuries and direct and frequent communication of problems to the attending veterinarian. We believe the regulations sufficiently address the attending veterinarians', licensees', and registrants' responsibilities for sick animals and are

making no changes to the rule as a result of this comment.

Some commenters stated that the proposed veterinary examination requirement would cause financial hardship on small breeders and noted that many stakeholders do not live near an affordable veterinarian.

We note that § 2.40 of the regulations already requires dealers and exhibitors to employ an attending veterinarian under formal arrangements and to have programs of adequate veterinary care.

A commenter stated that it is unclear why the attending veterinarian would need to conduct an annual physical head-to-tail examination of every dog for what are husbandry issues, when the licensee is already required to observe every animal on a daily basis.

We are making no changes to the rule in response to this comment. A physical examination of a dog by a veterinarian may discover health issues that a licensee may overlook, as the veterinarian has more extensive knowledge and expertise.

Several commenters stated that it is not clear why APHIS does not already have the authority under the current language in § 2.40 to assure that such care is provided. The commenter noted that § 2.40 currently requires that for licensees with a part-time or consulting attending veterinarian there be a regular schedule of visits and a written program of veterinary care. The commenter said that if APHIS finds that the number of visits and written program is not providing adequate care, the facility should be cited and given a specific timeline to come into compliance.

Under the current regulations in § 2.40, although a written program of veterinary care is required for part-time or consulting veterinarians, it is not required for full-time attending veterinarians. Similarly, although the veterinarian must conduct regularly scheduled visits, there is no requirement for a physical, head-to-tail annual examination for dogs. This rule requires that dealers, exhibitors, and research facilities keep and maintain a written program of veterinary care for dogs, regardless of their arrangement with their attending veterinarian, and require annual veterinary exams for dogs in addition to the existing veterinary care requirements that provide for regularly scheduled visits of the attending veterinarian to premises where animals are kept to ensure the adequacy of animal care.

Some commenters opposed a required annual head-to-tail examination for adult dogs on grounds that their animals already receive adequate care. A few research organizations stated that the proposed requirement for the head-to-tail examination will yield no additional benefit and result in more regulatory burden. They suggested that APHIS focus specifically on those individuals and businesses having a history of noncompliance and prevent them from obtaining a license or working with regulated animals, while allowing research institutions with strong adherence to Federal requirements and excellent veterinary care to perform their duties following current accepted practices.

APHIS believes that physical head-to-tail examinations and regularly scheduled visits by attending veterinarians to the premises where animals are kept are necessary to ensure adequate animal care and use, regardless of the facility's compliance history. To address the commenters' concerns, facilities that maintain high levels of veterinary care likely meet or exceed the veterinary care requirements in this rule, meaning that such facilities likely would not need to make any changes to their practices. Therefore, we are making no changes to the rule in response to this comment.

With respect to the hands-on exam, one commenter asked if APHIS had considered facilities that exhibit wolf-dogs (an animal that falls under USDA dog regulations), noting that most rescued wolf-dogs are not able to be handled safely for this type of exam.

In § 1.1 of the regulations, dog-hybrid crosses are considered dogs under the definition of *dog.* Licensees and registrants with dog-hybrid crosses must comply with all applicable provisions of the AWA regulations. Licensees and registrants should work closely with their attending veterinarian to determine appropriate safe handling practices for dogs (including hybrid crosses) for hands-on examinations.

The commenter also suggested that we require licensed veterinary certification that the breeding animal is free from detectable health or congenital problems which can be identified using accepted medical tests appropriate for problems seen by breed, and is certified healthy to breed.

We acknowledge the commenter's concern about breeding and breed-specific problems but are making no changes in response. The veterinary exam can determine whether a dog is generally in good health, but any additional testing to detect breed-specific issues would not be a requirement, but rather a decision by the dog owner.

We also included in proposed § 3.13(a)(3) a requirement for vaccinations for rabies, parvovirus, distemper, and other dangerous diseases of dogs.

One commenter opposed to the vaccination requirements in the proposed rule stated that the wording ''contagious and deadly'' used in the proposed regulation could be interpreted to mean that a disease must be both contagious and deadly for a vaccination to be required. The commenter noted that vaccinations are not always innocuous and should not be given unless they are needed.

We appreciate the opportunity to clarify our intent with respect to the wording ''contagious and deadly.'' We agree that vaccinations are required for diseases that are contagious, or deadly, or both, and are amending § 3.13(a)(3) accordingly.

Other commenters opposed to the vaccination requirement expressed a concern that the proposed changes, which include specific vaccination requirements, would lead to over-vaccinating of animals. A few commenters stated that APHIS, through this rulemaking, is requiring them to excessively vaccinate their animals at the expense of their dogs being poisoned or having seizures. Another commenter opposed to the proposal said that mandatory vaccinations will result in the deaths of millions of dogs.

We are making no changes to the vaccination requirement in response to these comments. Vaccinations are a scientifically proven and critical component in ensuring the health and well-being of dogs. The regulations require vaccinations for contagious and deadly diseases of dogs, which expressly includes but is not limited to rabies, parvovirus, and distemper, in accordance with a schedule approved by the attending veterinarian. We note that there are exceptions to this requirement for research protocols approved by the Institutional Animal Care and Use Committee (IACUC) at research facilities.

A commenter noted that the rule allows exemptions from required vaccinations for research facilities, but not for dealers, and requested that the exemption also be available to dealers who provide dogs with higher health status requirements (*i.e.,* unvaccinated dogs) for veterinary health research purposes, providing the animals are housed in barrier facilities suitable to protect their health and well-being.

We noted that vaccinations would not be a requirement if contraindicated for health reasons for the individual animal or unless otherwise required by a research protocol approved by the IACUC at research facilities. Therefore,

we are making no changes to the rule in response to this comment.

We proposed also that the veterinary exam address husbandry issues for hair coat, toenails, teeth, skin, eyes, and ears.

A commenter representing a research organization recommended the development of clear, objective criteria to standardize what constitutes adequate care and subsequently non-compliance regarding prevention and treatment procedures for skin, nails, teeth, eyes, ears, and hair coat. The commenter expressed concern that USDA inspectors may cite noncompliance for the occurrence of early signs of clinical conditions that are considered mild and not in need of immediate treatment. The commenter asked that guidelines be developed and made available to inspectors and regulated facilities in the form of additions to the Animal Welfare Inspection Guide, rather than in the proposed changes to the regulations, and that they include examples of appropriate written prevention and treatment plans.

The rule requires a written program of veterinary care that includes preventative care and treatment to ensure healthy and unmatted hair coats, properly trimmed nails, and clean and healthy eyes, ears, skin, and teeth, unless otherwise required by a research protocol approved by the IACUC at research facilities. An adequate plan would address these systems and provide sufficient guidelines on when and how the veterinarian will need to be consulted on certain conditions. Therefore, we are making no changes to the rule in response to this comment.

We proposed in revised § 3.13(b) to require licensees to keep and maintain veterinary medical records and to make them available for inspection by APHIS.

A few commenters stated that keeping a medical record of every dog daily would increase their recordkeeping burden.

The rule does not require a daily medical record for every dog. Rather, the rule requires facilities to keep track of incidents, treatments, and progress of care, and to track individual health trends and frequency of illnesses and injuries for the kennel as a whole.

Regarding the proposed requirement to maintain animal medical records, a commenter questioned whether the language in section 2140 of the AWA gives the Secretary the authority to require such records. The commenter stated that under the Principles of Veterinary Medical Ethics, a veterinarian has a duty to maintain the necessary records to provide appropriate care, but does not agree that the AWA requires them to be maintained.

Under section 2140 of the AWA, ''[d]ealers and exhibitors shall make and retain for such reasonable period of time as the Secretary may prescribe, such records with respect to the purchase, sale, transportation, identification, and previous ownership of animals as the Secretary may prescribe.'' This section has similar language for research facilities to maintain such records with respect to live dogs and cats. However, section 2151 grants the Secretary the authority ''to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act.'' Moreover, the rule places the requirement to maintain the medical records on the facility, not on the veterinarian.

A commenter noted that § 3.13(b)(1), which allows medical records for all dogs kept in a group (or herd) to be preserved on a single record (without individual identifying marks noted for each dog), will likely negate the positive impact of this section as it will fail to give inspectors a means of ensuring that all dogs have received adequate care. The commenter explained that the justifications for allowing group records for animals like cattle, sheep, and deer, do not exist in the case of dogs, and that licensees and attending veterinarians should be able to safely and productively identify each dog. Accordingly, the commenter recommended that we remove the ''group'' provision in paragraph (b)(1).

We disagree with this comment and are making no changes in response. This rule will allow routine husbandry, such as vaccinations, preventive medical procedures, and treatment that are performed on a group of dogs to be kept on a single record. All animals on the record will have received the treatment or care if they are listed on the record. Therefore, we are making no changes to the rule based on this comment.

Other Comments

One commenter stated that USDA should develop and make available an implementation plan.

The plan for implementing the rule includes a 3-year schedule for converting the current 1-year licenses to a 3-year new license based on the expiration day and month listed on the license. Prior to the license expiration date, USDA will notify current licensees of the month and date on which their license will need to be converted to the 3-year license and licensees will need to submit an application for the new license. Until the license is converted to the 3-year schedule, the licensee must pay a $40 license fee and renew the current license for 1 year. After the effective date of the rule, new applicants that demonstrate compliance with the AWA, regulations, and standards will be issued a 3-year license. We believe this approach will ensure that adequate resources are continuously available to conduct prelicense and routine inspections under the AWA.

A few commenters stated that USDA should require online education classes on compliance that need to be completed by the licensee between licensing or annually.

We agree that applicants, licensees, and registrants need to learn about the AWA regulations and how to achieve and maintain compliance with them. APHIS provides a variety of learning opportunities, including online modules and in person trainings, and plans to continue these after the publication of this rule.

Some commenters expressed concerns that APHIS is understaffed and therefore unable to conduct inspections for compliance under the existing regulations, let alone new ones.

We affirm that APHIS has adequate resources for conducting inspections to ensure compliance with the AWA. We employ a risk-based inspection system that calls for more frequent inspections at facilities with a higher risk of animal welfare concerns and fewer inspections at those that are consistently in compliance.

Some commenters objected to allowing members of the public to comment on the rule, particularly animal welfare advocates, stating that the general public lacks any technical expertise that can be offered on these issues. One such commenter representing a wild animal preserve stated that only individuals who own animals as their business should be voting on changes in regulations with USDA.

The Administrative Procedure Act, which applies to all agencies of the Federal government, provides the general procedures for various types of rulemaking. For informal rulemakings such as this one, agencies are required to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the rule's content. Accordingly, we are not authorized to limit the opportunity to comment to only certain individuals or businesses. We also note that comments do not constitute ''votes.''

Some commenters stated that licensees were not consulted in the development of these changes: A commenter stated that ''those authoring these proposed amendments did not

solicit the input of seasoned and respected licensees prior to doing so.''

On August 24, 2017, we published an ANPR to solicit input from licensees and all other members of the public on potential revisions to the licensing requirements under the AWA regulations.[13] We received over 47,000 comments in response to the ANPR, including comments from licensees. After carefully reviewing those comments, we published a proposed rule for public comment, to which we received over 100,000 comments from licensees and other members of the public. We believe that we have adequately solicited input from licensees before publishing this final rule, and are accordingly making no changes in response to this comment.

Several thousand commenters asked USDA to end the practice of keeping dogs in stacked cages with wire flooring, to ban cage stacking, and to require facilities to provide animals with more cage and living space. A letter signed by several members of Congress supported the rule but also called for the elimination of wire flooring in dog enclosures, as well as a prohibition on stacking cages and an increase in space requirements for dogs. An animal welfare organization commented that APHIS' failure to address wire flooring in the proposed rule is unacceptable and APHIS should add a requirement that all primary enclosures in commercial breeding facilities have solid floors, or flooring that is slatted if the slats are at least 3.5 inches in width with no more than half-inch gaps between slats.

We acknowledge the concerns of the public and members of Congress on this subject. However, we are making no changes in response to these comments because enclosure flooring and space requirements are outside the scope of this rulemaking.

A few commenters stated that the proposed rule change is contrary to the intent of reducing burden as mandated by the 21st Century Cures Act, which requires the National Institutes of Health, the U.S. Department of Agriculture, and the Food and Drug Administration to complete a review of applicable regulations and policies for the care and use of laboratory animals and make revisions as appropriate, to reduce administrative burden on investigators, while maintaining the integrity and credibility of research findings and protection of research animals.

The changes to the licensing requirements do not apply to research facilities. In addition, the amendments to the veterinary care and watering standards are necessary to ensure the humane treatment and care of dogs, and are not the kind of inconsistent, overlapping, or unnecessarily duplicative regulations that are targeted for review by section 2034 of the 21st Century Cures Act.

Several commenters, without providing specifics, disagreed with the rule in that it imposes economic and recordkeeping burdens on breeders. One commenter generally stated that the proposed changes are unfair to zoos and will burden APHIS with paperwork, enforcement, and legal challenges.

We believe that changes to the licensing fees would not be unfair to zoos, but could result in significant savings for many exhibitors. Under existing licensing fees, exhibitors pay between $30 and $300 per year, with an additional $10 per year renewal application or new application fee. The licensees need to submit the renewal application each year. Under the proposed and final rule, each licensee pays only $40 per year ($120 for a 3 year license) and has to apply for the license only once every 3 years. This saves each licensee anywhere from $0 dollars (no change in cost) to $780 for an exhibitor with over 500 animals over the course of the 3 year licensing period. The new rule also saves the licensee two-thirds of the time filling out and filing the paperwork for the license over the 3 year period.

We anticipate an increase in animal welfare due to the requirement that licensees must apply for a license every 3 years and demonstrate compliance with the regulations and standards. Based on our knowledge and experience with administering and enforcing the AWA and regulations, we are concerned that even experienced licensees may struggle to achieve and maintain compliance after making noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we believe that revisions to the regulations set forth in this final rule are necessary to ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the AWA regulations.

We received many other comments that made general statements about the rule or addressed subjects that are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866, 13563, 13771 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This final rule is an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is making revisions to the licensing requirements to promote compliance with the AWA, as well as to strengthen existing safeguards that prevent individuals and businesses that are unfit to hold a license from obtaining a license or from working with regulated animals. Licensees will be required to renew their certification of regulatory compliance and pay the associated license fee once every 3 years rather than every year. In addition, the fee will be changed to a flat rate rather than a set of tiered rates. This action will promote AWA compliance by requiring that regulated businesses affirmatively demonstrate regulatory compliance when applying for or renewing a license. It will reduce the license fee for most regulated entities and will reduce the compliance paperwork burden for all licensees.

[13] 82 FR 40077 (Aug. 24, 2017) and 82 FR 48938 (Oct. 23, 2017); *https://www.federalregister.gov/documents/2017/10/23/2017-22940/animal-welfare-procedures-for-applying-for-licenses-and-renewals.*

APHIS is also amending the veterinary care requirements for dogs that are under the care of entities covered by the AWA. Facilities with dogs will be required to have an expanded Program of Veterinary Care (PVC) that includes annual, hands-on veterinary exams for adult dogs by the attending veterinarian and addresses husbandry issues for hair coat, toenails, teeth, skin, eyes, and ears. Facilities will also be required to create and maintain medical records of preventive health care measures and the treatment of ill and injured dogs.

The expanded PVC will guide the facilities in practicing a minimum level of acceptable husbandry and in maintaining records of preventive care and the treatment of ill or injured dogs. Annual hands-on physical exams by the attending veterinarian will allow for evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. Health problems that are detected early could receive timely and appropriate veterinary care. A required husbandry program will help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease, illness, and injury. Required medical records will help facilities keep track of incidents, treatments, and progress of care. They also will enable facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole.

This rule will also amend the AWA standard for dogs with respect to access to clean, drinkable water. The current regulations state that if potable water is not continuously available to a facility's dogs, it must be offered as often as necessary to ensure the animals' health and well-being, and not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. The standard will require that facilities make potable water continuously available.

All businesses covered under the AWA will be affected by the licensing requirements, including animal dealers, exhibitors, retail pet stores, brokers, and breeders. The number of these entities varies from year to year, but has tended to be around 6,000 in recent years. Based on reported revenue data and Small Business Administration (SBA) small-entity standards, the majority of the entities affected by this rule can be considered small. About one-half of these businesses are licensees and registrants with dogs, including about 2,240 dog breeder facilities.

The licensing requirements will result in annual cost savings expected to range from about $627,000 to $2,106,300. The veterinary care requirements for facilities having dogs will result in annual costs ranging from about $726,200 to about $1,390,200, and the water access requirement for these facilities will result in annual costs ranging from about $1,020,800 to $2,460,000. Net costs, as shown in table A, are therefore expected to range from annual cost savings of $359,300 (the higher licensing cost savings estimate plus the lower veterinary care and water access cost estimates) to annual costs of $3,223,200 (the lower licensing cost savings estimate plus the higher veterinary care and water access cost estimates).

TABLE A—ESTIMATED NET COSTS OF THE RULE, 2016 DOLLARS

	Low estimate	High estimate
Licensing cost savings	($2,106,300)	($627,000)
Veterinary care costs	726,200	1,390,200
Water access costs	1,020,800	2,460,000
Net costs	(359,300)	3,223,200

Based on the costs in the table and in accordance with guidance on complying with Executive Order 13771, the single primary estimate of the costs of this rule is $1,432,000, the mid-point estimate of net costs annualized in perpetuity using a 7 percent discount rate.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.* Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or mare 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and concluded that 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.

OTR has determined that Tribal consultation under Executive Order 13175 is not required at this time. If consultation is requested, OTR will work with the APHIS to ensure quality consultation is provided.

Congressional Review Act

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection requirements included in this final rule have been approved under Office of Management and Budget (OMB) control number 0579–0036 and some of the information collection requirements were filed under OMB comment-filed number 0579–0470, which has been submitted to OMB for approval. When OMB notifies us of its decision, if approval is denied, we will publish a document in

the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment 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 rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects

9 CFR Parts 1 and 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we are amending 9 CFR parts 1, 2, and 3 as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 1.1 is amended by removing the definition for *AC Regional Director* and revising the definition for *Business hours* to read as follows:

§ 1.1 Definitions.

* * * * *

Business hours means a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year, during which inspections by APHIS may be made.

* * * * *

PART 2—REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:

■ a. By revising paragraphs (a)(1) and (2), (b), and (c);

■ b. By removing paragraph (d) and redesignating paragraph (e) as paragraph (d); and

■ c. By revising newly redesignated paragraph (d) and the OMB citation at the end of the section.

The revisions read as follows:

§ 2.1 Requirements and application.

(a)(1) No person shall operate as a dealer, exhibitor, or operator of an auction sale, without a valid license, except persons who are exempt from the licensing requirements under paragraph (a)(3) of this section. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the Deputy Administrator. The applicant shall provide the information requested on the application form, including, but not limited to:

(i) The name of the person applying for the license;

(ii) A valid mailing address through which the applicant can be reached at all times;

(iii) Valid addresses for all locations, facilities, premises, or sites where animals, animal facilities, equipment, and records are held, kept, or maintained;

(iv) The anticipated maximum number of animals on hand at any one time during the period of licensure;

(v) The anticipated type of animals described in paragraph (b)(2)(ii) of this section to be owned, held, maintained, sold, or exhibited, including those animals leased, during the period of licensure;

(vi) If the person is seeking a license as an exhibitor, whether the person intends to exhibit any animal at any location other than the person's location(s) listed pursuant to paragraph (a)(1)(iii) of this section; and

(vii) Disclosure of any plea of *nolo contendere* (no contest) or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals.

(2) The completed application form, along with a $120 license fee, shall be submitted to the appropriate Animal Care office.

* * * * *

(b)(1) No person shall have more than one license. Licenses are issued to specific persons, and are issued for specific activities, types and numbers of animals, and approved sites. A new license must be obtained upon change of ownership, location, activities, or animals. A licensee shall notify Animal Care no fewer than 90 days and obtain a new license before any change in the name, address, substantial control or ownership of his business or operation, locations, activities, and number or type of animals described in paragraph (b)(2) of this section. Any person who is subject to the regulations in this subchapter and who intends to exhibit any animal at any location other than the person's approved site must provide that information on their application form in accordance with paragraph (a) of this section and submit written itineraries in accordance with § 2.126.

(2) Licenses authorize a specific number and specific type(s) of animals, as follows:

(i) Licenses authorize increments of 50 animals on hand at any single point in time during the period of licensure. A licensee must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time during the period of licensure.

(ii) Licenses authorize the use of animals subject to subparts A through F in part 3 of this subchapter, except that, for animals subject to subparts D and F, licenses must specifically authorize the use of each of the following groups of animals: Group 5 (baboons and nonbrachiating species larger than 33 pounds) and Group 6 (great apes over 55 pounds and brachiating species) nonhuman primates; exotic and wild felids (including but not limited to lions, tigers, leopards, cheetahs, jaguars, cougars, lynx, servals, bobcats, and caracals, and any hybrid cross thereof); hyenas and/or exotic and wild canids (including but not limited to wolves, coyotes, foxes, and jackals); bears; and mega-herbivores (including but not limited to elephants, rhinoceroses, hippopotamuses, and giraffes). A licensee must obtain a new license before using any animal beyond those types or numbers of animals authorized under the existing license.

(c) A license will be issued to any applicant, except as provided in §§ 2.9 through 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid a $120 license fee to the appropriate Animal Care office. The applicant may pay the fee by certified check, cashier's check, personal check, money order, or credit card. An applicant whose check is returned by a bank will be charged a fee of $20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, money order, or credit card.

(d) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license or for its suspension or revocation by the Secretary, as provided in the Act.

(Approved by the Office of Management and Budget under control numbers 0579–0036 and 0579–0470)

■ 5. Section 2.2 is revised to read as follows:

§ 2.2 Acknowledgement of regulations and standards.

Animal Care will supply a copy of the Act and the regulations and standards in this subchapter to an applicant upon request. Signing the application form is an acknowledgement that the applicant has reviewed the Act and the regulations and standards and agrees to comply with them.

(Approved by the Office of Management and Budget under control numbers 0579–0036 and 0579–0470)

■ 6. Section 2.3 is revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant for a license must demonstrate that his or her location(s) and any animals, facilities, vehicles, equipment, or other locations used or intended for use in the business comply with the Act and the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant must make his or her animals, locations, facilities, vehicles, equipment, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the Act and the regulations and standards.

(b) Each applicant for a license must be inspected by APHIS and demonstrate compliance with the Act and the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, locations, or records do not meet the applicable requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection may request up to two more inspections by APHIS to demonstrate his or her compliance with the Act and the regulations and standards. The applicant must request the second inspection, and if applicable, the third inspection, within 60 days following the first inspection.

(c) Any applicant who fails the third and final prelicense inspection may appeal all or part of the inspection findings to the Deputy Administrator. To appeal, the applicant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 7 days of the date the applicant received the third prelicense inspection report. Within 7 days of receiving a timely appeal, the Deputy Administrator will issue a written response to notify the applicant whether APHIS will issue a license or deny the application.

(d) If an applicant fails inspection or fails to request reinspections within the 60-day period, or fails to submit a timely appeal of the third prelicense inspection report as described in paragraph (c) of this section, the applicant cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. No license will be issued until the applicant pays the license fee and demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, locations, and records are in compliance with all applicable requirements in the Act and the regulations and standards in this subchapter.

(Approved by the Office of Management and Budget under control number 0579–0036)

■ 7. Section 2.5 is revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective for 3 years unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act or terminated pursuant to § 2.12.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the Deputy Administrator.

(3) The license has expired, except that:

(i) The Deputy Administrator may issue a temporary license, which automatically expires after 120 days, to an applicant whose immediately preceding 3-year license has expired, if:

(A) The applicant submits the appropriate application form before the expiration date of a preceding license; and

(B) The applicant had no noncompliances with the Act and the regulations and standards in parts 2 and 3 of this subchapter documented in any inspection report during the preceding period of licensure.

(ii) For expedited hearings occurring under § 2.11(b)(2), a license will remain valid and effective until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(4) There will not be a refund of the license fee if a license is denied, or terminated, suspended, or revoked prior to its expiration date.

(b) Any person who seeks the reinstatement of a license that has expired or been terminated must follow the procedure applicable to new applicants for a license set forth in § 2.1.

(c) A license which is invalid under this part shall be surrendered to the Deputy Administrator. If the license cannot be found, the licensee shall provide a written statement so stating to the Deputy Administrator.

§§ 2.6 through 2.8 [Removed and Reserved]

■ 8. Sections 2.6 through 2.8 are removed and reserved.

■ 9. Section 2.9 is revised to read as follows:

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based will not be licensed, or registered as a carrier, intermediate handler, dealer, exhibitor, or research facility, within the period during which the order of suspension or revocation is in effect.

■ 10. Section 2.10 is revised to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license or registration has been suspended for any reason shall not be licensed, or registered, in his or her own name or in any other manner, within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed or registered during that period. Any person whose license has been suspended for any reason may apply to the Deputy Administrator, in writing, for reinstatement of his or her license or registration.

(b) Any person whose license has been revoked shall not be licensed or registered, in his or her own name or in any other manner, and no partnership, firm, corporation, or other legal entity in

which any such person has a substantial interest, financial or otherwise, will be licensed or registered.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation, under any circumstances, whether on his or her behalf or on the behalf of another licensee or registrant.

■ 11. Section 2.11 is revised to read as follows:

§ 2.11 Denial of license application.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1 through 2.4 and has not paid the fees indicated in § 2.1;

(2) Is not in compliance with the Act or any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.1(d);

(4) Was an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based, as set forth in § 2.9;

(5) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 3 years of application, or after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(6) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(7) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b)(1) An applicant whose initial license application has been denied may request a hearing in accordance with the applicable rules of practice in 7 CFR part 1 for the purpose of showing why the application for license should not be denied. The denial of an initial license application shall remain in effect until the final decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

(2) An applicant who submitted a timely appeal of a third prelicense inspection as described in § 2.3(c), and whose appeal results in the denial of the license application, may request an expedited hearing if the applicant held a valid license when he or she submitted the license application that has been denied and the Deputy Administrator received such license application no fewer than 90 days prior to the expiration of the valid license. If the applicant meets the criteria in this paragraph (b)(2), and notwithstanding the timeframes of the proceedings set forth in the applicable rules of practice (7 CFR 1.130 through 1.151):

(i) The applicant must submit the request for an expedited hearing within 30 days of receiving notice from the Deputy Administrator that the license application has been denied;

(ii) The administrative law judge shall set the expedited hearing so that it occurs within 30 days of receiving a timely request for expedited hearing as described in paragraph (b)(2)(i) of this section; and

(iii) The administrative law judge must issue an initial decision no later than 30 days after the expedited hearing.

(iv) The applicant's license will remain valid until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order, stipulation, or settlement agreement suspending, revoking, terminating, or denying a license or disqualifying a person from engaging in activities under the Act.

■ 12. Section 2.12 is revised to read as follows:

§ 2.12 Termination of a license.

A license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice in 7 CFR part 1.

■ 13. Section 2.13 is added to read as follows:

§ 2.13 Appeal of inspection report.

Except as otherwise provided in § 2.3(c), any licensee or registrant may appeal all or part of the inspection findings in an inspection report to the Deputy Administrator. To appeal, the licensee or registrant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 21 days of the date the licensee or registrant received the inspection report that is the subject of the appeal.

§ 2.25 [Amended]

■ 14. In § 2.25, paragraph (a) is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.26 [Amended]

■ 15. Section 2.26 is amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.27 [Amended]

■ 16. Section 2.27 is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.30 [Amended]

■ 17. Section 2.30 is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.35 [Amended]

■ 18. In § 2.35, the OMB citation at the end of the section is amended by removing the number ''0579–0254'' and adding the number ''0579–0036'' in its place.

§ 2.36 [Amended]

■ 19. In § 2.36, paragraph (a) is amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

■ 20. Section 2.38 is amended as follows:

■ a. By revising paragraph (c);

■ b. In paragraph (g)(1) introductory text, by removing the period between the words ''acquired'' and ''sold'' and adding a comma in its place;

■ c. In paragraph (g)(7), footnote 1, by removing the words ''AC Regional Director'' and adding the words

''Deputy Administrator'' in their place; and

■ d. In paragraph (i) introductory text, by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

The revision reads as follows:

§ 2.38 Miscellaneous.

* * * * *

(c) *Publication of lists of research facilities subject to the provisions of this part.* APHIS will publish on its website lists of research facilities registered in accordance with the provisions of this subpart. The lists may also be obtained upon request from the Deputy Administrator.

* * * * *

§ 2.52 [Amended]

■ 21. In § 2.52, footnote 4 is amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.75 [Amended]

■ 22. In § 2.75, paragraphs (a)(3) and (b)(2) are amended by removing the citation ''§ 2.79'' and adding the citation ''§ 2.78'' in its place.

§ 2.77 [Amended]

■ 23. In § 2.77, paragraph (b) is amended by removing the citation ''§ 2.79'' and adding the citation ''§ 2.78'' in its place.

§ 2.102 [Amended]

■ 24. In § 2.102, paragraphs (a) and (b) introductory text are amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.126 [Amended]

■ 25. In § 2.126, paragraph (c) is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

■ 26. Section 2.127 is revised to read as follows:

§ 2.127 Publication of lists of persons subject to the provisions of this part.

APHIS will publish on its website lists of persons licensed or registered in accordance with the provisions of this part. The lists may also be obtained upon request from the Deputy Administrator.

§ 2.132 [Amended]

■ 27. In § 2.132, the OMB citation at the end of the section is amended by removing the number ''0579–0254'' and adding the number ''0579–0036'' in its place.

§ 2.150 [Amended]

■ 28. Section 2.150 is amended as follows:

■ a. By removing the words ''continental United States or Hawaii'' each time they appear and adding the word ''States'' in their place;

■ b. In paragraph (a), by removing the words '', research, or veterinary treatment''; and

■ c. In paragraph (c)(8), by adding the words ''resale for'' immediately before the words ''research purposes''.

§ 2.151 [Amended]

■ 29. Section 2.151 is amended as follows:

■ a. By removing the words ''continental United States or Hawaii'' each time they appear and adding the word ''States'' in their place;

■ b. In paragraph (a) introductory text, by removing the words '', research, or veterinary treatment'';

■ c. In paragraph (b)(1), by adding the words ''resale for'' immediately before the words ''use in research, tests, or experiments at a research facility''; and

■ d. In paragraph (b)(2) introductory text, by adding the words ''and subsequent resale'' immediately after the words ''for veterinary treatment by a licensed veterinarian''.

§ 2.152 [Amended]

■ 30. Section 2.152 is amended by removing the words ''continental United States or Hawaii'' and adding the word ''States'' in their place.

§ 2.153 [Amended]

■ 31. Section 2.153 is amended as follows:

■ a. By removing the words ''continental United States or Hawaii'' both times they appear and adding the word ''States'' in their place; and

■ b. By adding the words ''or the Act'' immediately after the words ''this subpart''.

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

§ 3.6 [Amended]

■ 33. In § 3.6, paragraphs (b)(5) and (c)(3) are amended by removing the citations ''§ 3.14 of this subpart'' and ''§ 3.14(a)(6) of this subpart'' and adding the citations ''§ 3.15'' and ''§ 3.15(a)(6)'' in their places, respectively.

■ 34. Section 3.10 is revised to read as follows:

§ 3.10 Watering.

(a) Potable water must be continuously available to the dogs, unless restricted by the attending veterinarian or except as provided in § 3.17(a).

(b) If potable water is not continuously available to the cats, it must be offered to the cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian.

(c) Water receptacles must be kept clean and sanitized in accordance with § 3.11(b) and before being used to water a different dog or cat or a different social grouping of dogs or cats.

§§ 3.13 through 3.19 [Redesignated as §§ 3.14 through 3.20]

■ 35. Sections 3.13 through 3.19 are redesignated as §§ 3.14 through 3.20, respectively.

■ 36. New § 3.13 is added to read as follows:

§ 3.13 Veterinary care for dogs.

(a) Each dealer, exhibitor, and research facility must follow an appropriate program of veterinary care for dogs that is developed, documented in writing, and signed by the attending veterinarian. Dealers, exhibitors, and research facilities must keep and maintain the written program and make it available for APHIS inspection. The written program of veterinary care must address the requirements for adequate veterinary care for every dealer and exhibitor in § 2.40 of this subchapter and every research facility in § 2.33 of this subchapter, and must also include:

(1) Regularly scheduled visits, not less than once every 12 months, by the attending veterinarian to all premises where animals are kept, to assess and ensure the adequacy of veterinary care and other aspects of animal care and use;

(2) A complete physical examination from head to tail of each dog by the attending veterinarian not less than once every 12 months;

(3) Vaccinations for contagious and/or deadly diseases of dogs (including rabies, parvovirus and distemper) and sampling and treatment of parasites and other pests (including fleas, worms, coccidia, giardia, and heartworm) in accordance with a schedule approved by the attending veterinarian, unless otherwise required by a research protocol approved by the Committee at research facilities; and

(4) Preventative care and treatment to ensure healthy and unmatted hair coats, properly trimmed nails, and clean and healthy eyes, ears, skin, and teeth,

unless otherwise required by a research protocol approved by the Committee at research facilities.

(b) Dealers, exhibitors, and research facilities must keep copies of medical records for dogs and make the records available for APHIS inspection. These records must include:

(1) The identity of the animal, including identifying marks, tattoos, or tags on the animal and the animal's breed, sex, and age; *Provided,* however, that routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd), may be kept on a single record;

(2) If a problem is identified (such as a disease, injury, or illness), the date and a description of the problem, examination findings, test results, plan for treatment and care, and treatment procedures performed, when appropriate;

(3) The names of all vaccines and treatments administered and the dates of administration; and

(4) The dates and findings/results of all screening, routine, or other required or recommended test or examination.

(c) Medical records for dogs shall be kept for the following periods:

(1) The medical records for dogs shall be kept and maintained by the research facility for the duration of the research activity and for an additional 3 years after the dog is euthanized or disposed of, and for any period in excess of 3 years as necessary to comply with any applicable Federal, State, or local law.

(2) The medical records for dogs shall be kept and maintained by the dealer or exhibitor for at least 1 year after the dog is euthanized or disposed of and for any period in excess of 1 year as necessary to comply with any applicable Federal, State, or local law.

(3) Whenever the Administrator notifies a research facility, dealer, or exhibitor in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the research facility, dealer, or exhibitor shall hold those records until their disposition is authorized by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0470)

§ 3.14 [Amended]

■ 37. Newly redesignated § 3.14 is amended as follows:

■ a. In paragraph (c) introductory text, by removing the citation ''§ 3.16 of this subpart'' and adding the citation ''§ 3.17'' in its place;

■ b. In paragraph (d), by removing the citation ''§ 3.14 of this subpart'' and adding the citation ''§ 3.15'' in its place; and

■ c. In paragraph (e) introductory text:

■ i. In the first sentence, by removing the citation ''§§ 3.18 and 3.19 of this subpart'' both times it appears and adding the citation ''§§ 3.19 and 3.20'' in its place; and

■ ii. In the second sentence, by removing the citations ''§ 3.18'' and ''§ 3.19'' and adding the citations ''§ 3.19'' and ''§ 3.20'' in their place, respectively.

§ 3.15 [Amended]

■ 38. In newly redesignated § 3.15, paragraph (h) is amended by removing the citation ''§ 3.13(c)'' and adding the citation ''§ 3.14(c)'' in its place.

§ 3.17 [Amended]

■ 39. In newly redesignated § 3.17, paragraph (a) is amended by removing the citation

''§ 3.13(c) of this subpart'' both times it appears and adding the citation ''§ 3.14(c)'' in its place.

■ 40. Newly redesignated § 3.18 is amended as follows:

■ a. In paragraph (a), by removing the citation ''§ 3.15(e)'' and adding the citation ''§ 3.16(e)'' in its place;

■ b. In paragraph (b), by removing the citation ''§ 3.15(d)'' and adding the citation ''§ 3.16(d)'' in its place; and

■ c. In paragraph (d), by adding a paragraph heading and removing the citations ''§ 3.14(b) of this subpart'' and ''§ 3.6 or § 3.14 of this subpart'' and adding the citations ''§ 3.15(b)'' and ''§ 3.6 or § 3.15'' in their places, respectively.

The addition reads as follows:

§ 3.18 Care in transit.

* * * * *

(d) *Removal during transportation in commerce prohibited.* * * *

* * * * *

§ 3.19 [Amended]

■ 41. In newly redesignated § 3.19, paragraph (f) is amended by removing the citation ''§ 3.13(f) of this subpart'' and adding the citation ''§ 3.14(f)'' in its place.

§ 3.20 [Amended]

■ 42. Newly redesignated § 3.20 is amended as follows:

■ a. In paragraph (a)(1), by removing the citation ''§ 3.18(d) of this subpart'' and adding the citation ''§ 3.19(d)'' in its place; and

■ b. In paragraph (a)(3), by removing the citations ''§ 3.13(e)'' and ''§ 3.18(d) of this subpart'' and adding the citations ''§ 3.14(e)'' and ''§ 3.19(d)'' in their places, respectively.

§ 3.61 [Amended]

■ 43. Section 3.61 is amended as follows:

■ a. In paragraph (b), by removing the word ''specie'' and adding the word ''species'' in its place; and

■ b. In paragraph (f), by removing the word ''works'' and adding the word ''words'' in its place.

■ 44. Section 3.78 is amended by revising the section heading to read as follows:

§ 3.78 Outdoor housing facilities.

* * * * *

§ 3.110 [Amended]

■ 45. In § 3.110, paragraph (a) is amended by removing the words ''it is determined that''.

§ 3.111 [Amended]

■ 46. Section 3.111 is amended by removing the word ''regional'' in footnote 14.

Done in Washington, DC, this 9th day of April 2020.

Lorren Walker,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2020–07837 Filed 5–12–20; 8:45 am]

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Part V

Department of Homeland Security

Coast Guard

33 CFR Parts 135, 138, and 153

Financial Responsibility—Vessels; Superseded Pollution Funds; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 135, 138, and 153

[Docket No. USCG–2017–0788]

RIN 1625–AC39

Financial Responsibility—Vessels; Superseded Pollution Funds

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand its regulations on vessel financial responsibility to apply to all tank vessels greater than 100 gross tons as required by statute, and to make other amendments that clarify and update reporting requirements, reflect current practice, and remove unnecessary regulations. This proposed rule would ensure that the Coast Guard has current information when there are significant changes in a vessel's operation, ownership, or evidence of financial responsibility, and would reflect current best practices in the Coast Guard's management of the Certificate of Financial Responsibility program.

DATES: Comments and related material must be received by the Coast Guard on or before August 11, 2020. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 13, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0788 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of information. Submit comments on the collection of information discussed in section V.D of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget using one of the following two methods:

- *Email: dhsdeskofficer@omb.eop.gov.*
- *Mail: OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.*

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Benjamin White, National Pollution Funds Center, Coast Guard; telephone 202–795–6066, email *Benjamin.H.White@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
II. Abbreviations
III. Basis and Purpose and Regulatory Background
A. Purpose of the Certificate of Financial Responsibility (COFR) Regulations
B. History of COFR Regulations
C. History of 33 CFR Part 135 and Subpart D of Part 153
IV. Discussion of Proposed Rule
A. Overview of Proposed Amendments to COFR Regulations
B. Discussion of Proposed COFR Regulation Revisions
C. Proposed Removal of 33 CFR 138.90(f)
D. Proposed Removal of 33 CFR Part 135 and Subpart D of 33 CFR Part 153
V. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents mentioned in this proposed rule, and all public comments, will be available in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We do not plan to hold a public meeting but we will consider doing so if public comments indicate that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

311(k) Fund The fund established by Section 311(k) of the Federal Water Pollution Control Act
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act of 1980
COFR Certificate of Financial Responsibility
CFR Code of Federal Regulations
CIMS Contract Information Management System
DHS Department of Homeland Security
eCOFR Electronic Certificate of Financial Responsibility
EEZ Exclusive Economic Zone
FOSC Federal on-scene coordinator
FWPCA Federal Water Pollution Control Act
MISLE Marine Information for Safety and Law Enforcement
NAICS North American Industry Classification System
NPFC National Pollution Funds Center
NPRM Notice of proposed rulemaking
OCSLA Fund Offshore Oil Pollution Compensation Fund
OCSLAA Title III of the Outer Continental Shelf Lands Act Amendments of 1978
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990
OSLTF or Fund Oil Spill Liability Trust Fund
SBA Small Business Administration
U.S.C. United States Code
§ Section

III. Basis and Purpose, and Regulatory History

The Oil Pollution Act of 1990 (OPA 90) (specifically, 33 U.S.C. 2716) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (specifically, 42 U.S.C. 9608), require responsible parties for certain vessels to establish and maintain evidence of financial responsibility. The evidence of financial responsibility must meet the maximum amount of liability under 33 U.S.C. 2704(a) or (d). Violators of those requirements are subject to various penalties under 33 U.S.C. 2716a and 42 U.S.C. 9609.

The 2010 Coast Guard Authorization Act (Pub. L. 111–281, 124 Stat. 2988

(October 15, 2010)) amended OPA 90 by expanding the population of vessels subject to the evidence of financial responsibility requirements. By statute, that population now includes any tank vessel greater than 100 gross tons but less than or equal to 300 gross tons using any place subject to the jurisdiction of the United States. The Coast Guard proposes to amend the Code of Federal Regulations (CFR) to reflect that statutory change. The Coast Guard had previously issued Certificate of Financial Responsibility (COFR) regulations at 33 CFR part 138, subpart A, which apply to vessels over 300 gross tons, as well as certain other vessels depending on how and where they are operated. In the time since the Coast Guard promulgated those regulations, the Coast Guard has modernized and simplified its COFR program. The Coast Guard has also identified certain aspects of the COFR program where it could improve compliance, particularly in the current COFR requirements for reporting changes in vessel operation, ownership, or evidence of financial responsibility that affect the basis of the Coast Guard's decision to issue a COFR. Finally, the structure of the current COFR regulations and some of their provisions, including the rules for applying vessel gross tonnage, are out of date and difficult to understand.

A. Purpose of COFR Regulations

Generally, under OPA 90, the responsible parties (owners, operators, and demise charters) for a vessel from which oil is discharged, or poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone (EEZ), are liable for the removal costs and damages specified from such an incident (33 U.S.C. 2702(a)). Embodying the ''polluter pays'' principle, this liability is strict, joint, and several. In addition, 42 U.S.C. 9607 also states that the responsible parties for a vessel from which a hazardous substance is released, or which poses a threat of a release of a hazardous substance, are similarly strictly liable, jointly and severally, for the resulting response costs and damages.

Under OPA 90 and CERCLA, the responsible parties for certain categories of vessels must establish and maintain evidence of financial responsibility in accordance with regulations promulgated by the Secretary. The purpose of this requirement is to ensure that, in advance of an oil pollution incident or a hazardous substance release, the responsible parties for the vessels in the specified categories have the financial ability to meet their potential liabilities under OPA 90 and CERCLA up to the applicable limits of liability.

Under 33 U.S.C. 2716 evidence of financial responsibility is required for the following categories:

(1) Vessels greater than 300 gross tons.

(2) Vessels using the EEZ to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

(3) Tank vessels greater than 100 gross tons.

B. History of COFR Regulations

Initially, the Coast Guard established COFR regulations in 33 CFR part 138 with an interim rule published July 1, 1994 (59 FR 34210) followed by a final rule published March 7, 1996 (61 FR 9264). In 2008 the Coast Guard amended the COFR regulations and placed them in a newly created subpart A of part 138 (73 FR 53691, September 17, 2008).[1] In addition to making several other changes, that final rule removed a requirement that responsible parties carry an original or authorized copy of the current COFR aboard each covered vessel, because improved technology enabled the Coast Guard to view vessel COFRs electronically. This rule proposes further changes to part 138, subpart A, including changes to the management of electronic documents.

C. History of 33 CFR Part 135 and Subpart D of 33 CFR Part 153

The Coast Guard added part 135, titled ''Offshore Oil Pollution Compensation Fund,'' to 33 CFR in 1979 (44 FR 16868, March 19, 1979) and it added subpart D, titled ''Administration of the Pollution Fund,'' to 33 CFR part 153 in 1971 (36 FR 7010, April 13, 1971). This proposed rule would remove 33 CFR part 135 and subpart D of 33 CFR part 153, which concern management of two pollution funds for which OPA 90 repealed the authorities. The two defunct funds are the Offshore Oil Pollution Compensation Fund (OSCLA Fund) in 33 CFR part 135 and the Federal Water Pollution Control Act (FWPCA) Section 311(k) Fund (311(k) Fund) in subpart D of 33 CFR part 153.

On November 1, 2011, the Coast Guard published a notice of inquiry (76 FR 67386) soliciting public comment on whether to remove 33 CFR part 135. We received no adverse comments; there were three comments supporting the removal of part 135.

[1] That rule expanded part 138's heading to ''Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports)'' and dedicated subpart B to the last half of the revised heading—limits of liability for vessels and deepwater ports under OPA 90.

IV. Discussion of Proposed Rule

The Coast Guard proposes amending 33 CFR part 138, subpart A, and removing the superseded regulations in 33 CFR parts 135 and 153. We explain our specific proposed changes below.

A. Overview of Proposed Changes to COFR Regulations

Following is an overview of proposed revisions to 33 CFR part 138, subpart A:

(1) *Evidence of financial responsibility for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons.* As required by 33 U.S.C. 2716(a)(3), we propose extending the regulatory requirement to establish and maintain evidence of financial responsibility to any tank vessel greater than 100 gross tons but less than or equal to 300 gross tons using any place subject to the jurisdiction of the United States.

(2) *Reporting requirements.* We also propose reorganizing, clarifying, and updating the reporting requirements for submitting an Application. Examples of new requirements include documenting evidence of financial responsibility submitted in support of an Application or a request for COFR renewal, and adding into regulatory text the current practice of guarantor notification.

This set of proposed changes—including § 138.150, which is dedicated to reporting requirements and expressly links those requirements to enforcement provisions—aims to address instances in which COFR Operators fail to report changes to their status, as is currently required by 33 CFR 138.90(e). These failures include failing to report a vessel's financial changes in a timely manner, failing to report a vessel transfer to a new owner, and failing to secure a guaranty and apply for a new COFR—and have resulted in compliance gaps. These gaps compromise emergency responses where an inability to confirm financial responsibility has caused untimely responses to oil spills and undermined the COFR program.

Lastly, these proposed revisions are intended to ensure that the Director receives the most current and accurate information when issuing a COFR. These revisions would improve the Coast Guard's ability to verify vessel compliance with COFR regulations. For example, if an owner sells a vessel while it is located in a place subject to U.S. jurisdiction, the new responsible party becomes immediately subject to the COFR program. However, enforcing compliance with the COFR program's requirements depends on the Coast Guard knowing about the vessel

transfer. The proposed regulatory revisions mitigate the risk of uninsured responsible parties and derelict vessels.

(3) *Revise COFR regulations to incorporate improved management practices and technological advancements.* We also propose to amend the COFR regulations to reflect changes in the NPFC's management of the COFR program. The proposed revisions include the following:

- New regulatory text expressly authorizing COFR Operators, guarantors, and agents for service of process to submit signed scanned documents;
- Permitting COFR Operators submitting Applications or requests for COFR renewal by email or fax to pay the COFR Application and certification fees up to 21 days after submission. This method would replace the current rule's requirement to pay certification fees before the NPFC issues the COFR;
- Updating and simplifying the provisions that detail how to apply gross tonnage assigned under different measurement systems. This reflects changes in the law since OPA 90's initial legislation and conforms the regulatory text to the Coast Guard's ''Measurement of Vessels'' final rule (81 FR 18701, March 31, 2016), which amended the U.S. tonnage regulations in 46 CFR part 69;
- Adding new provisions describing the COFR program's current procedures for determining the acceptability of COFR guarantors; and
- Modifying past technical amendments to implement the Electronic COFR (eCOFR). These regulatory changes are necessary to manage the COFR program more effectively, reduce the burden to the public, and accommodate the frequent changes in vessel operation during the normal course of maritime commerce.

(4) *Clarifying terminology.* We propose clarifying and simplifying the terminology in COFR regulations for consistency with law and COFR program business practices. These changes include using terms of art consistently and simplifying terminology.

B. Discussion of Specific Proposed Changes to COFR Regulations

Table 1 provides a section-number crosswalk between the current COFR regulations and our proposed COFR regulations. The crosswalk will assist the reader in comparing the current regulations with those in this proposed rule. Following table 1 is a discussion of substantive changes, which include either new requirements or updates to the rule to match current Coast Guard practice. The narrative discussion does not address every proposed change: for example, the crosswalk shows that part of current § 138.30 is proposed to relocate to § 138.40, but we omitted narrative discussion because proposed § 138.40 contains no substantive change to requirements. When we applied plain language doctrine required by E.O. 13563 to make these regulations easier to understand but did not make substantive changes we did not discuss those changes.

TABLE 1—CROSSWALK OF CURRENT AND PROPOSED COFR REGULATIONS

Current COFR regulations	Proposed COFR regulations
Part 138—Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities).	Part 138—Evidence of Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities).
Subpart A—Financial Responsibility for Water Pollution (Vessels)	Subpart A—Evidence of Financial Responsibility for Water Pollution (Vessels).
§ 138.10 Scope	§ 138.10 Scope and purpose.
§ 138.15 Applicability	§ 138.20 Applicability.
§ 138.20 Definitions	§ 138.30 Definitions.
§ 138.30 General	§ 138.40 General requirements.
§ 138.30(c) through (f)	§ 138.50 How to apply vessel gross tonnages.
§ 138.40 Forms	§ 138.60 Forms and submissions; ensuring submission timeliness.
§ 138.45 Where to apply for and renew Certificates	§ 138.60 Forms and submissions; ensuring submission timeliness.
§ 138.50 Time to apply	§ 138.80 Applying for COFR.
§ 138.60 Applications, general instructions	§ 138.80 Applying for COFR.
§ 138.65 Issuance of Certificates	§ 138.70 Issuance and renewal of COFR.
§ 138.70 Renewal of Certificates	§ 138.90 Renewing COFR.
§ 138.80 Financial responsibility, how established	§ 138.110 How to establish and maintain evidence of financial responsibility.
§§ 138.80(f) [untitled] and 138.85 Implementation schedule for amendments to applicable amounts by regulation.	§ 138.100 How to calculate a total applicable amount.
§ 138.90(a)–(c) Individual and Fleet Certificates	§ 138.80 Applying for COFR.
§ 138.90(d) and (e), untitled	§ 138.150 Reporting requirements.
§ 138.100 Non-owning operator's responsibility for identification	§ 138.160 Non-owning COFR Operator's responsibility for identification.
§ 138.110 Master Certificates	§ 138.80 Applying for COFR.
§ 138.120 Certificates, denial or revocation	§ 138.140 Application withdrawals, COFR denials and revocations.
§ 138.130 Fees	§ 138.120 Fees.
§ 138.140 Enforcement	§ 138.170 Enforcement.
§ 138.150 Service of process	§ 138.130 Designating agents for service of process.

Proposed § 138.10 Scope and Purpose

Proposed § 138.10(a)(2) states that the standards and procedures the Coast Guard uses to determine guarantor acceptability would be included within the scope of subpart A. In addition, we propose in § 138.10(a)(3) that the reporting requirements for guarantors would be included within the scope of subpart A. These proposed changes for submitting evidence of financial responsibility on behalf of the COFR Operator reflects current practice.

Proposed § 138.20 Applicability

Proposed § 138.20(a)(1) would extend, as required by statute, the applicability of the rule to include tank vessels greater than 100 gross tons but less than or equal to 300 gross tons, regardless of whether it is transshipping or lightering oil. This provision expands the

population of vessels under 300 gross tons that are required to establish and maintain evidence of financial responsibility under 33 U.S.C. 2716. The current regulation includes any tank vessel using the waters of the EEZ to transship or lighter oil destined for a place subject to the jurisdiction of the United States, but if a tank vessel is not engaged in transshipping or lightering, the current regulation has an exception for those that are 300 gross tons or less.

In § 138.20(a)(2) through (a)(4), we propose extending the applicability of the rule to include guarantors, responsible parties other than the COFR Operator, and agents of process. This proposed action would be in accordance with current practice.

Proposed § 138.30 Definitions

We propose to cross-reference additional statutory and regulatory definitions, add new regulatory definitions, amend regulatory definitions in the current COFR regulations, and remove definitions that are not used.

The following definitions reflect substantive changes from the current rule:

Applicant and certificant: We propose replacing the confusing terms ''applicant'' and ''certificant'' with the term ''COFR Operator'' throughout the rule. This action would promote consistency with the COFR program's business practice that authorizes the COFR Operator designated in the ''Application'' to represent the responsible parties for purposes of compliance with the COFR program.

COFR Operator: We propose to redefine ''COFR Operator'' to clarify when we are referring to the operator who is liable in the event of an incident or a release. We also propose replacing the current term ''Operator'' with the term ''responsible party.'' This rule defines the term ''responsible party,'' for purposes of OPA 90 and CERCLA evidence of responsibility, by cross-reference to the relevant statute, and includes all of those persons who meet the definition. This replacement of the term ''operator'' with the newly-defined terms ''responsible party'' and ''COFR Operator'' makes clear that the designation of a ''COFR Operator'' to act on behalf of the responsible parties for purposes of the COFR program does not limit or preclude other responsible parties from being operators within the meaning of OPA 90 or CERCLA. We are also expressly clarifying that, when there is more than one responsible party, the COFR Operator is the operator designated and authorized by all the vessel's responsible parties to act on their behalf to comply with the COFR program.

Fleet Certificate and Individual Certificate: We propose a new definition for the term ''Fleet Certificate'' to parallel the definition of ''Master Certificate,'' and a new definition for the term ''Individual Certificate,'' so that COFR regulations will include definitions for all three types of Certificates issued by the Director.

Financial guarantor: We propose to revise the definition to make clear that a financial guarantor cannot also be a self-insurer of a vessel, but that it is possible for the self-insurer of one vessel to be the financial guarantor for a different vessel.

Owner: We propose removing the current regulatory definition of ''owner.'' It does not accurately reflect current law, and it is not clear that a separate regulatory definition of ''owner'' is needed or helpful, as both OPA 90 and CERCLA define the term ''owner'' and we cross-reference those definitions.

Tank vessel: We propose removing the regulatory definition of ''tank vessel,'' cross-referencing the OPA 90 statutory definition in proposed § 138.30(a), and moving the exceptions to applicability that are embedded in the current regulatory definition of ''tank vessel'' to proposed § 138.20(d)(3).

Vessel: We propose removing the regulatory definition of ''vessel'' and cross-referencing in § 138.30(a) the statutory definitions that appear in OPA 90 and CERCLA. This is because there are slight differences in the OPA 90 and CERCLA definitions, specifically in the reference to public vessels in OPA 90. Therefore, although other provisions of the current COFR regulations resolve these differences, we believe the better way to resolve the wording differences is to cross-reference the statutory definitions. This approach ensures that COFR-regulation definitions will always be consistent with OPA 90 and CERCLA.

Proposed § 138.50 How To Apply Vessel Gross Tonnages

The current COFR regulations provide instructions to apply different gross tonnage measurements for three different purposes: (1) To determine whether a tonnage threshold applies; (2) to calculate a vessel's OPA 90 and CERCLA applicable amounts of financial responsibility; and (3) to determine the vessel's OPA 90 and COFR limits of liability. However, these provisions are complex, and have been difficult to apply, in part because they were developed and established prior to the full coming into force of the International Convention on Tonnage Measurement of Ships (June 23, 1969) on July 18, 1994. Furthermore, the 2010 Coast Guard Authorization Act included amendments that updated, clarified, and eliminated inconsistencies in the tonnage measurement law. The Coast Guard implemented these amendments in the 2016 rule,[2] which also incorporated changes to help provide a suitable framework for tonnage-based regulations, allowing the Coast Guard to specify tonnage thresholds more clearly. This proposed rule maintains the purposes of applying gross tonnage measurements explained in the current COFR regulations.

This proposed rule separates provisions for applying vessel gross tonnage in proposed § 138.50, and clarifies and simplifies the current language while conforming with the 2016 amendments to the U.S. tonnage regulations. We added a table to illustrate use of gross tonnages assigned under the two overarching tonnage measurement systems provided for by U.S. law.[3]

As proposed in § 138.50(f), regardless of the tonnage reported on the Application, the appropriate tonnage-certifying document as provided for under the U.S. tonnage regulations, such as a tonnage certificate or completed Simplified measurement application, governs in determining the evidence of financial responsibility applicable amounts, except when the responsible parties or guarantors knew or should have known that the applicable tonnage certificate was incorrect. In the event of an oil pollution incident or hazardous substance release, the tonnage-certifying document governs the applicable limit of liability. This information is vital to the COFR program because the guaranty is to the certified tonnage at the time of the incident, and addresses what happens if a vessel undergoes a modification that affects the tonnage after a COFR Operator submits an Application. This approach also creates certainty by removing the implication that a tonnage re-measurement at the time of an incident can supersede liability and financial responsibility as reflected on the tonnage-certifying document.

The addition proposed in § 138.50(g) also requires COFR Operators to submit, upon request, the original or a copy of

[2] ''Measurement of Vessels'' final rule (81 FR 18701, March 31, 2016).

[3] These systems are under the Convention Measurement System, which expresses gross tonnage as ''GT ITC,'' and the Regulatory Measurement System, which expresses gross tonnage as ''GRT.''

the tonnage certifying document(s). The proposed rule would capture the fact that, in some circumstances, vessels may be assigned tonnage under both measurement systems.

Proposed § 138.60 Forms and Submissions; Ensuring Submission Timeliness

To remain consistent with current practice, proposed § 138.60(a) notes that forms can be completed online or downloaded. This is the Coast Guard's preference for submitting eCOFR Applications. If you submit electronic images, please note that, currently, our system only accepts the following imaging programs: PDF, JPEG, and TIFF. Because of delays associated with mail processing and security, submission of forms by mail is discouraged.

Proposed § 138.60(c)(2) also removes the option for hand-delivering submissions because of the prohibition of hand delivery under U.S. Government mail security restrictions. Also, § 138.60(e) makes clear that the timeliness of submissions is solely the responsibility of the person making the submission.

Proposed § 138.70 Issuance and Renewal of COFR

Proposed § 138.70(b) removes the express requirement to pay fees before the issuance of a COFR. This would reflect the NPFC's current business practice when the COFR Operator submits the application via fax or email.

The proposed § 138.70(e) states that certain tonnage information will be posted to the NPFC's COFR website, including the measurement system(s) used, which under proposed § 138.80(a)(1), the applicant is required to provide.

Proposed § 138.80 Applying for COFRs

Proposed § 138.80 reflects the removal of a requirement to pay fees before the issuance of a COFR when Applications are submitted by email or fax, by cross-referencing § 138.120. Section 138.120's new paragraph (a)(3)(i) allows payment to be made within 21 days of the Application. This allows flexibility for the Director to issue COFRs when the Application is complete and evidence of financial responsibility has been established, and before the NPFC receives payment. The COFR Operator must, however, ensure the fees are paid within 21 days of submission of the Application to avoid adverse consequences specified in § 138.120(a)(4).

Proposed § 138.80(a)(1)(i)(C) also clarifies that Master Certificates do not name any specific vessel, but do state the maximum tonnages for the largest vessel for which the COFR Operator may be responsible. Without that requirement, we would not have a record of coverage if an incident occurs in the intervening period between the Application and the first periodic report of covered vessels.

Proposed § 138.80(a)(1)(iv) requires the COFR Operator to include a report with the Application providing information on the vessels covered by the Master Certificate. The proposed rule would also explain what information the COFR Operator must provide to the Director if a vessel has been assigned tonnages under both measurement systems. The inclusion of both assigned tonnages for vessels with more than one should avoid delay of the application process and the effective date of the guaranty.

Additionally, proposed § 138.80(a)(1)(iv)(B) adds a new requirement that certain Master Certificate application information be updated, including a listing of vessels that are no longer covered. This would establish the termination of the guaranty date. Finally, to assist in keeping this information up to date, if during a 6-month reporting period a vessel is transferred to another responsible party, the updated report must list the date and place of transfer and the contact information of the responsible party to whom the vessel was transferred.

Unlike the current application instruction section, § 138.60, proposed § 138.80(d) would not require an original signature page for applications submitted by email or fax. Instead, the COFR Operator may submit a legible scan of the signature page.

Proposed § 138.100 How To Calculate a Total Applicable Amount

Proposed § 138.100(c) states that when statute or regulation adjusts limits of liability, the COFR Operator must establish and maintain evidence of financial responsibility in an amount equal to or greater than the amended total applicable amount, as provided in § 138.240(a).

Proposed § 138.110 How To Establish and Maintain Evidence of Financial Responsibility

The proposed rule removes from the regulation the surety bond as a specifically mentioned method for establishing and maintaining evidence of financial responsibility. This method is still permitted as falling under the ''other method'' provision in paragraph (f).

Proposed § 138.110(a) explains that the guarantor continues to be liable and must provide coverage for 30 days following NPFC receipt of a notice of cancellation and not from the date the guarantor issues the notice. The proposed rule moves this provision currently contained on the COFR guaranty forms into the regulation, and reflects a current and important NPFC business practice. The guarantor would provide the reason for termination as part of its notice of cancellation, if known. Additionally, proposed § 138.110(a) requires COFR Operators, guarantors, and self-insurers to notify the Director of any material change in submitted information, including any material change in the guarantor or self-insurer's financial position. A material change is a change that would affect the basis of the Director's approval of the guarantor or evidence of financial responsibility. This notification would be required immediately when a change occurs, rather than within 10 days of the change as specified in the current rule.

Proposed § 138.110(b) describes the current practice for establishing and maintaining the acceptability of COFR insurance guarantors. This will entail the guarantor submitting information on its structure, business practices, history, financial strength, and other information as requested by the Director. This process involves an initial determination followed by annual submission by each COFR insurance guarantor.

Proposed § 138.110(c) clarifies the net worth and working capital requirements for financial guarantors to reflect current practice. Currently, the NPFC does not add the total applicable amount of each vessel owned by one operator; rather, it bases evidence of financial responsibility on the operator's vessel with the greatest total applicable amount. This proposed rule would require net worth and working capital be based on the aggregate total applicable amounts.

Proposed § 138.110(f) changes the submission date for requesting another guaranty method for establishing evidence of financial responsibility from 45 to 90 days prior to the date the COFR is required. The NPFC needs this additional 45 days to review the financial documentation and communicate with the potential guarantor.

Proposed § 138.120 Fees

Proposed § 138.120 would eliminate an existing requirement that the application fee must be paid before the Director will issue a COFR. This would add flexibility and convenience for COFR Operators, especially if they are underway and want to enter U.S.

navigable waters or U.S. Exclusive Economic Zone. It further explains that failure to pay fees in a timely manner may result in denial or revocation of COFR, debt collection, or other enforcement. Finally, it amends the fee refund procedures in the case of overpayment. The Director would refund overpayments, because, under the proposed amendment, the NPFC will not credit overpayments for the operator's future use or for transfer to another operator anymore.

Proposed § 138.130 Designating Agents for Service of Process

Proposed § 138.130(d) shortens the notification period for a COFR Operator or Guarantor to notify the Director of a new agent for service of process from 10 days to 5 days. This shortened period reflects efficiencies relating to electronic notifications in place of mailed notifications.

Proposed § 138.140 Application Withdrawals, COFR Denials and Revocations

Proposed § 138.140 is revised to reflect current business practice. It adds a provision noting that the COFR Operator may withdraw an Application at any time before issuance of the COFR. It also includes the failure to designate and maintain a U.S. agent for service of process to the list of cases in which the Director may deny an Application or revoke a COFR. The proposed section revision also clarifies that the Director may deny an Application or revoke a COFR after obtaining additional information, such as transfer to a new operator, vessel renaming, guaranty termination or cancellation, or disapproval of the guarantor, and it adds a duty to remedy violations where a COFR for a vessel expires. Finally, it adds a provision specifying that where a COFR is revoked because 30 days have elapsed following the date the Director receives a guarantor's notice of termination, the Director may reinstate the COFR if the guarantor promptly notifies the Director that the guarantor rescinded the termination and there was no gap in coverage. This will align the regulation to the COFR guaranty forms.

Proposed § 138.150 Reporting Requirements

The proposed rule would merge reporting requirements into this one section. It would also revise the regulatory text to emphasize prior notices of changes that will require a new COFR before the change occurs. Proposed § 138.150 identifies the information that must be reported to the Director no later than 21 business days before a new COFR is required for permanent vessel transfers and other changes requiring issuance of a new COFR, and information that need only be reported 3 business days before implementing the change for changes not requiring issuance of a new COFR. Changes that will require issuance of a new COFR include, but are not limited to: a permanent vessel transfer, change of COFR Operator, vessel name change, change in the vessel's gross tonnage, or termination of guaranty.

C. Proposed Removal of 33 CFR 138.90(f)

Current paragraph § 138.90(f) contains a non-regulatory provision dealing with the temporary transfer of custody of an unmanned barge that has a COFR issued under subpart A of part 138. The COFR Operator who transfers the barge continues to be liable under OPA 90, CERCLA, or both, and continues to maintain on file with the Director acceptable evidence of financial responsibility with respect to the barge. The provision encourages the temporary transferee to require the transferring COFR Operator to acknowledge in writing that the transferring COFR Operator agrees to remain responsible for pollution liabilities. We propose to remove § 138.90(f) because the existing COFR remains in effect in respect to that vessel, and a temporary new COFR is not required. We welcome comments on its removal, particularly from those who may employ the practice it encourages.

D. Proposed Removal of 33 CFR Part 135 and Subpart D of 33 CFR Part 153

This document also proposes to remove 33 CFR part 135 and subpart D of 33 CFR part 153 because OPA 90 repealed the legal authorities for them.

The regulations in 33 CFR part 135 apply to the management of the OCSLA Fund, under Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA). Section 2004 in OPA 90 repealed the authority for this part of the CFR (*see* 26 U.S.C. 9509 note). Like the 311(k) Fund, the funds in the OCSLA Fund were transferred to the OSLTF. Similarly, OPA 90 superseded the financial responsibility requirements of OCSLAA. However, OPA 90 (33 U.S.C. 2751(b) and 33 U.S.C. 2716(h)) preserved the force and effect of the regulations in 33 CFR part 135 regarding OCSLAA financial responsibility implementation, until OPA 90 financial responsibility regulations superseded these provisions (*see* 33 U.S.C. 2716(h), 59 FR 34210, July 1, 1994 (interim rule) and 61 FR 9264, March 7, 1996 (final rule)). Since 1992, other regulations have superseded, or appeared to overlap with, the pollution incident notification provisions of 33 CFR part 135. On November 1, 2011, the Coast Guard published a notice of inquiry (76 FR 67385) soliciting public comment on removing 33 CFR part 135. We received no comments opposed to its removal.

The regulations in subpart D of 33 CFR part 153 apply to the management of the 311(k) Fund. That section of the FWPCA was repealed by OPA 90 section 2002(b)(2) (*see* 33 U.S.C. 1321 note), and the funds in the 311(k) Fund were transferred to the Oil Spill Liability Trust Fund (OSLTF).

Removing part 135 and subpart D of part 153 to eliminate unauthorized regulatory requirements is necessary to eliminate potential confusion to the public.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control 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.''

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5,

2017). A draft Regulatory Assessment is available in the docket, and a summary follows. As explained in this section, this proposed rule would impose some quantified costs, and create qualitative benefits, which the Coast Guard believes will justify the costs.

1. Analysis of Alternatives

Alternative 1: No action.

The ''No Action'' alternative makes no regulatory changes to the evidence of financial responsibility regulations in 33 CFR part 138, subpart A. The ''No Action'' alternative is not viable because the statute requires evidence of financial responsibility regulations for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons. At a minimum, a regulation implementing this requirement is required. This alternative reflects the status quo and therefore would have no regulatory cost or benefit.

Alternative 2: Promulgate evidence of financial responsibility regulations for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons (statutory requirement).

Alternative 2 reflects the absolute minimum rulemaking effort to address the statutory requirement in Section 712 of the Coast Guard Authorization Act of 2010. However, the fact that there are other aspects of the Coast Guard's evidence of financial responsibility program that the Coast Guard would like to address, in addition to revising 33 CFR part 138, subpart A and removing regulations that are no longer authorized involving funds that were subsumed by the establishment of the OSLTF, makes this alternative unviable. This alternative would have the least net benefits of all of the proposed alternatives. This alternative reflects the most costly aspect of the rulemaking and is included in all of the proposed alternatives because it is a statutory provision.

Alternative 3: Promulgate evidence of financial responsibility regulations for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons (statutory requirement) and for deepwater ports (discretionary requirement).

Alternative 3 adds promulgating evidence of financial responsibility regulations for deepwater ports to Alternative 2. The Coast Guard considered proposing financial responsibility regulations for deepwater ports as part of this rulemaking. The deepwater port industry is experiencing increased activity in the liquefied natural gas deepwater port industry sector, raising questions about how existing laws and policies regarding these facilities would apply. These issues do not impact vessel evidence of financial responsibility, however, and could create complexity and potentially delay the mandated regulation of tank vessels greater than 100 gross tons but less than or equal to 300 gross tons. In addition, currently only one liquefied natural gas deepwater port is in operation and it uses less than 100 gallons of oil, whereas other designs might pose a greater risk of oil spills. Additional time is necessary to analyze the effects of liquefied natural gas regulation on the economy, maritime safety, and the environment. The only other deepwater port in operation, an oil deepwater port called the Louisiana Offshore Oil Port, is self-insured, and provides evidence of financial responsibility sufficient to meet its maximum liability under OPA 90 under grandfathered requirements of the Deepwater Port Act of 1974.

After evaluating this alternative, the Coast Guard has decided not to develop deepwater port financial responsibility regulations at this time. Postponing evidence of financial responsibility regulations for deepwater ports will not impact maritime safety or the environment. Currently, there is no established market that provides and maintains evidence of financial responsibility for deepwater ports. If the market decides to pursue these ventures in the future, the costs and benefits would be analyzed accordingly as part of a future rulemaking.

Alternative 4 (Preferred alternative) Promulgate evidence of financial responsibility regulations for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons (statutory requirement); require COFR Operators and guarantors to submit additional information to the Coast Guard; make conforming amendments reflect current practices (discretionary requirement); and remove subpart D of 33 CFR part 153 D and 33 CFR part 135 from the Code of Federal Regulations (discretionary requirement).

Alternative 4 addresses the statutory requirement to require tank vessels greater than 100 gross tons but less than or equal to 300 gross tons to establish and maintain financial responsibility. It also provides necessary updates to the current financial responsibility regulations to reflect current practices that have evolved over the past two decades, taking into account technological improvements as well as changes in policy. Lastly, this alternative removes 33 CFR part 135 and subpart D of 33 CFR part 153, both of which regulate two defunct funds, the OCSLA Fund and the 311(k) Fund.

In addition to the regulatory costs and benefits associated with Alternative 2, this alternative would add two aspects with no cost: Conforming regulations to current practice and removing two defunct portions of the CFR, which would provide intangible benefits of eliminating confusion for the public, as well as ensuring that the regulations reflect how the Coast Guard's financial responsibility program currently operates. Additionally, a small amount of regulatory cost would be associated with the proposed requirement to require COFR Operators and guarantors to provide additional information to the Coast Guard. Although the benefits of this alternative are qualitative, the Coast Guard expects them to justify these costs.

2. Proposed Regulatory Changes

We propose amending the vessel evidence of financial responsibility regulations at 33 CFR part 138, subpart A, to:

1. Require financial responsibility to now include all tank vessels greater than 100 gross tons but less than or equal to 300 gross tons.

2. Require additional information from the COFR Operator and guarantor. The proposed revisions include:

- Reporting of gross tonnage measurement system used and submission of a copy of the tonnage certifying document, upon request;
- Electronic submissions;
- Reporting of reason for termination of guaranty by a guarantor, if known; and
- Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

3. Conform regulations to current practice. The proposed revisions include:

- How to apply vessel gross tonnages;
- Removal of requirement to pay fees before issuance of a COFR;
- Moving surety bond method to ''other methods'' for establishing and maintaining evidence of financial responsibility;
- Clarification on continuation of guarantor's liability and requirement to provide coverage for 30 days after cancellation of guaranty; and
- Process for establishing and maintaining acceptability of COFR insurance guarantors.

In addition, for the reasons discussed above, we propose removing 33 CFR part 135 and subpart D of 33 CFR part 153 which concern management of two defunct pollution funds.

Table 2 shows whether a category of regulatory amendments have a

regulatory cost, regulatory benefit, or both. Those amendments that have a regulatory cost or benefit are discussed in detail following the table.

TABLE 2—SUMMARY OF REGULATORY AMENDMENT IMPACTS

	Regulatory cost	Regulatory benefit
Require financial responsibility for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons to establish and maintain evidence of financial responsibility (Statutory)		
Application and certification costs	Yes	Yes
COFR premium costs	Yes	Yes
Require Additional Information from the COFR Operator and guarantor (Discretionary)		
Reporting of gross tonnage measurement systems used and submission of a copy of the tonnage certifying document, upon request.	Yes	Yes
Electronic submissions	No [4]	Yes
Reporting of reason for termination of guaranty by a guarantor	Yes	Yes
Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change	Yes	Yes
Conform regulations to current Practice (Discretionary)		
How to apply vessel gross tonnages	No	Yes
Removal of requirement to pay fees		
before issuance of a COFR	No	Yes
Moving Surety Bond method to "other methods" for establishing and maintaining evidence of financial responsibility	No	Yes
Clarification on continuation of guarantor's liability and requirement to provide coverage for 30 days after cancellation of guaranty	No	Yes
Process for establishing and maintaining acceptability of COFR insurance guarantors	No	Yes
Removal of 33 CFR part 135 and subpart D of 33 CFR part 153 (Discretionary)		
Removal of 33 CFR part 135	No [5]	Yes
Removal of subpart D of 33 CFR part 153	No [6]	Yes

3. Regulatory Costs

There are two regulatory costs identified for this proposed rule:

- Regulatory Cost 1: Require the additional tank vessels greater than 100 gross tons but less than or equal to 300 gross tons to establish and maintain evidence of financial responsibility (statutory requirement).
- Regulatory Cost 2: Require additional information from the COFR Operator and guarantor (discretionary requirement).

Discussion of Regulatory Cost 1

The proposed rule would now require tank vessels greater than 100 gross tons but less than or equal to 300 gross tons to establish and maintain evidence of financial responsibility.[7] These vessels would be required to have COFRs, which would result in two types of costs:

- Application and certification costs; and
- COFR premium costs.

Application and Certification Costs: In the first year of the analysis period, the COFR Operator would be required to pay an Application fee of $200 and a Certification fee of $100 for each vessel requiring a COFR. A new Certification fee would be required every 3 years to renew the COFR.

COFR Premium Costs: The additional operators of tank vessels greater than 100 gross tons but less than or equal to 300 gross tons would have to establish and maintain evidence of financial responsibility using one of these several methods: Insurance, Self-insurance, or Financial Guaranty.[8]

Affected Population: According to the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database, there are an average of 481 tank vessels using U.S. navigable waters or U.S. Exclusive Economic Zone from 2014–2018 that are greater than 100 gross tons but less than or equal to 300 gross tons. Table 3 shows the number of tank vessels greater than 100 gross tons but less than or equal to 300 gross tons per year (2014–2018).

TABLE 3—NUMBER OF TANK VESSELS GREATER THAN 100 GROSS TONS BUT LESS THAN OR EQUAL TO 300 GROSS TONS

Year	Number of vessels
2014	488
2015	492
2016	477
2017	474
2018	474
Average (2014–2018)	481

Cost Summary Regulatory Cost 1

Application and Certification Costs: We assumed the number of future COFR Applications and Certifications, based on the historical average number of vessels in the population from 2014 to 2018 (481 vessels) would be constant for the 10-year analysis period.[9] We also assumed that all vessels would renew their COFRs every 3 years through the full 10-year analysis period. In the first year of the analysis period, COFR Operators would pay an Application fee ($200) and a Certification fee ($100) when applying for a COFR for their vessels. Every 3 years thereafter, COFR Operators would pay a Certification fee ($100) when renewing their COFRs. In the first year of the analysis period, the

[4] Electronic submissions creates cost savings.

[5] Removal of superseded regulatory requirements have no cost. The OCSLAA Fund was subsumed by the Oil Spill Liability Trust Fund.

[6] Removal of superseded regulatory requirements have no cost. The 311(k) Fund was subsumed by the Oil Spill Liability Trust Fund.

[7] Regulatory Cost 1 does not include vessels greater than 300 gross tons that are already required to have a COFR.

[8] Historically, the surety bond method has been used in a very few instances. This proposed rule would move this method to the "other methods" category of financial responsibility under § 138.110(f).

[9] This estimate, based on COFR trends for currently COFRed vessels, was validated by subject matter expert in Coast Guard's Vessel Certification Division.

annual cost would be calculated by multiplying the number of vessels applying for COFRs (481 vessels) by the cost of the Application ($200) and adding the number of vessels requesting certification (481) multiplied by the cost of certification ($100) to equal $144,300. Every third year thereafter, the cost would be calculated by multiplying the number of vessels (481) requesting certification for renewal of their COFRs by the cost of the certification ($100) to equal $48,100.

COFR Premium Costs: It is possible for vessel operators to choose to use the Self-insurance or Financial Guaranty methods of establishing their evidence of financial responsibility, which allows them to use their U.S. business assets. Alternatively, in the case of the Financial Guaranty method, vessels may use the U.S. business assets of a parent, affiliate, or special purpose company as evidence that they are capable of paying for removal costs and damages up to the applicable limit of liability. In those cases, they have made a business decision that the cost of the assuming liability risk under OPA 90 is less than the premium charged by commercial insurance companies. This assessment of OPA 90 risk is company-specific and not quantifiable. Therefore, for the purposes of this analysis, we have assumed that the responsible parties would use the Insurance method of establishing and maintaining their evidence of financial responsibility. We received estimates of COFR insurance premium amounts for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons from 4 COFR insurance companies representing over 90 percent of existing COFRs.[10] Based on this survey of guarantors, we estimated that the premiums per vessel would range between $300 and $1,000 per year.

Vessel Premium Low Range Cost Estimate: The Coast Guard calculated the vessel premium low range cost estimate by using the following formula:

Number of vessels × cost of premium per vessel per year:

481 vessels × $300 per vessel per year = $144,300 per year

Vessel Premium High Range Cost Estimate: The Coast Guard calculated the vessel premium high range cost estimate by using the following formula:

Number of vessels × the cost of premium per vessel per year:

481 vessels × the $1,000 per vessel per year = $481,000 per year

[10] Source: NPFC's COFR database.

Discussion of Regulatory Cost 2

This proposed rule would require additional information from the COFR Operator and guarantor that would result in three types of costs:

- Reporting of gross tonnage measurement systems used and submission of copy of tonnage certifying document, upon request;
- Reporting of reason for termination of guaranty by a guarantor, if known; and
- Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

Reporting of Gross Tonnage Measurement Systems Used and Submission of a Copy of Tonnage Certifying Document, upon request—Affected Population: All COFR Operators, including those for the tank vessels greater than 100 gross tons but less than or equal to 300 gross tons proposed in this rule, would report the gross tonnage measurement systems used when applying for and/or renewing a COFR. The Coast Guard's COFR database indicates that there are 25,875 currently COFRed vessels. Adding the 481 COFRed tank vessels greater than 100 gross tons but less than or equal to 300 gross tons proposed in Regulation Cost 1, and assuming the number of COFRed vessels remains constant during the analysis period, the total number of COFRed vessels equals 26,356.

Master Certificate and Fleet Certificate holders would also be required to provide the gross tonnage measurement systems used for the largest vessel covered by the Application. According to the COFR database, there are currently 8 Master Certificates and 12 Fleet Certificates.

COFR Operators would also provide a copy of the tonnage certifying document, upon request. We assume that the Coast Guard would request a copy of the tonnage certifying document when there is an incident. According to incident data from the Coast Guard's CIMS database, there was an average of 12 incidents per year involving vessels with COFRs and vessels that would be required to have COFRs under this proposed rule over the five year period 2012–2017. We assume that for the analysis period, the number of incidents will remain constant with this average.

& of Reason for Termination of Guaranty by a Guarantor—Affected Population:

Based on NPFC Vessel Certification Program data on the historical number of annual notices of guaranty termination by guarantors, the Coast Guard estimates that there will be 4,000 per year for the 10-year analysis period.

Reporting Vessel Name Change and Increased Reporting on Location of Vessel When There is a Change in Ownership on Date of change—Affected Population: Based on NPFC Vessel Certification Program historical data, the Coast Guard estimates that there will be 1,000 submissions per year.

Cost Summary Regulatory Cost 2

Reporting of Gross Tonnage Measurement Systems Used and Submission of Copy of Tonnage Certifying Document, upon request: Reporting the gross tonnage measurement systems used with the application and/or requests for COFR renewal would result in a negligible cost impact (less than one minute of time) to the COFR Operator and would be completed with the Application for the COFR. We do not quantify this cost because it is negligible.

Based on estimates received from COFR insurance guarantors who would submit, upon request, a copy of the tonnage certifying document on behalf of the COFR Operator, COFR Operators would require 15 minutes (0.25 hours) per submission.

Number of submissions per year × number of hours × the labor cost per hour:

12 × 0.25 hours per submission = 3 hours

3 hours per year × $35.64 per hour [11] = $107 per year

Reporting of reason for termination of guaranty by a guarantor: We estimated that it would take 5 minutes (0.08 hours) for the guarantor to add the reason why the guaranty was terminated to the information they already provide to the Coast Guard when they terminate a guaranty.

Number of terminations per year × number of hours per submission × labor cost per hour:

4,000 submissions per year × 0.08 hours per submission × $35.64 per hour = $11,405 per year

Reporting Vessel Name Change and Increased Reporting on Location of Vessel When There is a Change in Ownership on Date of Change: We assumed that it will take an additional

[11] Total employer compensation costs for private industry workers averaged, $35.64 per hour worked, found at *https://www.bls.gov/news.release/archives/ecec_12152017.pdf.* Bureau of Labor Statistics Economic News Release Employer Costs for Employee Compensation news release text. Friday, December 15, 2017. This wage rate was selected because it is the most general and reflects that the person submitting the information could be any worker whether an administrative assistant or a Chief Executive Officer of a company.

5 minutes (0.08 hours) per submission to provide additional information that is not already required under the current rule.

Number of submissions per year × number of hours per submission × the labor cost per hour:

1,000 submissions per year × the 0.08 hours/submission × the $35.64 per hour [12] = $2,851 per year

Present Value Regulatory Costs (Low Range): We estimated that the 10-year present value of the proposed rule, at a 3-percent discount rate, to be $1.6 million. We estimated that the 10-year present value of the proposed rule, at a 7-percent discount rate, to be $1.3 million. The estimated annualized discounted cost of the proposed rule, at a 3-percent discount rate, is $188,877. The estimated annualized discounted cost of the proposed rule, at a 7-percent discount rate, is $190,835.

Present Value Regulatory Costs (High Range): We estimated the 10-year present value of the proposed rule, at a 3-percent discount rate, to be $4.4 million. We estimated the 10-year present value of the proposed rule, at a 7-percent discount rate, to be $3.7 million. The estimated annualized discounted cost of the proposed rule, at a 3-percent discount rate, is $525,577. The estimated annualized discounted cost of the proposed rule, at a 7-percent discount rate, is $527,535.

4. Regulatory Benefits

There are four qualitative benefits identified for this proposed rule:

- Regulatory Benefit 1: Require Tank Vessels Greater than 100 Gross Tons to 300 Gross Tons to Establish and Maintain Evidence of Financial Responsibility (statutory requirement).
- Regulatory Benefit 2: Require additional information from the COFR Operator and guarantor (discretionary requirement).
- Regulatory Benefit 3: Conform Regulations to Current Practice (discretionary requirement).
- Regulatory Benefit 4: Removal of 33 CFR part 135 and subpart D of 33 CFR part 153 (discretionary requirement).

Discussion of Regulatory Benefit 1

Oil pollution removal costs and damages for incidents have substantially increased since 1990, even for relatively small-sized discharges. When there is no evidence of financial responsibility, it becomes more likely that the OSLTF will have to pay for at least some of the costs resulting from the incident.[13] When vessels have COFRs, the incident cost amount paid by the responsible party is higher than for vessels that do not have COFRs. This proposed rule would add tank vessels greater than 100 gross tons but less than or equal to 300 gross tons to the vessels that are already required to establish and maintain evidence of financial responsibility.

Of the 10,000 incidents sampled from the Coast Guard's Contract Information Management System (CIMS) database during the ''1990 to 2017'' period, 4.91 percent were COFRed vessels and 29.15 percent were non-COFRed vessels.[14] Coast Guard CIMS data show that the Coast Guard recovers 98.98 percent of costs when a vessel was COFRed, and only 27.71 percent of costs when it was not COFRed.

The proposed requirement would ensure that the costs are internalized because parties responsible for oil spills would be more fully responsible for (moving from less than ⅓ to nearly 100 percent) paying for the oil pollution removal costs and damages and help correct this market failure.[15] Increased recovered cost rates shift the risk and actual costs from the OSLTF to the polluting responsible party.

Discussion of Regulatory Benefit 2

Reporting of Gross Tonnage Measurement Systems Used and Submission of copy of Tonnage Certifying Document, upon request: COFR Operators would submit a copy of the tonnage certifying document upon request.

Providing this additional information with respect to gross tonnage will allow the Coast Guard to determine more effectively the limit of liability and applicable amounts of financial responsibility for the incident. In some cases, vessels have tonnage determined under more than one measurement system, depending on a variety of factors, including the vessel's flag, length, voyage type, keel laid, or substantial alteration date, and whether it is self-propelled. This has caused confusion with respect to which measurement system to use to determine the limit of liability and amount of financial responsibility.

Regardless of the tonnage reported on the Application, the tonnage certifying document governs the required evidence of financial responsibility and the limit of liability at the time of the incident (except when the responsible parties or guarantors knew or should have known that the tonnage certificate information was incorrect). Using the tonnage certifying document provides the following benefits: (1) It ensures that the Coast Guard has the most accurate tonnage measurements; (2) it provides the method used to determine tonnage, as well as the tonnage amount; (3) it provides information for foreign flagged vessels that is oftentimes difficult to obtain; and (4) without the applicable tonnage certifying document, if an incident occurred, a re-measurement of tonnage could alter the already determined financial responsibility and limit of liability.

Electronic submissions: The proposed rule would allow COFR Operators, guarantors, and agents for service of process to submit signed scanned images, emails, or faxes instead of hard copy signed-in-ink originals. The Coast Guard receives approximately ten of the CG–5586 forms by mail annually. Allowing electronic submissions creates minimal cost savings; however, it allows the flexibility to COFR Operators, and enhances Coast Guard's recordkeeping goals. This would work towards the OMB's goal to maximize the use of electronic technology for collection of information from the public.

Reporting of reason for termination of guaranty by guarantor: The proposed rule would require the guarantor to include the reason for termination, if known, with the notification for termination of the guaranty. This information would provide the Coast Guard with new information about the COFR Operator in the event there is an incident.

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change: The proposed rule would ensure that the Coast Guard has the most current information when initially issuing a COFR—especially concerning vessels that, over time, become derelict while in U.S. navigable waters or U.S. Exclusive Economic Zone. The proposed revisions will also improve the Coast Guard's ability to establish compliance with COFR regulations by more effectively ensuring the responsible party is able to pay its liability and mitigate risks to the OSLTF. For example, if a vessel is sold while using a place subject to U.S. jurisdiction, the new responsible parties become immediately subject to the COFR program. These proposed changes are to ensure that, while the Coast Guard still has regulatory authority over

[12] See footnote 8.

[13] Lawrence I. Kiern, ''Liability, Compensation, and Financial Responsibility Under the Oil Pollution Act of 1990: A review of the Second Decade.'' 36 *Tulane Maritime Law Journal.* 23–24 (2011).

[14] The remaining 65.94 percent of incidents were either facility incidents or incidents where the Coast Guard could not identify the source.

[15] See OMB Circular A–4, page 4 dated September 17, 2003 for a short discussion on market failures and externalities such as environmental problems.

a responsible party and the financial assurances of the guarantor, the Coast Guard receives information relevant to continued compliance before problems arise. However, enforcing compliance with the COFR program's requirements depends on the Coast Guard knowing about the vessel transfer. The proposed regulatory revisions seek to ensure that the Coast Guard receives this information and to mitigate the risk of uninsured responsible parties and derelict vessels.

Discussion of Regulatory Benefit 3

How to apply vessel gross tonnages: This proposed rule would update and simplify the provisions respecting how to apply gross tonnage measurement methods to reflect changes in the law since OPA 90 was first enacted. This proposed rule is consistent with the Coast Guard's tonnage regulation at 46 CFR part 69 ''Measurement of Vessels'' (81 FR 18701, March 31, 2016).

Removal of requirement to pay fees before issuance of a COFR: The proposed rule would allow the COFR Operator to pay the COFR Application and Certification fees up to 21 days after submitting their COFR Application. This would add flexibility and convenience for COFR Operators, especially if they are underway and want to enter U.S. navigable waters or U.S. Exclusive Economic Zone.

Moving surety bond method to ''other methods'' for establishing and maintaining evidence of financial responsibility: The proposed rule would no longer specifically discuss the surety bond method in the regulations because it is rarely, if ever, used. However, the surety bond method would continue to be available under the ''other methods'' provision in the proposed rule.

Clarification on continuation of guarantor's liability and requirement to provide coverage for 30 days after cancellation of guaranty: The proposed rule would explain that the guarantor continues to be liable and must provide coverage for 30 days following NPFC receipt of a notice of cancellation. This requirement is currently contained on the COFR form and reflects a current and important NPFC business practice.

Process for establishing and maintaining acceptability of COFR insurance guarantors: The proposed rule would move the current process for establishing and maintaining acceptability of COFR insurance guarantors into the regulations to make it more transparent to the public. The Coast Guard's longstanding business practice under the current COFR regulations for determining the acceptability of guarantors is the basis of the procedures set forth in the proposed rule. The proposed rule would also provide a process through which a COFR operator may provide new evidence of financial responsibility and obtain approval or continuation of the COFR where the Coast Guard disapproves a guarantor (for example, due to guarantor fraud or financial failure). The provision applies to pending Applications and following the issuance of a COFR.

Discussion of Regulatory Benefit 4

These regulations concern management of two pollution funds—the Offshore Oil Pollution Compensation Fund and the FWPCA Section 311(k) Fund. These provisions are no longer authorized. On November 1, 2011, the Coast Guard published a notice of inquiry (76 FR 67385) soliciting public comment on removing 33 CFR part 135 and we received no adverse comments. This aspect of the rulemaking is necessary to remove unauthorized regulatory requirements and to eliminate potential confusion to the public.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket, and a summary follows.

There are two potential direct costs to small entities that would result from this proposed rule:

- Regulatory Cost 1: Require Tank Vessels Greater than 100 Gross Tons to 300 Gross Tons to Establish and Maintain Evidence of Financial Responsibility (Statutory Requirement) [16]
- Regulatory Cost 2: Require Additional Information from COFR Operators and Guarantors (Discretionary Requirement)

Regulatory Cost 1—Require Tank Vessels Greater than 100 Gross Tons to 300 Gross Tons Establish and Maintain Evidence of Financial Responsibility (Statutory Requirement).

Affected Population: We queried NPFC's COFR database to determine that there are 149 U.S. entities that operate tank vessels greater than 100 gross tons but less than or equal to 300 gross tons. We researched the number of employees and revenue for these entities using public and proprietary databases. We then determined which entities were small based on the Regulatory Flexibility Act's criteria for small non-profits and small governmental jurisdictions and the U.S. Small Business Administration's (SBA) ''Table of Small Business Standards Matched to North American Industry Classification System (NAICS) Codes'' publication for businesses.[17]

Of these 149 entities, we found employee and revenue data on 59 entities. Of these 59 entities, 27 were small and 32 were not small based on the Regulatory Flexibility Act and SBA's criteria. For the purposes of this analysis, we assumed that the remaining 90 entities were small entities. Adding the known small entities to the unknown entities brings the total number of entities considered to be small entities for the purpose of this analysis to be 117. Of the small entities, 115 are businesses, 2 are governmental jurisdictions, and 0 are small non-profits.

Regulatory Cost 2—Require Additional Information from COFR Operators and Guarantors (Discretionary Requirement).

Affected Population: We queried NPFC's COFR database to determine that there are 761 U.S. entities that operate vessels with COFRs, including those operating vessels proposed in Regulatory Cost 1. We researched the number of employees and revenue for these entities using public and proprietary databases. We then determined which entities were small based on the Regulatory Flexibility Act's criteria for small non-profits and small governmental jurisdictions and the U.S. Small Business Administration's (SBA) ''Table of Small Business Standards Matched to North American Industry Classification System (NAICS) Codes'' publication for businesses.[18]

Of these 761 entities, we found employee and revenue data on 354 entities. Of these 354 entities, 245 were small and 109 were not small based on the Regulatory Flexibility Act and SBA's

[16] Regulatory Cost 1 does not include vessels greater than 300 gross tons that are already required to have a COFR.

[17] The criteria for determining whether an entity is small vary by NAICS code and generally involve the number of employees or annual sales.

[18] The criteria for determining whether an entity is small vary by NAICS code and generally involve the number of employees or annual sales.

criteria. For the purposes of this analysis, we assumed that the remaining 407 entities were small entities. Adding the known small entities to the unknown entities brings the total number of entities considered to be small entities for the purpose of this analysis to be 652. Of the small entities, 641 are businesses, 4 are governmental jurisdictions, and 7 are small non-profits.

Regulatory Cost 1 Summary

The following calculation shows the average annual cost of establishing financial responsibility per vessel for tank vessels greater than 100 gross tons but less than or equal to 300 gross tons:

Number of Vessels × Annual Cost of Application/Certification + Number of Vessels × Annual COFR Insurance Premium

In the first year of the analysis period, COFR Operators would pay an Application fee ($200) and a Certification fee ($100) when applying for a COFR for their vessels. Every 3 years thereafter, COFR Operators would pay a Certification fee ($100) when renewing their COFRs. For each tank vessel greater than 100 gross tons but less than or equal 300 gross tons, the total 10 year cost is $600. The average annual cost for these vessels is $60. We calculated the average premium ($650 per year) by averaging the high-range COFR insurance premium ($1,000 per year) and low-range COFR insurance premium estimates ($300 per year) provided by COFR insurance guarantors.

For example, for a small entity with three vessels, the calculation would be as follows:

Number of Vessels × Annual Cost of Application/Certification + Number of Vessels × Annual COFR Insurance Premium

3 vessels × $60 per year + 3 vessels × $650 per year = $2,130 per year

Table 4 shows the annual cost of Regulatory Cost 1 for each small entity based on the number of vessels they operate.[19]

TABLE 4—ANNUAL COST PER SMALL ENTITY

Number of vessels	Number of small entities	Annual cost per small entity
1	77	$710
2	17	1,420
3	9	2,130
4	3	2,840
5	4	3,550
6	1	4,260
7	3	4,970
8	0	0
9	0	0
10	0	0
11	0	0
12	1	8,520
13	1	9,230
14	0	0
15	1	10,650
Total	117	

We then divided the annual cost per small entity by the small entity's associated annual revenue and then multiplied by 100 to determine the percent impact of the proposed rule on the small entities' revenue. Table 5 shows the economic impact to small entities of Regulatory Cost 1.

TABLE 5—ECONOMIC IMPACT TO SMALL ENTITIES—REGULATORY COST 1

Percent of annual revenue	Number of small entities	Percent of small entities
1 to 2	0	0
<1	117	100

Regulatory Cost 2 Summary

Reporting the gross tonnage measurement systems used with the application and/or requests for COFR renewal would result in a negligible cost impact (less than one minute of time) to the COFR Operator and would be completed with the Application for the COFR. We do not quantify this cost because it is negligible. As shown in the Cost Benefit Analysis section of the Regulatory Analysis, the annual cost for Regulatory Cost 2 is $14,363 per year total for all COFRed vessels, including those operating vessels proposed in Regulatory Cost 1. The per vessel cost of Regulatory Cost 2 to small entities is calculated by determining the total cost of Regulatory Cost 2 divided by number of COFRed vessels.

$14,363 ÷ 26,356 COFRed Vessels = $1 per vessel[20]

Table 6 shows the annual cost of Regulatory Cost 2 for each small entity based on the number of vessels they operate.[21]

[19] Source: NPFC's COFR database.

[20] Rounded up to nearest dollar from $0.55.

[21] Source: NPFC's COFR database.

TABLE 6—ANNUAL COST PER SMALL ENTITY

Number of vessels	Number of small entities	Annual cost per small entity
1	362	1
2	77	2
3	41	3
4	26	4
5	22	5
6	19	6
7	18	7
8	5	8
9	9	9
10	12	10
11	3	11
12	3	12
13	4	13
14	3	14
15	4	15
16	1	16
18	3	18
19	1	19
20	1	20
23	1	23
24	1	24
25	1	25
26	1	26
27	1	27
30	2	30
31	1	31
32	1	32
35	2	35
36	1	36
37	1	37
41	1	41
42	1	42
53	1	53
55	1	55
56	1	56
57	1	57
60	1	60
61	1	61
77	1	77
79	1	79
80	1	80
96	2	96
98	1	98
104	1	104
107	1	107
116	2	116
129	1	129
158	1	158
169	1	169
315	1	315
389	1	389
462	1	462
496	1	496
Total	652	

We then divided the annual cost per small entity by the small entity's associated annual revenue and then multiplied by 100 to determine the percent impact of the proposed rule on the small entities' revenue.[22] Table 7 shows the economic impact to small entities of Regulatory Cost 2.

[22] Revenue information researched at *https://www.manta.com/*.

TABLE 7—ECONOMIC IMPACT TO SMALL ENTITIES—REGULATORY COST 2

Percent of annual revenue	Number of small entities	Percent of small entities
1 to 2	0	0
< 1	652	100

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would revise a previously approved collection of information (OMB Control Number 1625–0046) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. We also discuss the following incremental paperwork burden associated with this proposed rule earlier in the ''Cost Benefit Analysis'' under ''Regulatory Cost 2'' and ''Regulatory Benefit 2.''

Title: Financial Responsibility for Water Pollution.

OMB Control Number: 1625–0046.

Summary of the Collection of Information: This proposed rule would add additional collection of information requirements to existing OMB Control Number 1625–0046 for: COFR Operators to report gross tonnage and gross tonnage measurement systems used, and submit a copy of their tonnage certifying document, upon request; guarantors to report the reason for termination of a guaranty; and COFR Operators to report vessel name changes and increase reporting on location of vessel when there is a change in ownership on date of change.

Need for Information:

Reporting of gross tonnage measurement systems used and submission of copy of the tonnage certifying document, upon request.

Providing tonnage measurement systems used and submitting the tonnage certifying document, upon request, in the proposed rule, with respect to gross tonnage will allow the Coast Guard to determine more effectively the limit of liability and applicable amounts of financial responsibility for the incident. In some cases, the vessel may be assigned tonnage under more than one measurement system depending on a variety of factors including the vessel's flag, length, voyage type, keel laid, or substantial alteration date, and whether it is a self-propelled vessel. This has caused confusion with respect to which method to use to determine limit of liability and amount of financial responsibility.

Regardless of the tonnage reported on the Application, the tonnage certifying document governs the required evidence of financial responsibility and the limit of liability at the time of the incident (except when the responsible parties or guarantors knew or should have known that the tonnage certifying document or certificate of registry was incorrect). Using the tonnage certifying document provides the following benefits: It ensures that the Coast Guard has the most accurate tonnage measurements; it provides the method used to determine tonnage, as well as the tonnage amount; it provides information for foreign flagged vessels that is oftentimes difficult to obtain; and without the applicable tonnage certifying document, if an incident occurred, a re-measurement of tonnage could alter the already determined financial responsibility and limit of liability.

Reporting of reason for termination of guaranty by a guarantor.

The proposed rule would require that the guarantor include the reason for termination, if known, with the notification for termination of the guaranty. This information would provide the Coast Guard with information about the COFR Operator that otherwise would not be known in the event there is an incident.

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

The additional collection of information in the proposed rule would ensure the information the Coast Guard relies on when initially issuing a COFR is up to date and remains current—especially concerning vessels that, over time, become derelict while in U.S. navigable waters or U.S. Exclusive Economic Zone. The proposed revisions would also improve the Coast Guard's ability to establish compliance with COFR regulations by more effectively ensuring that the responsible party is able to pay its liability and mitigate risks to the OSLTF. For example, if a vessel is sold while using a place subject to U.S. jurisdiction, the new responsible parties become immediately subject to the COFR program. These proposed changes would ensure that, while the Coast Guard still has regulatory authority over a responsible party and the financial assurances of the guarantor, the Coast Guard receives information material to continued compliance before problems arise. Enforcing compliance with the COFR program's requirements, however, depends on the Coast Guard knowing about the vessel transfer. The proposed regulatory revisions seek to ensure that the Coast Guard receives this information and to mitigate the risk of uninsured responsible parties and derelict vessels.

Proposed Use of Information:

Reporting of gross tonnage measurement systems used and

submission of copy of the tonnage certifying document, upon request.

The Coast Guard would use the additional collection of information in the proposed rule to ensure that the gross tonnage of a vessel involved in an incident is accurate to determine its limit of liability and applicable amount of financial responsibility.

Reporting of reason for termination of guaranty by a guarantor.

The Coast Guard would use the additional collection of information in the proposed rule to learn more about a vessel and its COFR Operators in the event of an incident. Adding a new requirement to provide the reason for guaranty termination will reduce the possibility that a guarantor would cancel the guaranty to simply shield themselves from potential liability in the event of an incident.

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

The Coast Guard would use the additional collection of information in the proposed rule to identify a responsible party in the event there is an incident.

Description of the Respondents: The respondents are COFR Operators of vessels and OPA 90 COFR insurance guarantors.

Number of Respondents: The additional collection of information in this proposed rule would affect 761 COFR Operators and 14 OPA 90 COFR insurance guarantors.

Frequency of Response:

Reporting of gross tonnage measurement systems used and submission of copy of the tonnage certifying document.

All COFR Operators, including those for the tank vessels greater than 100 gross tons but less than or equal to 300 gross tons proposed in this rule, would report the gross tonnage measurement systems used when applying for a COFR. The Coast Guard's COFR database indicates that there are 25,875 currently COFRed vessels. Adding the 481 COFRed tank vessels greater than 100 gross tons but less than or equal to 300 gross tons proposed in Regulation Cost 1, and assuming the number of COFRed vessels remains constant during the analysis period the total number of COFRed vessels equals 26,356.

Master Certificate and Fleet Certificate holders would also be required to provide the gross tonnage measurement systems used for the largest vessel covered by the Application.

The Coast Guard estimated that COFR Operators would provide information on ⅓ of the vessels with COFRs each year due to the 3-year cycle of the Application process.

Individual Certificates—The Coast Guard's COFR database indicates that, currently, there are 25,875 COFRed vessels. Adding the 481 COFRed tank vessels greater than 100 gross tons to 300 gross tons proposed in Regulation Cost 1 equals 26,356 COFRed vessels.

26,356 COFRed vessels ÷ 3 = 8,785 COFRed vessels per year that would require the submission of the gross tonnage measurement systems used.

Masters Certificates—According to the COFR database, there are currently 8 Master Certificates.

8 Master Certificates ÷ 3 = 3 Master Certificates per year that would require the submission of the gross tonnage measurement systems used for the largest vessel covered by the Application.

Fleet Certificates—According to the COFR database, there are currently 12 Fleet Certificates.

12 Fleet Certificates ÷ 3 = 4 Fleet Certificates per year that would require the submission of the gross tonnage measurement systems used for the largest vessel covered by the Application.

COFR Operators would also provide a copy of the tonnage certifying document, upon request. We assume that the Coast Guard would request a copy of the tonnage certifying document when there is an incident. According to incident data from the Coast Guard's CIMS database, there was an average of 12 incidents per year involving vessels with COFRs and vessels that would be required to have COFRs under this proposed rule over the five year period 2012–2017. We assume that for the analysis period, the number of incidents will remain constant with this average.

Reporting of reason for termination of guaranty by a guarantor.

Based on NPFC Vessel Certification Program data on the historical number of annual notices of guaranty termination by guarantors, the Coast Guard estimates that there will be 4,000 vessels per year for the 10-year analysis period.

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

Based on NPFC Vessel Certification Program historical data, the Coast Guard estimates that there will be 1,000 submissions on vessel name changes and change in location when there is a change in ownership per year.

Burden of Response:

Reporting of gross tonnage measurement systems used and submission of copy of the tonnage certifying document, upon request.

Reporting the gross tonnage measurement systems used with the application and/or requests for COFR renewal would result in a negligible burden (less than one minute of time) to the COFR Operator and would be completed with the Application for or request for renewal of the COFR.

Based on estimates received from COFR insurance guarantors who would submit, upon request, a copy of the tonnage certifying document on behalf of the COFR Operator, COFR Operators would require 15 minutes (0.25 hours) per submission.

Reporting of reason for termination of guaranty by a guarantor.

The Coast Guard estimated that it will take 5 minutes (0.08 hours) for the guarantor to add the reason why the guaranty was terminated to the information they provide to the Coast Guard already when he or she terminates a guaranty.

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

The Coast Guard assumed that it will take an additional 5 minutes (0.08 hours) per submission to provide additional information that is not already required under the current rule.

Estimate of Total Annual Burden:

Reporting of gross tonnage measurement systems used and submission of copy of the tonnage certifying document, upon request.

As stated above in the cost benefit analysis section of the preamble, we do not quantify the cost impact of reporting the gross tonnage measurement systems used because it is negligible and is provided as part of the Application and/or request for COFR renewal.

The cost burden associated with COFR Operators providing, upon request, their tonnage certifying document is calculated as follows:

Number submissions per year × Number of hours × labor cost per hour:

12 × 0.25 hours per submission = 3 hours

3 hours per year × $35.64 per hour = $107 per year

Reporting of reason for termination of guaranty by a guarantor.

Number of terminations per year × number of hours per submission × labor cost per hour:

4,000 submissions per year × 0.08 hours per submission × $35.64 per hour = $11,405 per year

Reporting vessel name change and increased reporting on location of vessel when there is a change in ownership on date of change.

Number of submissions per year × number of hours per submission × labor cost per hour:

1,000 submissions per year × 0.08 hours per submission × $35.64 per hour = $2,851 per year

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them by the date listed in the **DATES** section of this preamble to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

This rulemaking is based on provisions in OPA 90 and CERCLA; 33 U.S.C. 2716 and 42 U.S.C. 9608, respectively. This proposed rule would amend Coast Guard regulations on vessel evidence of financial responsibility and remove certain unnecessary pollution fund regulations. The OPA 90 contains a savings clause that saves to the States the ability to regulate activities contained in Title I of OPA 90, including vessel evidence of financial responsibility requirements. *See* 33 U.S.C. 2718; *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 105, 120 S.Ct. 1135, 1146 (2000). Thus, nothing in this proposed rule would preempt states from regulating vessel evidence of financial responsibility requirements for oil pollution. However, CERCLA contains an express preemption provision which prohibits States, except under limited circumstances, from requiring vessels to establish or maintain evidence of financial responsibility in connection with liability for the release of a hazardous substance if those vessels maintain evidence of the financial responsibility required under that subchapter (42 U.S.C. 9614(d)). Thus, except under limited circumstances, States cannot regulate requirements for vessel evidence of financial responsibility requirements for hazardous material pollution. The removal of 33 CFR part 135 and subpart D of part 153 would remove certain federal pollution fund's regulatory requirements that were superseded by OPA 90 and subsumed by the OSLTF. As the proposed rule clarifies but does not alter the existing, applicable federal law relating to pollution funds, it would not have preemptive impact. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods;

sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule would be categorically excluded under paragraph L53 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L53 pertains to congressionally mandated regulations designed to improve or protect the environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This proposed rule involves expanding vessel financial responsibility to include tank vessels greater than 100 gross tons but less than or equal to 300 gross tons, clarifying and updating the rule's reporting requirements, conforming the rule to current practice, and removing two superseded regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 135

Administrative practice and procedure, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 138

Hazardous materials transportation, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels, Water pollution control.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to remove 33 CFR part 135, and to amend 33 CFR parts 138 and 153 as follows:

PART 135—[REMOVED]

■ 1. Remove part 135.

PART 138—EVIDENCE OF FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER PORTS AND ONSHORE FACILITIES)

■ 2. The authority citation for part 138 is revised to read as follows:

Authority: 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; 6 U.S.C. 552(d); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01. Section 138.40 also issued under the authority of 46 U.S.C. 2103 and 14302.

■ 3. In part 138, revise the part heading to read as set out above; and revise subpart A, consisting of §§ 138.10 through 138.170, to read as follows:

Subpart A — Evidence of Financial Responsibility for Water Pollution (Vessels)

Sec.

138.10 Scope and purpose.
138.20 Applicability.
138.30 Definitions.
138.40 General requirements.
138.50 How to apply vessel gross tonnages.
138.60 Forms and submissions; ensuring submission timeliness.
138.70 Issuance and renewal of COFRs.
138.80 Applying for COFRs.
138.90 Renewing COFRs.
138.100 How to calculate a total applicable amount.
138.110 How to establish and maintain evidence of financial responsibility.
138.120 Fees.
138.130 Agents for Service of process.
138.140 Application withdrawals, COFR denials and revocations.
138.150 Reporting requirements.
138.160 Non-owning COFR Operator's responsibility for identification. 138.170 Enforcement.

Subpart A—Evidence of Financial Responsibility for Water Pollution (Vessels)

§ 138.10 Scope and purpose.

(a) *Scope.* This subpart sets forth—

(1) The requirements and procedures each COFR Operator (as defined in § 138.30(b)) must use to establish and maintain the evidence of financial responsibility required by the OPA 90 and CERCLA (both defined in § 138.30), and to obtain Certificates of Financial Responsibility (COFR);

(2) The standards and procedures the Coast Guard uses to determine the acceptability of guarantors;

(3) The procedures guarantors must use to submit evidence of financial responsibility on behalf of the responsible parties for vessels to which this subpart applies;

(4) The requirements for designating and maintaining U.S. agents for service of process;

(5) The requirements for reporting changes affecting compliance with this subpart; and

(6) The enforcement actions that may result from non-compliance with this subpart or OPA 90, CERCLA, or both, referenced in paragraph (a)(1) of this section.

(b) *Purpose.* These requirements ensure that the responsible parties for vessels to which this subpart applies, have sufficient available financial resources to cover their potential liabilities to the United States and other claimants in the following scenarios:

(1) Under OPA 90 in the event of a discharge, or substantial threat of a discharge, of oil; and

(2) In the case of vessels greater than 300 gross tons, under CERCLA in the event of a release, or threatened release, of a hazardous substance.

§ 138.20 Applicability.

(a) *Applicability generally.* This subpart applies—

(1) To the COFR Operator of—

(i) Any vessel over 300 gross tons (except a vessel listed in paragraphs (d)(1) or (d)(2) of this section) using the navigable waters of the United States, or any port or other place subject to the jurisdiction of the United States, including any such vessel using a deepwater port or other offshore facility subject to the jurisdiction of the United States;

(ii) Any vessel of any size (except a vessel listed in paragraphs (d)(1) or (d)(3) of this section) using the waters of the Exclusive Economic Zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(iii) Any tank vessel over 100 gross tons (except a vessel listed in paragraphs (d)(1) or (d)(3) of this section) using the navigable waters of the United States, or any port or other place subject to the jurisdiction of the United States, including any such tank vessel using a deepwater port or other offshore facility subject to the jurisdiction of the United States;

(2) To a guarantor providing evidence of financial responsibility under this subpart on behalf of one or more of a vessel's responsible parties;

(3) To responsible parties other than the COFR Operator designated to represent the responsible parties for purposes of this subpart; and

(4) To any person serving as a U.S. agent for service of process under this subpart.

(b) *How to apply this part to mobile offshore drilling units.* For the purposes of applying the evidence of financial responsibility required under OPA 90 and this subpart and the limits of liability set forth in subpart B of this part, and in addition to any OPA 90 offshore facility evidence of financial responsibility requirements that may apply under 30 CFR part 553, a mobile offshore drilling unit is treated as—

(1) A tank vessel when it is being used as an offshore facility; and

(2) A vessel other than a tank vessel when it is not being used as an offshore facility.

(c) *How to apply CERCLA evidence of financial responsibility to self-propelled vessels.* For the purposes of applying the evidence of financial responsibility required under CERCLA and for vessels identified in paragraph (a)(1)(i) of this section, this subpart applies to a self-propelled vessel over 300 gross tons even if it does not carry hazardous substances.

(d) *Exceptions.* (1) This subpart does not apply to public vessels.

(2) Paragraph (a)(1)(i) of this section does not apply to any non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(3) Paragraphs (a)(1)(ii) and (a)(1)(iii) of this section do not apply to: any offshore supply vessel; any fishing vessel or fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person; any towing or pushing vessel (tug) simply because it has in its custody a tank barge; or any tank vessel that only carries, or is adapted to carry, non-liquid hazardous material in bulk as cargo or cargo residue.

§ 138.30 Definitions.

(a) As used in this subpart, the following terms have the meanings set forth in—

(1) OPA 90 (specifically in 33 U.S.C. 2701): *claim, claimant, damages, deepwater port, discharge, Exclusive Economic Zone, facility, incident, liable* or *liability, mobile offshore drilling unit, navigable waters, offshore facility, oil, owner or operator, person, remove, removal, removal costs, responsible party, tank vessel, United States,* and *vessel;* and

(2) CERCLA (42 U.S.C. 9601): *claim, claimant, damages, facility, hazardous substance, liable* or *liability, navigable waters, offshore facility, owner or operator, person, remove, removal, United States,* and *vessel.*

(3) 46 CFR 69.9: *Convention Measurement System, foreign-flag vessel, gross tonnage ITC (GT ITC)*[1] and *gross register tonnage (GRT), tonnage,* and *U.S.-flag vessel.*

(b) As used in this subpart—

Applicable amount means an OPA 90 or CERCLA evidence of financial responsibility amount determined to apply to a vessel as provided under § 138.100.

Application means an ''Application for Vessel Certificate of Financial Responsibility (Water Pollution)'', which the COFR Operator for one or more vessels has completed and verified in eCOFR, as provided in § 138.60(c)(1)(i), or signed, dated, and submitted to the NPFC by one of the submission methods specified in § 138.60(c)(1)(ii) through (c)(1)(iv).

Cargo means goods or materials carried on board a vessel for purposes of transportation, whether proprietary or nonproprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not cargo.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*).

COFR means a current Certificate of Financial Responsibility (Water Pollution) issued by the Director, under this subpart, as provided in § 138.70, and posted on the NPFC COFR program website *https://npfc.uscg.mil/cofr/default.aspx.*

COFR Operator means a responsible party who conducts, or has responsibility for, the operation of a vessel to which this subpart applies—that is, a person who is an operator as defined in OPA 90 and CERCLA, and, when there is more than one responsible party (including more than one operator), is the operator designated and authorized by all the vessel's responsible parties to act on their behalf for the purpose of complying with this subpart, including submitting (or causing to be submitted) all Applications and requests for COFR renewal, evidence of financial responsibility and reports, and payment of all fees required by § 138.120.

(1) If a vessel has one owner and is operated by that owner, or the owner controls and is responsible for the vessel's operation, the owner is the COFR Operator. In all other cases the person who operates, or controls and is principally responsible for the operation of, the vessel (for example, the demise charterer) is the COFR Operator.

(2) A person who is responsible, or who agrees by contract to become responsible, for a vessel in the capacity of a builder, repairer, or scrapper, or for the purpose of holding the vessel out for sale or lease, is the COFR Operator. A person who takes possession of, or responsibility for, a newly built, modified, or repaired vessel from a builder or repairer, or who purchases and operates or becomes a demise charterer of a vessel held out for sale or lease, is the COFR Operator.

(3) A time or voyage charterer who does not assume responsibility for the operation of a vessel is not a COFR Operator for purposes of this subpart.

(4) The designation of an operator to act as the COFR Operator on behalf of a vessel's responsible parties for purposes of this subpart does not limit who may be determined to be an operator under OPA 90, CERCLA, or both, in the event of an incident or a release.

Day or *days* means calendar days unless otherwise specified.

Director means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFC), or that person's authorized representative.

eCOFR means the electronic Certificate of Financial Responsibility web-based process located on the NPFC COFR program website, *https://npfc.uscg.mil/cofr/default.aspx,* and is the process COFR Operators may use to apply for and renew COFRs.

Evidence of financial responsibility means the demonstration of the financial ability of the responsible parties for a vessel to which this subpart applies to meet their potential liabilities under OPA 90, CERCLA, or both, up to the total applicable amount determined as provided under § 138.100 of this subpart.

Financial guarantor is a type of guarantor and means a business entity or other person providing a financial guaranty under § 138.110(c). A financial guarantor is distinct from a COFR insurance guarantor, a self-insurer, or a surety. A self-insurer, however, may also serve as a financial guarantor for others.

Fish tender vessel and *fishing vessel* have the same meanings as set forth in 46 U.S.C. 2101.

Fleet Certificate means a COFR issued by the Director under this subpart to the COFR Operator of a fleet of 2 or more unmanned, non-self-propelled barges

[1] The acronym ''ITC'' refers to the International Tonnage Convention. GT ITC, as defined in 46 CFR 69.9 means the gross tonnage measurement of a vessel as applied under the Convention Measurement System.

that are not tank vessels and that, from time to time, may be subject to this subpart (for example, a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo). A Fleet Certificate covers, automatically, all unmanned, non-self-propelled, non-tank barges for which the COFR Operator may from time to time be responsible that does not exceed the maximum gross tonnage indicated on the Fleet Certificate.

Fuel means any oil or hazardous substance used, or capable of being used, to produce heat or power by burning, including power to operate equipment. A hand-carried pump with no more than 5 gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

Guarantor means any person who has been determined to be acceptable by the Director, as provided in § 138.110, and who is providing evidence of financial responsibility on behalf of one or more of a vessel's responsible parties, other than as a responsible party providing self-insurance under § 138.110(d).

Hazardous material has the same meaning as set forth in 46 U.S.C. 2101.

Individual Certificate means a COFR issued by the Director under this subpart to the COFR Operator for a single vessel.

Insurance guarantor is a type of guarantor and means an insurance company, association of underwriters, ship owners' protection and indemnity association, or other person, serving as a guarantor under § 138.110(b). An *insurance guarantor* is distinct from a self-insurer, a financial guarantor, or a surety.

Master Certificate means a COFR issued by the Director under this subpart to the COFR Operator of one or more vessels that are under the custody of such person solely in the capacity of a builder, repairer, or scrapper, or for the purpose of holding vessels out for sale or lease, where such person does not physically operate the vessels. A Master Certificate covers, automatically, all of the vessels subject to this subpart held by the COFR Operator solely for purposes of construction, repair, scrapping, sale or lease. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, leasing, or selling (for example, a slop barge used by a shipyard) cannot be covered by a Master Certificate and must have either a current Individual Certificate or, if applicable, a current Fleet Certificate.

Net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world.

NPFC means the U.S. Coast Guard, National Pollution Funds Center. NPFC is the U.S. Government office responsible for administering the OPA 90 and CERCLA vessel COFR program.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*).

Public vessel means a vessel owned or demise chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Release, for purposes of this subpart, means a release as defined in CERCLA (specifically, 42 U.S.C. 9601), or a threatened release, of a hazardous substance.

Responsible party, for purposes of OPA 90 evidence of financial responsibility, has the same meaning as defined at 33 U.S.C. 2701; and, for purposes of CERCLA evidence of financial responsibility, means any person who is an ''owner or operator,'' as defined at 42 U.S.C. 9601, including any person chartering a vessel by demise.

Self-insurer means a COFR Operator providing evidence of financial responsibility as the responsible party of the subject vessel, as provided under § 138.110(d). A self-insurer is distinct from a guarantor.

Total applicable amount means an evidence of financial responsibility amount that must be demonstrated under this subpart, determined as provided in § 138.100.

Working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world.

§ 138.40 General requirements.

(a) *Requirement to establish and maintain evidence of financial responsibility.* The COFR Operator of a vessel must establish and maintain (or cause to be established and maintained) evidence of financial responsibility acceptable to the Director using any one of the methods specified in § 138.110, in an amount equal to or greater than the total applicable amount determined under § 138.100 and, in the case of a financial guarantor, as further provided under § 138.110(c)(2) (aggregation of total applicable amounts). The evidence of financial responsibility required by this paragraph must be—

(1) Established as of the date they become a responsible party; and

(2) Continuously maintained for so long as they remain a responsible party.

(b) *Requirement to have a COFR and report changes.* The COFR Operator must apply for and ensure the vessel is covered at all times by a current COFR, by complying with the requirements and procedures set forth in this subpart, including the reporting requirements in § 138.150.

§ 138.50 How to apply vessel gross tonnages.

(a) *Purpose.* This section sets forth the methods for applying vessel gross tonnage to—

(1) Determine whether a vessel exceeds the 100 or 300 gross ton threshold under § 138.20 and OPA 90, CERCLA, or both;

(2) Calculate the OPA 90 and CERCLA applicable amounts of financial responsibility required, as provided in § 138.100; and

(3) Determine the OPA 90 limit of liability under subpart B of this part in the event of an oil pollution incident, and the CERCLA limit of liability under 42 U.S.C. 9607 in the event of a hazardous substance release.

(b) *Both GT ITC and GRT assigned.* For a vessel assigned both gross tonnage ITC (GT ITC) and gross register tonnage (GRT) under 46 CFR part 69, apply the tonnage thresholds in § 138.20 using the assigned GRT tonnage, and determine the applicable amounts of financial responsibility and the limits of liability using the assigned GT ITC tonnage.

(c) *GT ITC or GRT assigned.* For a vessel assigned only a GT ITC or a GRT tonnage under 46 CFR part 69, apply the tonnage thresholds in § 138.20, and determine the applicable amounts of evidence of financial responsibility and the limits of liability using the assigned GT ITC or GRT tonnage.

(d) *High or low GRT assigned.* For a vessel assigned a high and low GRT tonnage under 46 CFR part 69, subpart D (Dual Regulatory Measurement System), apply the tonnage thresholds in § 138.20, and determine the applicable amounts of financial responsibility and the limits of liability, using the high GRT tonnage.

(e) *Summary.* The use of assigned gross tonnages, as required by paragraphs (b) through (d) of this section, is summarized in the following table.

TABLE 1 TO § 138.50—USE OF ASSIGNED GROSS TONNAGES

Category	Assigned tonnage	
	To apply the tonnage thresholds in § 138.20	To determine applicable amounts under § 138.100 and limits of liability
Vessels Assigned Both GT ITC and GRT	GRT	GT ITC.
Vessels Assigned—		
GT ITC only	GT ITC	GT ITC.
GRT only	GRT	GRT.

(f) *Certified gross tonnage governs.* In the event of an incident or release, the responsible parties and guarantors are governed by the vessel's assigned gross tonnage on the date of the incident. This is as determined under paragraphs (b) through (e) of this section and evidenced on the appropriate tonnage certifying document as provided for under the U.S. tonnage regulations or international conventions (for example, tonnage certificate or completed Simplified measurement application, International Tonnage Certificate (1969)), regardless of what gross tonnage is specified in the Application or guaranty form submitted under this subpart, except when the responsible parties or guarantors knew or should have known that the tonnage certificate information was incorrect (see also § 138.110(h)(1)(iii)).

(g) *Requirement to present tonnage certifying document(s).* Each COFR Operator must submit to the Director, or other authorized United States Government official, upon request, for examination and copying, the original or an unaltered and legible electronic copy of the vessel's applicable tonnage certifying document(s).

§ 138.60 Forms and submissions; ensuring submission timeliness.

(a) *Where to obtain forms.* All forms referred to in this subpart are available at the NPFC COFR program website, *https://npfc.uscg.mil/cofr/default.aspx,* and may be completed online or downloaded.

(b) *Where to obtain information.* Direct all questions concerning the requirements of this subpart to the NPFC at one of the addresses in paragraphs (c)(1)(ii) through (iv) of this section or by calling the NPFC at 202–795–6130.

(c) *How to present Applications and other required submissions.*

(1) Provide all submissions required by this subpart to the Director, by one of the following four methods:

(i) Electronically, using the eCOFR process (located at *https://npfc.uscg.mil/cofr/default.aspx*);

(ii) By email, sent to such email address as the Director may specify, attaching legible electronic images scanned in a format acceptable to the Director;

(iii) By fax, sent to 202–795–6123 with a cover sheet specifying the total number of pages, the sender's telephone number, and referencing NPFC telephone number 202–795–6130; or

(iv) By mail, addressed to: Director, National Pollution Funds Center; ATTN: VESSEL CERTIFICATION; U.S. Coast Guard Stop 7605; 2703 Martin Luther King Jr Ave SE; Washington, DC 20593–7605.

(2) Submissions may not be hand delivered to the NPFC.

(3) Do not present submissions by more than one method.

(d) *Required contents of submissions.* Unless otherwise instructed by the Director, all submissions required by this subpart must—

(1) Set forth, in full, the correct legal name of the COFR Operator to whom the COFR is to be, or has been, issued;

(2) Be in English, and

(3) Express all monetary terms in United States dollars.

(e) *Ensuring the timeliness of submissions; requesting deadline exceptions.*

(1) Compliance with a submission deadline will be determined based on the day the submission is received by NPFC. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next business day.

(2) Ensuring the timeliness of the submissions is the sole responsibility of the person making the submission.

(3) The Director may, in the Director's sole discretion, grant an exception to a deadline specified in this subpart only upon written request, submitted as provided in paragraph (c) and (d) of this section, in advance of the deadline and for good cause shown. The Director will not grant a deadline exception request that does not set forth the reasons for the request and that does not give NPFC sufficient time to consider and act on an Application or a request for COFR renewal before the COFR is required.

(f) *Public access to information.* Financial data and other information submitted to the Director is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552(a)).

§ 138.70 Issuance and renewal of COFRs.

(a) *Types of COFRs.* The Director issues the following three types of COFRs as provided further in § 138.80: Individual Certificates, Fleet Certificates and Master Certificates.

(b) *Requirements before issuance and renewal of COFRs.* The Director will issue or renew a COFR only after NPFC receives a completed Application or request for COFR renewal, and satisfactory evidence of financial responsibility.

(c) *COFRs are issued only to designated COFR Operators.* Each COFR of any type is issued only in the name of the COFR Operator designated in the Application or request for COFR renewal.

(d) *Form of issuance.* All COFRs are issued by the Director in electronic form on NPFC's COFR program website (*https://npfc.uscg.mil/cofr/default.aspx*) for a term of no more than 3 years from the date of issuance.

(e) *Information included in COFRs.* The following information is available on NPFC's COFR program website for each COFR issued by the Director:

(1) The name of the COFR Operator;

(2) The date of COFR expiration;

(3) The COFR number;

(4) For an Individual Certificate, the name of the covered vessel, and the vessel's gross tonnage information, including the measurement system(s) used;

(5) For a Fleet Certificate, the gross tons of the largest unmanned, non-self-propelled, non-tank barge within the fleet, including the measurement systems(s) used; and

(6) For a Master Certificate, the gross tons of the largest tank vessel and largest vessel other than a tank vessel eligible for coverage by the Master Certificate, including the measurement systems(s) used.

§ 138.80 Applying for COFRs

(a) *How to apply for a COFR.* To apply for a COFR of any type, the COFR Operator must—

(1) Submit, or cause to be submitted, to the Director, by one of the submission methods provided in § 138.60(c):

(i) An Application;

(A) For an Individual Certificate, list the name of the covered vessel, and the vessel's gross tonnage information, including the measurement system(s) used on the application;

(B) For a Fleet Certificate, instead of listing each individual barge, mark the box with the following statement: ''This is an Application for a Fleet Certificate. The largest unmanned, non-self-propelled, non-tank barge to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT GROSS TONNAGE] GRT''; and

(C) For a Master Certificate, instead of listing each individual vessel, mark the box with the following statement: ''This is an Application for a Master Certificate. The largest tank vessel to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT APPLICABLE GROSS TONS] GRT, as applicable. The largest vessel other than a tank vessel to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT APPLICABLE GROSS TONS] GRT, as applicable.''

(ii) The evidence of financial responsibility using one of the guaranty methods provided in § 138.110;

(A) For a Fleet Certificate, the evidence of financial responsibility must be in the total applicable amount, determined as provided in § 138.100, for the largest unmanned, non-self-propelled, non-tank barge to be covered.

(B) For a Master Certificate, the evidence of financial responsibility must be in the total applicable amount determined as provided in § 138.100 for the largest tank vessel and largest non-tank vessel to be covered by the Master Certificate.

(iii) The agent for service of process designations required by § 138.130; and

(iv) All other supporting documentation required by this subpart.

(A) At the time of Application for a Master Certificate, the COFR Operator must submit a report to the Director, indicating: The name; previous name, if applicable; type; gross tonnage and measurement system(s) used, for each vessel covered by the Master Certificate, indicating which vessels, if any, are tank vessels. If a vessel has both a GT ITC and GRT tonnage, specify both gross tonnages.

(B) Six months after receiving a Master Certificate, and every 6 months thereafter, each COFR Operator must submit to the Director, an updated report, separately listing the vessels no longer covered by that Master Certificate. If a vessel has both a GT ITC and GRT, both gross tonnages must be specified. If a vessel has been transferred to another responsible party and the COFR Operator to whom the Master Certificate was issued ceases to be the vessel's operator, the COFR Operator must report the date and place of the transfer, and the name and contact information of the responsible party to whom the vessel was transferred. If the vessels covered by the Master Certificate have not changed from the previous report, the COFR Operator may submit an updated report that indicates no change from previous report.

(2) Pay, or cause to be paid, all fees required by § 138.120.

(b) *Application deadline.* The Director must receive the Application, evidence of financial responsibility, and other required supporting documentation, at least 21 days prior to the date the Certificate is required. The COFR Operator may seek an exception to the 21-day submission deadline only as provided in § 138.60(e)(3).

(c) *Where to obtain Application forms.* COFR Operators may create an Application using the online eCOFR web process (located at *https://npfc.uscg.mil/cofr/default.aspx*) or, if not using eCOFR, may obtain an ''Application for Vessel Certificate of Financial Responsibility (Water Pollution)'' at the same website.

(d) *Requirement to verify, or sign and date, the Application.* (1) The COFR Operator must complete and either verify the Application in eCOFR as provided in § 138.60(c)(1)(i) or, if not using eCOFR, sign and date the hard-copy signature page of the Application and submit the signed Application to the Director, by one of the methods specified in § 138.60(c)(1)(ii)-(iv).

(2) The Application must include the title of the person signing it.

(3) If the person signing the Application is acting under a Power of Attorney, they must include a copy of the Power of Attorney with the Application.

(e) *Requirement to update Applications.* The COFR Operator must report any changes to the Application to the Director in writing, no later than 5 business days after discovery of the change. The Director may require that the COFR Operator submit a revised Application and provide additional evidence of financial responsibility, and pay any additional fees required by § 138.120.

(f) *Amending Fleet and Master Certificates.* Before operating a barge or vessel that exceeds the maximum gross tonnage indicated on the COFR, the COFR Operator must:

(1) Submit a new or amended Application, or a written request to supplement the Application, to reflect the new maximum gross tonnages on the COFR;

(2) Unless the COFR Operator qualifies as a self-insurer at the higher total applicable amount, submit, or cause to be submitted, evidence of financial responsibility using one of the guaranty methods provided in § 138.110 to the Director, demonstrating increased coverage based on the new maximum gross tonnage; and

(3) Pay a new certification fee, as required by § 138.120.

§ 138.90 Renewing COFRs.

(a) The COFR Operator must submit a request for COFR renewal to the NPFC at least 21 days, but no earlier than 90 days, before the expiration date of the current COFR.

(b) The COFR Operator may seek an exception to the 21-day request for COFR renewal submission deadline in paragraph (a) of this section only as provided in § 138.60(e)(3).

(c) The COFR Operator must identify in the request for COFR renewal all changes to the information contained in the initial Application, including the gross ton measurement system(s) used (if not previously provided), the evidence of financial responsibility, and all other supporting documentation previously submitted to the Director, as provided in § 138.150.

§ 138.100 How to calculate a total applicable amount.

The total applicable amount is the sum of the OPA 90 applicable amount determined under paragraph (a) of this section plus the CERCLA applicable amount determined under paragraph (b) of this section.

(a) *OPA 90 applicable amount.* The applicable amount under OPA 90 is equal to the applicable limit of liability determined as provided in subpart B of this part.

(b) *CERCLA applicable amount.* The applicable amount under CERCLA is determined as follows:

(1) For a vessel over 300 gross tons carrying a hazardous substance as cargo, and for any vessel covered under §§ 138.110(c)(3) or (d)(2)(ii) (calculation of CERCLA applicable amounts for financial guarantors and self-insurers), the greater of $5,000,000 or $300 per gross ton.

(2) For any other vessel over 300 gross tons, the greater of $500,000 or $300 per gross ton.

(c) *Amended applicable amounts.* If an applicable amount determined under paragraph (a) or (b) of this section is amended by statute or regulation, the COFR Operator must establish and maintain evidence of financial responsibility in an amount equal to or greater than the amended total applicable amount, as provided in § 138.240(a).

(d) *OPA 90 and CERCLA applicable amounts and limits of liability.*

The responsible parties are strictly, jointly and severally liable, for the costs and damages resulting from an incident or a release, but together they need only establish and maintain an amount of financial responsibility equal to the single limit of liability per incident or release. Only that portion of the evidence of financial responsibility under this subpart with respect to—

(1) OPA 90 is required to be made available by a guarantor for the costs and damages related to an incident where there is not also a release; and

(2) CERCLA is required to be made available by a guarantor for the costs and damages related to a release where there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to a limitations of liability are not applicable), therefore, is not required to apply the entire amount of financial responsibility to an incident involving oil alone or a release involving a hazardous substance alone.

§ 138.110 How to establish and maintain evidence of financial responsibility.

(a) *General requirement; guaranty effective date and termination date.* The COFR Operator of each vessel must submit, or cause to be submitted, to the Director, the evidence of financial responsibility required by § 138.40(a) using one of the methods specified in this section.

(1) If submitted on behalf of the COFR Operator, the guarantor must provide evidence of financial responsibility to the Director.

(2) The effective and termination dates are as follows:

TABLE 2 TO § 138.110—EFFECTIVE AND TERMINATION DATES

Type of certificate	Effective date	Termination date
Individual	Guaranty form submission date	30 days after the date the Director and the COFR Operator receive written notice from the guarantor that the guarantor intends to cancel the guaranty for that vessel.
Fleet	Guaranty form submission date or date COFR Operator becomes a Responsible Party for the vessel.	
Master	Guaranty form submission date or date COFR Operator becomes a Responsible Party for the vessel.	

(3) Termination Provisions: (i) The guarantor must specify the reason for terminating the guaranty in the notice required by this paragraph, if known.

(ii) Termination of the guaranty as to any covered vessel will not affect the liability of the guarantor in connection with an incident or release commencing or occurring prior to the effective date of the guaranty termination.

(4) If, at any time, the information contained in the evidence of financial responsibility submitted under this section changes, or there is a material change in a guarantor or self-insurer's financial position, the guarantor or COFR Operator or self-insurer (as applicable), must report the change to the Director, as provided in § 138.150.

(b) *Insurance guaranty method.* The COFR Operator may establish and maintain evidence of financial responsibility using the insurance guaranty method by submitting an Insurance Guaranty Form to the Director.

(1) Each form must be executed by no more than four COFR insurance guarantors accepted by the Director. A lead underwriter is considered one of the COFR insurance guarantors.

(2) The process for establishing and maintaining the acceptability of a COFR insurance guarantor is as follows:

(i) The COFR insurance guarantor must request an initial determination by the Director of the COFR insurance guarantor's acceptability to serve as a COFR insurance guarantor under this subpart, at least 90 days before the date a COFR is required, by submitting information describing the COFR insurance guarantor's structure, business practices, history, and financial strength, and such other information as may be requested by the Director.

(ii) The Director reviews the continued acceptability of COFR insurance guarantors annually. Each COFR insurance guarantor must submit updates to the initial request submitted under paragraph (b)(2)(i) of this section, annually, within 90 days after the close of the COFR insurance guarantor's fiscal year, describing any material changes to the COFR insurance guarantor's legal status, structure, business practices, history, and financial strength, since the previous year's submission, and providing such other information as may be requested by the Director.

(c) *Financial guaranty method.* The COFR Operator may establish and maintain evidence of financial responsibility using the financial guaranty method by submitting a Financial Guaranty Form to the Director.

(1) Each form must be executed by no more than four financial guarantors accepted by the Director, at least one of which must be a parent or affiliate of the COFR Operator. (See paragraph (g) of this section for additional requirements if more than one financial guarantor signs the form.)

(2) The process for establishing and maintaining the acceptability of a financial guarantor is as follows:

(i) The financial guarantor must comply with the self-insurance provisions in paragraph (d) of this section, and the periodic reporting requirements in paragraph (e)(1) through (4) of this section.

(ii) The financial guarantor must also demonstrate that it maintains net worth and working capital, each in amounts equal to or greater than—

(A) The aggregate total applicable amounts, calculated for each COFR Operator vessel for which the financial guaranty is being provided, based on each such COFR Operator's vessel with the greatest total applicable amount, plus—

(B) The total applicable amount required to be demonstrated by a self-insurer under this subpart if the financial guarantor is also acting as a self-insurer.

(3) In the case of a vessel greater than 300 gross tons, calculate the CERCLA applicable amount under § 138.100(b)(1) based on a vessel carrying hazardous substances as cargo.

(d) *Self-insurance method.* The COFR Operator may establish and maintain evidence of financial responsibility using the self-insurance method as follows:

(1) Submit to the Director the financial statements specified in paragraphs (e)(1) through (4) of this section for the fiscal year preceding the date the COFR Operator signs the Application or request for COFR renewal.

(2) Demonstrate that the COFR Operator maintains, in the United States, working capital and net worth, each in amounts equal to or greater than the total applicable amount, calculated as follows:

(i) If the self-insurer has multiple vessels, calculate the total applicable amount based on the vessel with the greatest total applicable amount.

(ii) In the case of a vessel greater than 300 gross tons, calculate the CERCLA applicable amount under § 138.100(b)(1) based on a vessel carrying hazardous substances as cargo.

(e) *Reporting requirements for self-insurers and financial guarantors.* (1) Each self-insurer and financial guarantor must submit the following reports to the Director with the Application and annually thereafter, within the deadlines specified in paragraph (e)(4) of this section:

(i) Submit the self-insurer or financial guarantor's annual, current, and audited non-consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles, and audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards.

(ii) Accompany the financial statements with a declaration from the self-insurer or financial guarantor's chief financial officer, treasurer, or equivalent official, certifying the amount of the self-insurer or financial guarantor's current assets, and the amount of the self-insurer or financial guarantor's total assets included in the accompanying balance sheet, which are located in the United States.

(iii) If the financial statements cannot be submitted in non-consolidated form, submit a consolidated statement accompanied by an additional declaration prepared by the same Certified Public Accountant—

(A) Verifying the amount by which the total assets located in the United States exceed the self-insurer or financial guarantor's total (worldwide) liabilities, and the self-insurer or financial guarantor's current assets located in the United States exceed the self-insurer or financial guarantor's total (worldwide) current liabilities;

(B) Specifically naming the self-insurer or financial guarantor;

(C) Confirming that the amounts so verified relate only to the self-insurer or financial guarantor, apart from any parent or other affiliated entity; and

(D) Identifying the consolidated financial statement to which it applies.

(2) When the self-insurer or financial guarantor's demonstrated net worth is not at least ten times the cumulative total applicable amounts, their chief financial officer, treasurer, or equivalent official must submit to the Director with the Application and semi-annually thereafter, within the deadline specified in paragraph (e)(4) of this section, an affidavit stating that neither their working capital nor net worth fell during the first 6 months of the self-insurer or financial guarantor's current fiscal year, below the cumulative total applicable amounts.

(3) All self-insurers and financial guarantors must—

(i) Submit, upon the Director's request, additional financial information within the time specified; and

(ii) Notify the Director in writing within 5 days following the date the self-insurer or financial guarantor knows, or has reason to know, that its working capital or net worth has fallen below the total applicable amounts.

(4) All required annual financial statements and declarations must be submitted to the Director within 90 days after the close of the self-insurer or financial guarantor's fiscal year. All required semi-annual financial statements and declarations must be submitted to the Director within 30 days after the close of the applicable 6-month period. The Director will grant an extension of the time limits for submissions under this paragraph only as provided in § 138.60(e).

(5) A failure by a self-insurer or financial guarantor to timely submit to the Director any statement, data, notification, or other submission required may result in the Director denying or revoking the COFR, and may prompt enforcement action as provided under § 138.170.

(6) The Director may waive the working capital requirement for any self-insurer or financial guarantor that—

(i) Is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit organization qualifying under the Internal Revenue Code (26 U.S.C. 501(c)), provided that the self-insurer or financial guarantor demonstrates in writing that the waiver would benefit a local public interest; or

(ii) Demonstrates in writing that working capital is not a significant factor in the self-insurer or financial guarantor's financial condition, in which case the self-insurer or financial guarantor's net worth in relation to the required cumulative total applicable amounts, and a history of stable operations, are the major elements considered by the Director.

(f) *Other guaranty methods for establishing evidence of financial responsibility.* (1) The COFR Operator may request that the Director accept a guaranty method for establishing evidence of financial responsibility that is different from one of the methods described in paragraphs (b) through (e) of this section as follows:

(i) The COFR Operator must submit the request to the Director in writing, at least 90 days prior to the date the COFR is required.

(ii) The request must describe in detail: The method proposed; the reasons why the COFR Operator does not wish to (or is unable to) use one of the methods described in paragraphs (b) through (e); and how the proposed guaranty method assures that the vessel's responsible parties have the financial ability to meet their potential liabilities under OPA 90 and CERCLA in the event of an incident or a release.

(iii) Each COFR Operator making a request under this paragraph must provide the Director a proposed guaranty form that includes all the elements described in paragraphs (g) and (h) of this section.

(2) The Director will not accept a self-insurance method other than the one described in paragraph (d) of this section. The Director also will not accept a guaranty method under this paragraph that merely deletes or alters a requirement or provision of one of the guaranty methods described in paragraphs (b) through (e) of this section (for example, one that alters the termination clause of the Insurance Guaranty).

(3) A Director's decision to accept an alternative guaranty method of establishing evidence of financial responsibility under this paragraph is final agency action.

(g) *Additional rules regarding multiple guarantors.* If more than one guarantor executes the relevant guaranty form, the following rules apply:

(1) If a guarantor's percentage of vertical participation is specified on the relevant guaranty form, the guarantor is subject to direct action and is liable for the payment of costs and damages under OPA 90 or CERCLA, as applicable, only in accordance with the percentage of vertical participation so specified for that guarantor.

(2) Participation in the form of layering (tiers, one in excess of another) is not permitted. Only vertical participation on a percentage basis and participation with no specified percentage allocation is acceptable.

(3) If no percentage of vertical participation is specified for a guarantor on the relevant guaranty form, the guarantor's liability is joint and several for the total of the unspecified portion.

(4) The participating guarantors must designate a lead guarantor having authority to bind all of the participating guarantors for actions required of guarantors under OPA 90 or CERCLA and this subpart, including but not limited to reporting changes in the evidence of financial responsibility as provided in § 138.150(d), receipt of source designations, advertisement of source designations and the responsible party's claims procedures, and receipt and settlement of claims.

(h) *Direct action.* (1) Each guarantor providing evidence of financial responsibility must submit to the Director a written acknowledgment by the guarantor that a claimant (including a claimant by right of subrogation) may assert any claim for costs or damages arising under OPA 90, CERCLA, or both, directly against the guarantor, regardless of whether the claim is asserted in an action in court or other proceeding. The guarantor must also acknowledge that, in the event a claim is asserted directly against the guarantor under OPA 90, CERCLA, or both, the guarantor may invoke only the following rights and defenses—

(i) The incident, release, or both, were caused by the willful misconduct of a responsible party for whom the guaranty was provided;

(ii) All rights and defenses, which would be available to the responsible party under OPA 90, CERCLA, or both, as applicable;

(iii) A defense that the amount of the claim, or all claims asserted with respect to the same incident or release, whether asserted in court or in any other proceeding, exceeds the amount of the guaranty, except when the guaranty is based on the gross tonnage of the vessel (instead of the statutory minimums) and the guarantor knew or should have known that the applicable tonnage certificate was incorrect (see § 138.50(f)); and

(iv) The claim is not one made under OPA 90, CERCLA, or both.

(2) Except when the guaranty is based on the gross tonnage of the vessel (instead of the statutory minimums) and the guarantor knew or should have known that the evidence of financial responsibility or applicable tonnage certificate is incorrect (see § 138.50(f)), a guarantor who provides evidence of financial responsibility under this subpart will be liable, with respect to any one incident or release, or both, as applicable, only for the amount of costs and damages specified in the evidence of financial responsibility.

(3) A guarantor will not be considered to have consented to direct action under any law other than OPA 90 or CERCLA, or to unlimited liability under any law or in any venue, solely because the guarantor has provided evidence of financial responsibility under this subpart.

(4) In the event of any finding that the liability of a guarantor under OPA 90 or CERCLA exceeds the amount of the guaranty provided under this subpart, that guaranty is considered null and void with respect to that excess.

(i) *Process upon disapproval of guarantor.* If the Director intends to disapprove or revoke the approval of a guarantor (for example, due to the guarantor's change in financial position), the Director will notify the COFR Operator of the need to establish new evidence of financial responsibility within a specified period.

(1) If the COFR Operator establishes, or causes to be established, new acceptable evidence of financial responsibility within the period specified by the Director in the notice, the Application if otherwise complete will be approved or the COFR will remain in effect, and the COFR Operator will not have to pay a new Application fee or certification fee.

(2) If the COFR Operator fails to establish, or cause to be established, new acceptable evidence of financial responsibility within the period specified by the Director in the notice, the Director may deny or revoke the COFR and, if revoked, the COFR Operator will have to apply for a new COFR and pay a new certification fee. The COFR Operator's failure to establish, or cause to be established, new acceptable evidence of financial responsibility within the period specified by the Director may also result in enforcement as provided under § 138.170.

§ 138.120 Fees.

(a) *Fee payment methods.* Each COFR Operator applying for a COFR, or requesting a COFR renewal, must pay the fees required by paragraphs (b) and (c) of this section as follows:

(1) All fees required by this section must be paid in United States dollars.

(2) For COFR Operators using eCOFR as provided under § 138.60(c)(1)(i), credit card payment is required.

(3) For COFR Operators submitting Applications and requests for COFR renewal under § 138.60(c)(1)(ii)–(iv) (email, fax, and mail submissions), the fees must be paid by a check, cashier's check, draft, or postal money order, made payable to the ''U.S. Coast Guard''. Cash payments will not be accepted.

(i) For Applications and requests for COFR renewal submitted under § 138.60(c)(1)(ii) and (iii) (email and fax submissions, respectively), all fee payments must be received by the Director no later than 21 days following submission of the Application or request for COFR renewal.

(ii) For Applications and requests for COFR renewal submitted under § 138.60(c)(1)(iv) (mail submissions), all fee payments must be enclosed with the Application or request for COFR renewal.

(4) Any failure to timely pay the fees required by this section may result in COFR denial or revocation, debt collection (see 6 CFR part 11, 44 CFR part 11, and 31 CFR parts 285, and 900 through 904), and such other enforcement under § 138.170 as may be appropriate.

(b) *Application fee.* (1) Except as provided in paragraph (b)(2), the COFR Operator must pay a non-refundable Application fee of $200 for each Application submitted under this subpart (for each Application for one or more Individual Certificates, for a Fleet Certificate, or for a Master Certificate).

(2) An Application fee is not required when the COFR Operator submits—

(i) a request for an additional Individual Certificate under an existing Application;

(ii) a request to amend an Application;

(iii) a request for Certificate renewal; or

(iv) a request to reinstate a Certificate, if submitted within 90 days following the Certificate's revocation.

(c) *Certification fees.* In addition to the Application fees required by paragraph (b) of this section, each COFR Operator who submits an Application or request for COFR renewal must pay the following certification fees:

(1) $100 for each vessel listed in, or added to, an Application for one or more Individual Certificates;

(2) $100 for each Application for a Fleet Certificate or Master Certificate; and

(3) $100 for each request for renewal of an Individual Certificate, a Fleet Certificate or a Master Certificate.

(d) *Fee refunds.* (1) A certification fee will be refunded, upon receipt by the Director of a written request, if the

Application or request for COFR renewal is denied by the Director, or if the Application is withdrawn by the COFR Operator before the Director issues the COFR.

(2) Overpayments of Application and certification fees will be refunded to the COFR Operator.

§ 138.130 Agents for Service of process.

(a) *Designation of U.S. agents for service of process.* Each COFR Operator and guarantor must designate on the forms submitted a person located in the United States as its U.S. agent for service of process and (in the event of an incident, a release, or both) for receipt of notices of source designation, claims presented under OPA 90, CERCLA, or both, and lawsuits brought under OPA 90, CERCLA, or both.

(b) *U.S. agent for service of process acknowledgment.* Each U.S. agent for service of process designated under paragraph (a) must acknowledge the agency designation in writing unless the agent has already submitted a written master (that is, blanket) agency acknowledgment to the Director showing that the agent has agreed in advance to act as the U.S. agent for service of process for the COFR Operator or guarantor in question.

(c) *How to change the U.S. agent for service of process.* A COFR Operator or guarantor may change a designated U.S. agent for service of process, at any time and for any reason, by submitting a new U.S. agent for service of process designation in accordance with the procedure in paragraph (a), and by causing the new U.S. agent for service of process to submit the agency acknowledgment required by paragraph (b).

(d) *Replacement of unavailable U.S. agent for service of process.* In the event a designated U.S. agent for service of process becomes unavailable at any time, for any reason, the COFR Operator or guarantor must designate a new U.S. agent for service of process in accordance with the procedures in paragraph (a), within 5 days of the COFR Operator or guarantor becoming aware of such unavailability. In addition, the new U.S. agent for service of process must submit to the Director the agency acknowledgment required by paragraph (b).

(e) *Service on the Director.* If a designated U.S. agent for service of process cannot be served, then service of process on the Director, as provided in this paragraph, will constitute valid service of process on the COFR Operator or guarantor. Service of process on the Director will not be effective unless the server—

(1) Has sent a copy of each document served on the Director to the COFR Operator or guarantor, as applicable, by registered mail, at the COFR Operator or guarantor's last known address on file with the Director;

(2) Indicates, at the time process is served upon the Director, that the purpose of the mailing is to effect service of process on the COFR Operator or guarantor; and

(3) Provides evidence acceptable to the Director at the time process is served upon the Director, that service was attempted on the designated U.S. agent for service of process but failed, stating the reasons why service on the U.S. agent for service of process was not possible, and that the document was sent to the COFR Operator or guarantor, as required by paragraph (e)(1).

§ 138.140 Application withdrawals, COFR denials and revocations.

(a) *Application withdrawal.* A COFR Operator may withdraw an Application at any time prior to issuance of the COFR.

(b) *Application denials and COFR revocations.* The Director may deny an Application or revoke a COFR, and the United States may initiate enforcement under § 138.170, for any failure to comply with the requirements of this subpart, including—

(1) If the COFR Operator, or other person acting on the COFR Operator's behalf, makes a false statement in, or in connection with, any submission required by this subpart;

(2) If the COFR Operator, or other person acting on the COFR Operator's behalf, fails to establish or maintain acceptable evidence of financial responsibility, as required by this subpart;

(3) If the COFR Operator fails to pay the Application and certification fees required by § 138.120;

(4) If the COFR Operator or guarantor fails to designate and maintain a U.S. agent for service of process as required by § 138.130;

(5) If the COFR Operator, or other person acting on the COFR Operator's behalf, fails to comply with, or respond to, lawful inquiries, regulations, or orders of the U.S. Coast Guard pertaining to the activities subject to this subpart;

(6) If the COFR Operator, or other person acting on the COFR Operator's behalf, fails to timely report information required to be reported to the Director under this subpart, including failing to timely submit to the Director statements, data, financial information, notifications, affidavits, or other submissions required by this subpart; or

(7) If the Director obtains information indicating that the Application should be denied or that a new COFR is required (for example, a permanent vessel transfer, new COFR Operator, vessel renaming, guaranty termination, disapproval of a guarantor).

(c) *Procedure for reinstating COFRs following termination of guaranties.* If a COFR is revoked by the Director under paragraph (b)(2) of this section based on the expiration of 30 days following the date the Director receives a guarantor's notice of termination as provided under §§ 138.110(a)(3) and 138.150(d), the Director may reinstate the COFR if the guarantor promptly notifies the Director following the revocation that the guarantor rescinded the termination and that there was no gap in guarantor coverage.

(d) *Notice to COFR Operator of intent to deny an Application or revoke a COFR.* If the Director obtains information indicating that an Application should be denied or that a COFR should be revoked for reasons that the COFR Operator may not be aware of, the Director will notify the COFR Operator, in writing, stating the reason for the intended action.

(1) A notice from the Director that an Application is incomplete will be considered a denial unless the Application is completed by the COFR Operator within the period specified in the notice. A COFR subject to revocation remains valid until the COFR is revoked as provided in § 138.140(d)(2) and (3).

(2) If the Director issues a notice of intent to deny an Application or revoke a COFR due to a violation under paragraph (b) of this section, the COFR Operator may demonstrate compliance to the Director in writing by no later than the date specified by the Director in the notice. If the COFR Operator demonstrates compliance by that date, the Application will remain under consideration, and any current COFR will remain in effect, unless and until the Director issues a written decision denying the Application or revoking the COFR, as applicable. Otherwise, the Application denial or COFR revocation is effective as of the date specified by the notice.

(3) The denial of an Application or revocation of a COFR does not terminate the guaranty.

(e) *Request for reconsideration.* (1) A COFR Operator may ask the Director to reconsider a denial of the COFR Operator's Application or the revocation of a COFR as follows:

(i) The COFR Operator must submit the request for reconsideration, in writing, to the Director no later than 21

days after the date of the denial or revocation.

(ii) The submission must state the COFR Operator's reasons for requesting reconsideration and include all supporting documentation.

(2) A decision by the Director on reconsideration of an Application denial or a COFR revocation is final agency action. If the Director does not issue a written decision on the request for reconsideration within 30 days after its submission, the request for reconsideration will be deemed to have been denied, and the Application denial or COFR revocation will be deemed to have been affirmed as a matter of final agency action. Unless the Director issues a decision reversing the revocation, the COFR revocation remains in effect.

(f) *Duty to remedy violations.* If the COFR for a vessel expires or is revoked while the vessel is located in the navigable waters, at any port or other place subject to the jurisdiction of the United States, or in the Exclusive Economic Zone, the COFR Operator and the vessel's other responsible parties will be deemed in violation of this subpart. In such event, the COFR Operator or, if unavailable or no longer operating the vessel, the vessel's current responsible parties, must notify the Director within 24 hours, by email or other electronic means. The notice must include the information required by § 138.150(b) and must establish new evidence of financial responsibility, designate a new COFR Operator if applicable, and cure any other violation of this subpart.

§ 138.150 Reporting requirements.

(a) *Report Changes of submitted information.* When there is a change in any of the facts contained in an Application, a request for COFR renewal, evidence of financial responsibility, or other submission made under this subpart, the change must be reported, in writing, to the Director. The reports required by this section may be submitted with, but are in addition to, other submissions required by this subpart (for example, Applications, requests for COFR renewal, semi-annual and annual financial reports, Master Certificate reports).

(b) *A 21-day prior reporting requirement of permanent vessel transfers and other changes requiring issuance of a new COFR.* Current COFR Operators of vessels, and owners or operators of vessels not currently in U.S. navigable waters or the U.S. Exclusive Economic Zone, must report to the Director, and (if applicable) to the guarantor, the following information, no later than 21 business days before the new COFR is required:

(1) The number of the current COFR;

(2) The name of the covered vessel;

(3) The type of change planned;

(4) The date the change will take place;

(5) The reason for the change;

(6) For a vessel that will be located in U.S. navigable waters or U.S. Exclusive Economic Zone on the date the change is scheduled to take place, where the vessel will be located on that date (for example, name and location of port);

(7) For a vessel name change, the vessel's new legal name;

(8) For the planned transfer of a vessel to a new responsible party, and even if the transferee's intent is to scrap or otherwise dispose of the vessel, the name and contact information of the responsible party to whom the vessel is being transferred;

(9) For a change of COFR Operator, the name and contact information of the person who will replace the COFR Operator; and

(10) Any other changes in the information previously submitted to ensure the information on record at the NPFC is current.

(c) *Three-day prior reporting of changes not requiring issuance of a new COFR.* In addition to the prior reporting required by paragraph (b) of this section, the COFR Operator must report any change to information contained in a submission to the Director that does not require issuance of a new COFR, by no later than 3 business days before implementing the change, including, but not limited to: Changes to the U.S. agent for service of process (other than termination), a change of a non-operator vessel owner, new contact information, and changes in vessel particulars (for example, flag, measurement, type, and scheduled vessel scrapping).

(d) *Reporting by guarantors.* Each guarantor (or, if there are multiple guarantors, each lead guarantor) must give the Director 30 days notice before terminating a guaranty as provided in § 138.110(a)(3), explaining the reason for the intended termination. In addition, each guarantor (or, if there are multiple guarantors, each lead guarantor) must give the Director notice by email or other electronic means as soon as possible before any other change occurs that would require new evidence of financial responsibility or issuance of a new COFR under paragraph (b) of this section.

(e) *Enforcement; deadline exceptions.* A failure to timely submit the reports required by this section may result in enforcement actions as provided in § 138.170. Exceptions to the reporting deadlines will only be granted as provided in § 138.60(e).

§ 138.160 Non-owning COFR Operator's responsibility for identification.

(a) Each COFR Operator of a vessel with a COFR, other than an unmanned, non-self-propelled barge, who is not also an owner of the vessel must ensure that the original or a legible copy of the vessel's demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the COFR Operator named on the COFR) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon request, for examination and copying, to the Director or other United States Government official.

§ 138.170 Enforcement.

(a) Any person who fails to comply with the requirements of this subpart, including the reporting requirements in § 138.150, may be subject to enforcement as provided in this section, including if—

(1) The COFR Operator fails to maintain acceptable evidence of financial responsibility as required;

(2) The name of a covered vessel is changed without reporting the change to the Director as required in § 138.150;

(3) The COFR Operator ceases, for any reason, to be an operator of a covered vessel, including when a vessel is scrapped or transferred to a new owner or operator, and a new Application and report have not been submitted to the Director as required by §§ 138.80 and 138.150; or

(4) The COFR Operator fails to maintain a U.S. agent for service of process.

(b) During a period of non-compliance with this subpart, all use by the vessel of the navigable waters of the United States, of any port or other place subject to the jurisdiction of the United States, or of the Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, is forbidden.

(c) *Withholding and revoking vessel clearance.* The Secretary of the Department of Homeland Security will withhold or revoke the clearance required by 46 U.S.C. 60105 of any vessel subject to this subpart that does not have a COFR or for which the evidence of financial responsibility required has not been established and maintained.

(d) *Denying vessel entry, and detention.* The U.S. Coast Guard may

deny entry to any port or other place in the United States or the navigable waters, and may detain at any port or other place in the United States in which it is located, any vessel subject to this subpart, which does not have a COFR or for which the evidence of financial responsibility required by this subpart has not been established and maintained.

(e) *Seizure and forfeiture.* In accordance with OPA 90, any vessel subject to this subpart which is found in the navigable waters without a COFR, or for which the necessary evidence of financial responsibility has not been established and maintained as required, is subject to seizure by, and forfeiture to, the United States.

(f) *Administrative and judicial penalties and other relief.*

(1) Any person who fails to comply with the requirements of this subpart or the evidence of financial responsibility requirements of OPA 90, CERCLA, or both, including a failure to comply with the reporting requirements in § 138.150, is subject to civil administrative and judicial penalties under OPA 90 and CERCLA, as applicable. In addition, under OPA 90, the Attorney General may secure such relief as may be necessary to compel compliance with OPA 90 and this subpart, including termination of operations.

(2) Under 18 U.S.C. 1001, any person making a false statement in, or in connection with, a submission under OPA 90 or CERCLA or this subpart is subject to prosecution.

(3) Any person who fails to timely pay the fees required by § 138.120 or any other amounts due under OPA 90 or CERCLA or this subpart may also be subject to Federal debt collection under 6 CFR part 11, 44 CFR part 11 and 31 CFR parts 285, and 900 through 904.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

■ 4. The authority citation for part 153 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ § 153.401 through 153.417 (Subpart D) [Removed]

■ 5. In part 153, remove subpart D, consisting of §§ 153.401 through 153.417.

Dated: April 14, 2020.

Thomas G. Allan,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Resources.

[FR Doc. 2020–08159 Filed 5–12–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Wednesday,

No. 93 May 13, 2020

Part VI

The President

Proclamation 10030—National Charter Schools Week, 2020

Proclamation 10031—National Defense Transportation Day and National Transportation Week, 2020

Proclamation 10032—Peace Officers Memorial Day and Police Week, 2020

Proclamation 10033—Mother's Day, 2020

Memorandum of May 8, 2020—Providing Continued Federal Support for Governors' Use of the National Guard To Respond to COVID–19 and To Facilitate Economic Recovery

Federal Register
Vol. 85, No. 93
Wednesday, May 13, 2020

Presidential Documents

Title 3—

The President

Proclamation 10030 of May 8, 2020

National Charter Schools Week, 2020

By the President of the United States of America

A Proclamation

Nearly 30 years ago, in a small town in southeast Minnesota, freedom-loving Americans on both sides of the political aisle opened the doors to our Nation's first public charter school, enabling families to more effectively choose the best learning environment for their child. This historic action sparked a movement that now spans 44 States, the District of Columbia, Puerto Rico, and Guam. There are currently more than 7,400 public charter schools providing individualized education and learning opportunities to more than 3 million students and their families throughout our Nation. During National Charter School Week, we recognize the contributions of public charter school leaders, teachers, students, and parents and reaffirm our commitment to further expand access to public charter schools and all high-quality education opportunities throughout our Nation.

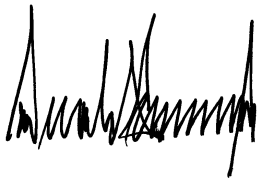
Every American family should have the right to choose the learning environment that works best for their child. Despite this, for decades the idea that all children can thrive under a one-size-fits-all approach to learning has defined American education. This antiquated and monolithic model leaves far too many of our Nation's young people trapped in a learning environment that does not meet their individual needs. Public charter schools ensure individual choice and empower students to fulfil their potential. These important educational options also disproportionately serve low-income students and students of color, and have a proven track record of serving these children better than neighboring public schools.

Although public charter school enrollment has increased at least eightfold in the past 18 years, there are currently more than 1 million students still on waitlists throughout the country. My Administration remains committed to ensuring these children are able to receive the best education possible by expanding access to alternative education options. Since my first day in office, I have championed school choice and education freedom for every American student, acknowledging that a family's zip code or socioeconomic status should not determine a child's future. My Administration has invested nearly $1.5 billion in the development of public charter schools, while also taking action to restore local control over education and expand access to high-quality education opportunities. Together, we are empowering students and families to be able to access learning environments that meet their unique needs.

This week, public charter schools, families, and supporters will share inspirational stories of success, recognize leaders in the charter sector, and build awareness of the unique public charter school model that offers flexibility to try different instructional methods while being accountable for student achievement and outcomes. During National Charter Schools Week, and every week, let us celebrate the extraordinary work of public charter schools in advancing education freedom, excellence, and innovative approaches to learning. By continuing to support public charter schools and students, we will give power back to families and build a brighter future for all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 10 through May 16, 2020, as National Charter Schools Week. I commend our Nation's successful public charter schools, teachers, and administrators, and I call on States and communities to help students and empower parents and families by supporting high-quality charter schools as an important school choice option.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–10424
Filed 5–12–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10031 of May 8, 2020

National Defense Transportation Day and National Transportation Week, 2020

By the President of the United States of America

A Proclamation

Our Nation's transportation infrastructure system is central to the ability of our manufacturers and exporters to get their goods to market and provides vital support for our national defense. On National Defense Transportation Day and during National Transportation Week, we recognize the critical contributions of the hardworking and dedicated Americans who ensure the safety, efficiency, and reliability of our transportation infrastructure systems.

Our Nation has a proven history of transportation innovation and might. We built the Transcontinental Railroad that led to today's interconnected freight rail network, engineered interstate highways and inland river infrastructure that connect the heartlands to our coastlines and beyond, and pioneered aviation with the advent of flight in Kitty Hawk. Our legacy of innovative practices, combined with the American spirit, has led to a robust, intricately connected country.

After decades of use, however, many of our Nation's roads, rails, ports, and airports are in disrepair. One of the chief causes of delay in infrastructure improvements is the broken permitting process. Completing the average environmental impact statement (EIS) process for highway projects takes more than 7 years. Some have taken more than a decade. To improve Federal agency coordination and make environmental reviews and permitting processes far less time-consuming, I directed Federal agencies to implement a One Federal Decision policy and complete environmental reviews for major infrastructure projects within 2 years. My Administration has also proposed the first comprehensive update to the regulations that implement the National Environmental Policy Act in more than 40 years. These new regulations will codify important aspects of the One Federal Decision policy to reduce the average time to complete an environmental impact statement through increased interagency coordination, cooperation, and communication within the Federal Government without sacrificing environmental protection.

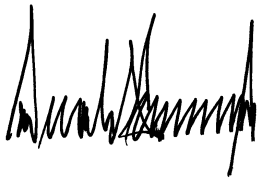
As a Nation, we must revitalize our crumbling infrastructure to promote commerce, protect public safety, and enhance our national defense. Our country's security and prosperity are inextricably linked, and the ability to move and travel freely throughout the country helps to ensure our Nation's preparedness and military readiness. Americans deserve nothing less than the most efficient, modern, and safe transportation infrastructure system that stimulates economic growth, creates jobs, supports the delivery of necessities during times of crises like these, and effectively facilitates the flow of supplies and equipment to our service members. My Administration looks forward to working with the Congress to invest in the repair and modernization of our transportation infrastructure.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May of each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), has declared that the week during which that

Friday falls be designated as ''National Transportation Week.'' In the midst of the coronavirus pandemic, the dedication and patriotism of our Nation's transportation workers have never been more evident as they risk their own health to ensure that grocery store shelves stay stocked and healthcare professionals receive essential products and equipment.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim Friday, May 15, 2020, as National Defense Transportation Day and May 10 through May 16, 2020, as National Transportation Week. I encourage all Americans to celebrate these observances with appropriate ceremonies and activities to learn more about how our transportation system contributes to the security of our citizens and the prosperity of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–10425
Filed 5–12–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10032 of May 8, 2020

Peace Officers Memorial Day and Police Week, 2020

By the President of the United States of America

A Proclamation

On Peace Officers Memorial Day and during Police Week, we commend the brave men and women of our law enforcement community for continually summoning the courage to fulfill their solemn oath to protect and serve. We also pause to remember all those who have lost their lives and who have suffered permanent disabilities defending their communities and the rule of law, including the heroes we have lost this year to the coronavirus.

Throughout our Nation's history, law enforcement officials have never wavered in the face of crisis or tragedy. During uncertain times, law enforcement officers bravely face challenges and continue to protect the American people. They steadfastly ensure the safety of our communities, providing a much needed sense of security for our citizens, and our country is extremely grateful for their efforts.

My Administration remains committed to ensuring our Nation's Federal, State, local, and tribal law enforcement officers have the resources and support they need to perform their duties safely and effectively. Last October, I was proud to sign an Executive Order to establish the Presidential Commission on Law Enforcement and the Administration of Justice—the first commission on law enforcement in half a century. This Commission identifies ways to reduce crime while simultaneously bringing law enforcement officers and the communities they serve closer together. We have also worked to expand lifesaving programs like the National Blue Alert Network. Thirty-five States have enacted Blue Alert plans, which provide early warnings to law enforcement agencies, the media, and the public by transmitting Blue Alerts to cell phones, television stations, and other devices. These alerts disseminate information on suspects who pose an imminent and credible threat to the safety of our officers, and this network demonstrates how we can work together to provide proactive programs, innovative resources, and cutting-edge technology to support and advance our law enforcement personnel.

We must continue working toward a time when all people respect and understand the important work that law enforcement officers do. Unfortunately, our law enforcement officers do not always receive the respect they deserve. These brave men and women must operate in an environment where their moral and legal authority is constantly being scrutinized, and they undertake the critical yet difficult task of addressing the actions of those affected by addiction, homelessness, and mental illness. Their ability to work well in the face of these and other challenges is extraordinary, and we have incredible appreciation for their public service and selflessness.

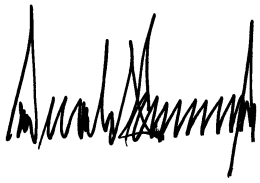
On behalf of our grateful Nation, we proudly recognize the more than 900,000 sworn members of law enforcement for their resolve and dedication in the face of dangerous uncertainty. The thoughts and prayers of our Nation are with them and their families, and we will always owe them our appreciation and support.

By a joint resolution approved October 1, 1962, as amended (Public Law 87–726, 76 Stat. 676), and by section 1 of Public Law 105–225 (36 U.S.C. 136–137), the President has been authorized and requested to designate

May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 15, 2020, as Peace Officers Memorial Day and May 10 through May 16, 2020, as Police Week. In honor of our hardworking law enforcement officers, Melania and I will light the White House in blue on May 15, 2020. I call upon all Americans to observe Peace Officers Memorial Day and Police Week with appropriate ceremonies and activities. I also call on the Governors of the States and Territories and officials of other areas subject to the jurisdiction of the United States, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–10430
Filed 5–12–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10033 of May 8, 2020

Mother's Day, 2020

By the President of the United States of America

A Proclamation

On Mother's Day, we celebrate the exceptional mothers in our lives. It is through the unwavering love, comfort, and guidance of these extraordinary women that we first learn to experience joy and the wonders of life. Whether they became mothers through birth, adoption, foster care, or other means, these women are deserving of our unending gratitude and praise this day and every day.

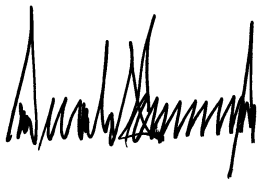
The intuition and wisdom passed from mother to child strengthens the fabric of our Nation and preserves generations of wisdom and familial values. In our earliest days, our mothers provide us with love and nurturing care. They often know our talents before we do, and they selflessly encourage us to use these God-given gifts to pursue our biggest dreams and most admirable ambitions. As we grow, our mothers teach us to be productive, contributing members of society and to care for one another as they have cared for us. As life-long supporters, mothers provide reassurance and guidance when needed most. President Abraham Lincoln described this spirit of compassion: ''I remember my mother's prayers and they have always followed me. They have clung to me all my life.'' Our mothers embrace us for who we are and help guide us to who we are meant to be. They advocate for us and counsel us, and above all else provide us with a steadfast and enduring love each day.

Today, on Mother's Day, we celebrate mothers everywhere and thank them for all that they do to enrich our lives, honoring how they raise us with a special grace and endurance. Their character, courage, and compassion are gifts that transcend time and span generations. May today be filled with the joy of knowing their contributions to our society are immeasurable, and their love for us does not go unnoticed or unappreciated.

In recognition of the contributions of mothers to American families and to our Nation, the Congress, by joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as Mother's Day, and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 10, 2020, as Mother's Day. I encourage all Americans to express their love and respect for their mothers or beloved mother figures, whether with us in person or in spirit, and to reflect on the importance of motherhood to the prosperity of our families, communities, and Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–10434
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Billing code 3295–F0–P

Presidential Documents

Memorandum of May 8, 2020

Providing Continued Federal Support for Governors' Use of the National Guard To Respond to COVID–19 and To Facilitate Economic Recovery

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), and section 502 of title 32, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to take measures to assist State and territorial Governors under the Stafford Act in their responses to all threats and hazards to the American people in their respective States and territories. On March 13, 2020, I declared a national emergency recognizing the threat that COVID–19, the disease caused by the novel (new) coronavirus known as SARS–CoV–2 (''the virus''), and the virus poses to the Nation's healthcare systems. I also determined that same day that the COVID–19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)). Considering the profound and unique public health risks posed by the ongoing outbreak of COVID–19, the need for close cooperation and mutual assistance between the Federal Government and the States and territories is greater than at any time in recent history. This need remains as the United States continues to battle the public health threat posed by the virus, while transitioning to a period of increased economic activity and recovery in those areas of the Nation where the threat posed by the virus has been sufficiently mitigated. To provide maximum support to the States and territories as they make decisions about the responses required to address local conditions in their respective jurisdictions with respect to combatting the threat posed by the virus and, where appropriate, facilitating their economic recovery, I am taking the actions set forth in sections 2, 3, and 4 of this memorandum:

Sec. 2. *One Hundred Percent Federal Cost Share.* To maximize assistance to the Governor of the State of South Dakota to facilitate Federal support with respect to the use of National Guard units under State control, I am directing the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security to fund 100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that South Dakota undertakes using its National Guard forces, as authorized by sections 403 (42 U.S.C. 5170b) and 503 (42 U.S.C. 5193) of the Stafford Act.

Sec. 3. *Support of Operations or Missions to Prevent and Respond to the Spread of COVID–19.* I am directing the Secretary of Defense, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), to request pursuant to 32 U.S.C. 502(f) that the Governor of the State of South Dakota order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that FEMA issues to the Department of Defense for the purpose of supporting State and local emergency assistance efforts under the Stafford Act.

Sec. 4. *Termination and Extension.* The 100 percent Federal cost share for the States' and territories' use of National Guard forces authorized pursuant to this memorandum, and my prior memoranda dated March 22, 28, and 30, 2020, and April 2, 7, and 13, 2020, each titled ''Providing Federal Support for Governors' Use of the National Guard to Respond to COVID–19,'' and my prior memoranda dated April 20 and 28, 2020, each titled ''Providing Continued Federal Support for Governors' Use of the National Guard to Respond to COVID–19 and to Facilitate Economic Recovery,'' shall extend to, and shall be available for orders of any length authorizing duty through June 24, 2020. Such orders include duty necessary to comply with health protection protocols recommended by the Centers for Disease Control and Prevention or other health protection measures agreed to by FEMA and the Department of Defense.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

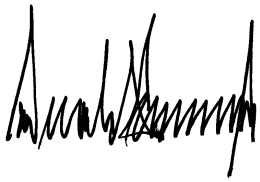
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, May 8, 2020

[FR Doc. 2020–10437
Filed 5–12–20; 11:15 am]
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Federal Register

Vol. 85, No. 93

Wednesday, May 13, 2020

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FEDERAL REGISTER PAGES AND DATE, MAY

25279–26316 1
26319–26600 4
26601–26834 5
26835–27104 6
27105–27286 7
27287–27644 8
27645–27908 11
27909–28478 12
28479–28840 13

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10016 26585
10017 26587
10018 26589
10019 26823
10020 26825
10021 26829
10022 26831
10023 26833
10024 27283
10025 27285
10026 27633
10027 27905
10028 27907
10029 28469
10030 28831
10031 28833
10032 28835
10033 28837

Executive Orders:
13917 26311
13918 26313
13919 26591
13920 26595
13921 28471

Administrative Orders:
Memorandums:
Memorandum of April 28, 2020 26315
Memorandum of May 8, 2020 28839
Notices:
Notice of May 7, 2020 27639
Notice of May 7, 2020 27641
Notice of May 7, 2020 27643

7 CFR

205 27105
984 27107

Proposed Rules:
905 27159
1217 27690
1250 27163

8 CFR

214 27645

9 CFR

1 28772
2 28772
3 28772

10 CFR

50 26540
72 28479

Proposed Rules:
Ch. 1 27332
50 28436
52 28436
72 28521
430 ..... 25324, 26369
431 ..... 26626, 27929, 27941
1021 25338

12 CFR

50 26835
249 26835
329 26835
1003 28364
1024 25279
1026 26319

13 CFR

113 27287
120 ..... 26321, 26324, 27287
124 ..... 27290, 27650
125 27650
126 27650
127 27650

14 CFR

21 26326
39 ..... 26842, 27109, 27112, 27665, 27667, 27670, 27909
61 26326
63 26326
65 26326
71 ..... 25283, 26601, 26602, 26604, 26605, 26607, 26608, 26609, 26845, 26846, 27114, 27293, 27294, 27295, 27673, 27911, 27912, 27914, 27915, 27916
91 26326
97 ..... 26611, 26613, 27917, 27919
107 26326
125 26326
141 26326

Proposed Rules:
39 ..... 25343, 25346, 25351, 25354, 26374, 26375, 26888, 26891, 26893, 26896, 27167, 27170
71 ..... 26898, 26901, 27172, 27174, 27176, 27178, 27180, 27181, 27183, 27184, 27186, 27188, 27189, 27333, 27334, 27337, 27339, 28523
399 26633

15 CFR

Proposed Rules:
922 25357

16 CFR

Proposed Rules:
Ch. 1 27191

17 CFR

23 27674

200.....25962, 28484
227.....27116
230.....25962, 28484
232.....25962, 28484
239 .....25962, 27116, 28484
240.....25962, 28484
270.....25962, 28484
274.....25962, 28484
Proposed Rules:
4.....26378
50.....27955
210.....28734
270.....28734

18 CFR

35.....27681

21 CFR

888.....26350
Proposed Rules:
73.....27340
573.....26902, 27692

22 CFR

120.....25285
122.....25285, 26847
123.....25285
124.....25285
129.....25285

24 CFR

5.....27133
891.....27133
960.....27133
962.....27133

25 CFR

Proposed Rules:
82.....26902

26 CFR

1.....26848
54.....26351
Proposed Rules:
1 .....25376, 27693, 28524, 28539

29 CFR

2560.....26351
2590.....26351

30 CFR

948.....27139
Proposed Rules:
935.....26413

31 CFR

208.....25285

32 CFR

112.....27157
144.....27157
199.....26355, 27921

33 CFR

100.....26355
117.....26358
165 .....26359, 26615, 28488
Proposed Rules:
100 .....26903, 27341, 28539
110.....27343
117 .....28540, 28542, 28544, 28546
135.....28802
138.....28802
153.....28802

36 CFR

1253.....26848
1290.....26848

37 CFR

202.....27296
Proposed Rules:
360.....26906

39 CFR

111.....27299
3040.....27301

40 CFR

9.....26617, 26617
52 .....25291, 25293, 25299, 25301, 25305, 26361, 27927, 28490, 28493
131.....28494
721.....26617
Proposed Rules:
9.....28140
50.....26634
52 .....25377, 25379, 26418, 26635, 26641, 26643, 26647, 26907, 27344, 27976, 28548, 28550
59.....28140
60.....28140
81.....28550
85.....28140
86.....28140, 28564
88.....28140
89.....28140
90.....28140
91.....28140
92.....28140
94.....28140
180.....27346
258.....27348
271.....26911
300.....27979
600.....28564
721.....26419
1027.....28140
1033.....28140
1036.....28140
1037.....28140
1039.....28140
1042.....28140
1043.....28140
1045.....28140
1048.....28140
1051.....28140
1054.....28140
1060.....28140
1065.....28140
1066.....28140
1068.....28140

42 CFR

406.....25508
407.....25508
409.....27550
410.....27550
412.....27550
413.....27550
414.....27550
415.....27550
422.....25508
423.....25508
424.....27550
425.....27550
431.....25508
438.....25508
440.....27550
457.....25508
482.....25508
483.....27550
484.....27550
485.....25508
600.....27550
Proposed Rules:
Ch. IV.....26438

44 CFR

64.....28499
333.....28500

45 CFR

156.....25640, 27550
170.....25640
171.....25640
1355.....28410

46 CFR

30.....27308
150.....27308
153.....27308

47 CFR

64.....26857, 27309
76.....26364
96.....25309
Proposed Rules:
1.....26438
2.....26438
18.....26438
54.....25380, 26653
73.....28586

48 CFR

Ch. 1.....27086, 27102
1 .....27087, 27088, 27098
2.....27087
4.....27101
5.....27088
8.....27088
9.....27088
12.....27088, 27098
13.....27088
15.....27088
19.....27088, 27101
22.....27087, 27088
25 .....27088, 27098, 27101
29.....27098
30.....27088
50.....27088
52 .....27087, 27088, 27098, 27101
Proposed Rules:
25.....28596

49 CFR

171.....27810
172.....27810
173.....27810
174.....27810
175.....27810
176.....27810
178.....27810
180.....27810
1333.....26858, 26866
1570.....25313
Proposed Rules:
Ch. X.....26915

50 CFR

17.....26786
91.....27313
219.....27028
300.....25315
635.....26365
648.....26874
660.....27317, 27687
665.....26622
679.....27158
Proposed Rules:
92.....27698
648.....27703

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 30, 2020

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